

**UNITED STATES LINES COMPANY AND JULIO ROXAS, PETITIONERS
VS. ASSOCIATED WATCHMEN AND SECURITY UNION (PTWO),
NARCISO LIM, APOLINAR BERNARDO, ANIANO SINCANGCO,
PAULINO HINUYANES,...**

G.R. No. 15508. June 29, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The United States Lines, Julio Roxas and Tomas Caraveo were respondents in an unfair labor practice case filed with the Court of Industrial Relations by the Associated Watchmen and Security Union (PTWO) and eleven members thereof (Case No. 958-ULP). Alleging that those eleven union members were employees of the United States Lines and that they had been dismissed by it, through Port Captain Julio Roxas and supervisor Tomas Caraveo, by reason of Union activities, the complaint prayed, among other reliefs, for reinstatement with back wages and for an order to cease and desist from the unfair labor practices complained of. In its decision of January 14, 1959 the Court of Industrial Relations found for the complainants and granted both of the prayers just stated. The case is now before us upon petition for review by certiorari filed by the United States Lines and Julio Roxas. Tomas Caraveo did not join the petition.

The essential facts found by respondent court are: Tomas Caraveo was the operator of the Maligaya Ship Watchmen Agency and at the same time was the head watchmen of the United States Lines, receiving compensation from it in that capacity. The eleven complainants below, respondents herein, were recruited by Caraveo, as operator of the agency, and rendered guard service on board the vessels of the United States Lines from 1951 until they went on strike on February 18, 1956. The strike was declared by herein respondent Associated Watchmen and Security Union (PTWO), of which the other individual respondents were members. On February 27, 1956 Caraveo registered the Maligaya Ship Watchmen Agency in the Department of Labor as a Union, known as the Maligaya Ship Watchmen Union. On the following April 2 a closed shop agreement was signed between the agency, represented by Caraveo, and the said union, represented by Roman Santillan, as president thereof. (Caraveo was originally elected president of the union, but declined to assume the position.) The contract provided specifically that the Maligaya Ship Watchmen Agency "shall hire no other watchmen but members of the Maligaya Ship Watchmen Union during the entire duration of the agreement."

At the time the aforesaid contract was entered into, however, the watchmen's strike against the United States Lines had been certified to the Court of Industrial Relations and was pending there, together with certification Case No. 328, to determine who should be the proper bargaining representative of the employees. Subsequently, the eleven watchmen-respondents reported to the head watchman of the United States Lines for assignment, but Caraveo, as supervisor and agent of the company, refused to take them back unless they first joined the Maligaya Ship Watchman Union. In fact respondent court found that even before the strike three of these watchmen had been dismissed for union activities, having affiliated with the Associated Watchmen and Security Union. After the reinstatement was denied a complaint for unfair labor practice amended on June 2, 1956, was filed with

respondent court.

In its answer to the complaint, the main defense of herein petitioners is that the eleven watchmen-respondents were not employees of the United States Lines but of the Maligaya Ship Watchmen Agency, operated by Tomas Caraveo, and that said petitioners had no authority to dismiss, and therefore had not dismissed them from their employment or restrained or coerced them in the exercise of their rights under Section 37 Republic Act No. 875, nor had petitioners committed any unfair labor practice against them.

In the petition before us five issues are raised, namely:

"1. Has the Court of Industrial Relations authority to reverse a finding of fact made by this Honorable Court in a previous case involving the same issues, the same parties and the same evidence?

"2. Is it essential for the validity of a collective bargaining agreement that the collective bargaining representative of the employees should first be certified by the Court of Industrial Relations?

"3. Is it unfair labor practice for an employer to refuse to reinstate employees who went on strike unless they first become members of the union which has a collective bargaining agreement with the employer containing a closed shop provision?

"4. Can the principal in a contract with an independent contractor be made responsible for unfair labor practice acts committed by the independent contractor against said contractor's employees?

"5. Is the finding of the Court of Industrial Relations to the effect that the eleven watchmen were dismissed and refused reinstatement because they went on strike and refused to join the Maligaya Ship Watchmen Union supported by substantial evidence in the record?"

The first issue has reference to the following finding of respondent court in the order under review:

"Considering that, the wage rates in the close-shop agreement and in the Caraveo contract with the United States Lines (Exh. "L" respondent company, page 178 of the Expediente) are the same and that the only addition was the close-shop clause; considering further that the contracting parties in the close-shop agreement, Caraveo and Santillan are officers of the same union, being the President and Vice-President respectively; and considering lastly that Caraveo's capacity as Operator of the agency and President of the union is inseparable from his capacity as agent of the company for being head-watchman and supervisor of the United States Lines, there is reasonable ground to believe that said closeshop agreement was merely an underhanded devise to deprive the eleven (11) watchmen, who joined the striking union, of their jobs. It cannot be valid because the bargaining representative of the watchmen has yet to be chosen since the certification Case No. 328 is still pending.

It is true that on January 23, 1956, the United States Line, through Manager Harrold D. Carl, executed a contract with the head-watchman Caraveo, stipulating, among others, that the shop watchman working on board of each vessel shall be employees of Caravon's Agency and not of the respondent company (Exh. "1"-United States Lines, pages 178 and 181 of the Expedients. But, it must be noted that this contract was executed after receipt of a notice of strike dated December 16, 1955 (See page 1.3,. Case No. 10 IPA). The Supreme Court observed in "Case'101' Phil., 896:

"'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 are ultimately paid for by the latter"

"Clearly in stipulating with Caraveo that its watchmen be his employees and not of the company, the United States Lines wanted to avoid responsibilities of our labor laws."

Petitioners contend that the foregoing is a reversal of the finding of fact made by us in 103 Phil., 920 entitled "Maligaya Ship Watchmen Company, et al., vs. Associated Watchmen & Security Union," promulgated May 28, 1958. Those cases, as well as G. R. Nos. L-12208-11, entitled "United States Lines et al., vs. Associated Watchmen & Security Union," promulgated May 21, 1958, arose from the same controversy between the same parties as those involved in the instant case. In G. R. Nos. L-12208-11 we sustained the finding of the Court of Industrial Relations—on the ground that it was supported by substantial evidence—to the effect that the watchmen involved therein (the same watchmen who are respondents here) were employees of the United States Lines. The evidence in those cases was reviewed by this Court and dealt with at length in the decision, and therefore need not now be reviewed again.

With reference to Cases G. R. Nos. L-12214-17 petitioners maintain that our finding therein that the Maligaya Ship Watchmen Agency was an independent contractor, vis-a-vis the United States Lines, insofar as the contract to recruit watchmen was concerned, was reversed by respondent court in the instant case. Petitioners specifically point out the statement by respondent court in the order now appealed that Tomas Caraveo is "the agent of the said company in the recruitment of watchmen." The apparent contradiction is of no decisive importance. What we said in those four cases was that although a contract existed between the shipping company and the agency with respect to the recruitment of watchmen, and therefore in that respect the latter was acting in the capacity of independent contractor, no such contract was ever entered into for the guarding of the ship and their cargo. It was only when the watchmen thus recruited actually rendered guard service to the United States Lines, which they did under the supervision of its officers, and received their pay from it, that they became its employees. After reviewing all the pertinent facts and circumstances obtaining in those cases we arrived at the conclusion "that the watchmen agencies-petitioners (among them the Maligaya Ship Watchmen Agency) are-not and may not be considered independent contractors insofar as the guarding of the ships and their cargo is concerned ..." This is our finding in the aforementioned cases which is decisive of the first issue raised by petitioner. It disposes likewise of the fourth issue which is based on the erroneous premise that the Maligaya Ship Watchmen Agency is an independent contractor and that therefore the United States Lines is not the employer of the watchmen-respondents.

The second and third issues may be dealt with together. In the first place, the statement of the second issue is misleading. Respondent court did not say that a certification of the proper bargaining representative is essential to the validity of a collective bargaining agreement—referring in this case to the one with the closed-shop stipulation entered into between the Maligaya Ship Watchmen Agency and the Maligaya Ship Watchmen Union. What respondent Court stated is that "it cannot be valid because the bargaining representative by the watchmen has yet to be chosen since Case No. 328 is still pending." For while the certification case was filed on February 21, 1956, the collective bargaining agreement was entered into only on April 2, 1956. In any event, it has been held in a number of cases that the closed-shop provision of such an agreement, assuming it to be valid, cannot operate retroactively so as to compel those already employed to join the union favored by the close-shop provision (Local 7, Press & Printing Free Workers, et al., vs. Tabigne, 110 Phil., 276; Freeman Shirt Manufacturing Co. vs. CIR. 110 Phil, 962; Findlay Miller Timber Company, L-18217 and 18222, September 29, 1962; Kapisanan Ng Mga Manggagawa ng Alak (NAFLU) vs. Hamilton Distillery Company, et al., L-18112, October 30, 1962). The fact that the watchmen who are respondents here went on strike before the agreement was entered into did not deprive them of their status as employees.

On the commission of unfair labor practice acts respondent court's findings are as follows:

"Thus, on April 18, 1958, when the eleven (11) watchmen reported to the Head-Watchman of the United States Lines for assignment, Caraveo, as supervisor and agent of the company, refused to reinstate them unless they became members of the Maligaya Ship Watchmen Union. However, Sesinando Villasana, one of the eleven,

who applied for membership in the union, was denied work because he continued as a complainant in this case (Exhibits "G" and "8"—Caraveo).

Even before the strike, three (3) watchmen were dismissed because of union activities. During- the conciliation proceedings in the Department of Labor, Tomas Caraveo and Capt. Julio Roxas made inquiries about the union activities of the complainant's members, with the result that, Narciso Lim and Paulino Hinojales were dismissed on January 1 and 15, 1956, respectively, because "they were inducing other watchmen to join their union." Apolinario Bernardo was dismissed on December 15, 1955. (t.s.n. page 49 Hearing of October 13, 1956; page 14, Hearing of January 24, 1957. and pages 30-31, 44, Hearing of February 5, 1957). The rest were dismissed because they were seen by Caraveo and Roxas In the picket line (t.s.n. pages 12-13, Hearing of March 19, 1958 and page 7, hearing of May 7, 1958). All the eleven (11) watchmen were members of the Maligaya Ship Watchmen Union but they required complainant union and form the picket line during the strike. (Exhs. "I" and "J"; Exhibits "13-13B"—Caraveo)."

We find no reason to say that the foregoing findings are not supported by substantial evidence so as to justify their reversal.

The decision appealed from is affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, and Regala, JJ., concur.

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