

JANUARIO T. SENO, ET AL., PETITIONERS, VS. THE HONORABLE JUDGE JOSE M. MENDOZA OF THE COURT OF FIRST INSTANCE OF CEBU AND CARLOS A. GO THONG & CO., RESPONDENTS.

G. R. No. 20565. November 29, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an original action in certiorari and prohibition with preliminary injunction brought by the above-named petitioners against the Honorable Jose M. Mendoza, presiding Judge of the Court of First Instance of Cebu, and Carlos A. Go Thong and Company.

It appears that petitioners other than Januario T. Seno, who is their counsel, were members of the United Seamen's Union of the Philippines. Pursuant to a letter-request of the Union stating that they "had ceased to be members in good standing" and citing a closed shop clause in its bargaining agreement[1] with respondent Carlos A. Go Thong & Co., the latter dismissed said petitioners. Through counsel, petitioners requested that they be reinstated to their former positions and paid their backwages, otherwise they would picket respondent's offices and vessels. The request was denied on the ground that the dismissal was unavoidable under the terms of the collective bargaining agreement. Conciliation conferences in the Regional Office of the Department of Labor in Cebu City failed to resolve the dispute, and on the morning of November 7, 1962, petitioners, together with their sympathizers, picketed the vessels of respondent Carlos A. Go Thong & Co. On the same day petitioners filed a charge of unfair labor practice against the company and the United Seamen's Union of the Philippines before the Special Prosecutor of the Court of Industrial Relations, Cebu Branch, which charge was docketed as Case No. 322-ULP-Cebu.

On November 8, 1962 the company filed a complaint (Civil Case No. R-7743) against the United Seamen's Union of the Philippines and petitioners herein in the Court of First Instance of Cebu City, with the following prayer for relief:

"(a) Ordering the defendants, jointly and severally, to pay the plaintiff the amount of TEN THOUSAND PESOS (P10,000.00) and such additional amounts representing actual damages which may be proven during the trial of this case including attorney's fees occasioned to the plaintiff by reason of the illegal acts of the defendants.

(b) Ordering the defendants, their agents, and all persons acting on their behalf to forever refrain from molesting plaintiff's employees of its vessels, all actual and prospective passengers of its vessels, all actual and prospective ship-pers of its vessels, and all persons engaged in loading and unloading cargoes of plaintiff's vessels, and after trial to make said injunction permanent.

(c) That pending the final termination of this case a writ of preliminary injunction be issued to all the defendants ordering them and all their agents and persons acting in their behalf to refrain from molesting, disturbing, or in any man-ner whatsoever hindering the free movements of all the employees of plaintiff's

vessels, all actual and prospective passengers of plaintiff vessels, all actual and prospective shippers of plaintiff's vessels, and all persons engaged in the loading and unloading of cargoes of plaintiff's vessels.

(d) That plaintiff be exempted from complying with that provisions of paragraph 1 of Article II of Annex "A" to the effect that the company hire all unlicensed members of the crew needed for the service through the hiring office of the union (USUP).

(e) That the defendants be ordered to pay the costs of this action.

Plaintiff further prays for such other reliefs which may be just, legal and equitable in view of the premises."

On the same day, petitioners through counsel appeared before respondent Judge and opposed the issuance of the writ of preliminary injunction on the ground of lack of jurisdiction, alleging that the case involved a labor dispute and that a charge of unfair labor practice had already been filed with the Court of Industrial Relations. They also requested that they be given until the next day, November 9, 1962, to file a memorandum on the matter, with citations of authorities. However, on that same day respondent Judge issued an order directing the issuance of a writ of preliminary injunction, which reads:

"After hearing the arguments of all the parties, the Court is of the opinion and so holds that for the interest of all parties concerned and in order to maintain a status quo during the pendency of this action, a writ of preliminary injunction issue upon the filing of the plaintiff of a bond of P5,000.00, which maybe increased or decreased as circumstances may afterward warrant, duly approved by this Honorable Court, directing all the defendants United Seamen's Union of the Philippines, Atty. Januario T. Seno, and all persons, agents and sympathizers to refrain from molesting, disturbing, or in any manner whatsoever hindering the free movements of all the employees of plaintiff's vessels, all actual and prospective shippers of plaintiff's vessels, and all persons engaged in the loading and unloading of cargoes of plaintiff's vessels.

Let this case be called again for tomorrow, November 9, 1962, at 8:00 o'clock in the morning, to give the defendants another opportunity to show cause if any, why the aforementioned writ of preliminary injunction should be dissolved."

On November 9, 1962 petitioners moved to reconsider, but the motion was denied on November 13, 1962.

Petitioners have come to us contesting the juris-diction of the lower court in taking cognizance of the case (Civil Case No. R-7743). Pursuant to one of the prayers in the petition we issued a writ of preliminary injunction on December 2, 1962, ordering respondent Judge to desist from further proceeding in the case and from enforcing the injunction he had issued.

In support of the contention that the Industrial Court and not the Court of First Instance has exclusive jurisdiction over the matters involved in Civil Case No. R-7743 petitioners claim: (1) that a labor dispute exists and (2) that their dismissal constitutes an unfair labor practice, being an act of discrimination in regard to hire or tenure of employment.

There is no question that a labor dispute arose when petitioners were dismissed from their employment. Under Section 2(j) of Republic Act 875 a question involving tenure of employment is included in the term "labor dis-pute."

The main issue, however, is whether such dismissal cons-titutes an unfair labor practice so as to bring the case under the jurisdiction of the Industrial Court. Sus-taining the affirmative of the issue, petitioners contend that the closed shop agreement between the United Seamen's Union of the Philippines and the respondent company, on the strength of which petitioners were dismissed, is null and void for being violative of Sections 4(a) (1) and 4(a) (4), of Republic Act 875, inasmuch as the matter of union representation of the employees was still pending

before the Court of Industrial Relations at the time said closed shop agreement was executed.

The following facts are pertinent to the resolution of the issue: On October 4, 1957 respondent company entered into a collective bargaining agreement with the United Seamen's Union of the Philippines, effective for a period of two (2) years, and thereafter for another period of one (1) year unless either party should notify the other in writing, not less than sixty (60) days prior to the expiry date, of its intention and election to terminate the agreement as of the end of the current term.

On July 18, 1959 said collective bargaining agreement was extended for another period of two (2) years, counted from October 4, 1959.

On October 6 and 31, 1959 the Philippine Labor Federation and the General Maritime Stevedores Union of the Philippines filed separate petitions for certification election with the Court of Industrial Relations, to which the United Seamen's Union of the Philippines presented an opposition. On January 17, 1961 respondent company and the United Seamen's Union of the Philippines renewed their collective bargaining agreement, with additional conditions for a period of five (5) years counted from its execution.[2]

We agree with respondent company that the pendency of the petitions for certification election did not bar or preclude the renewal of the collective bargaining agreement with the United Seamen's Union of the Philippines.[3] Other-wise there would be a gap or interregnum during which no agreement would govern, that is, from the time the old collective bargaining contract expired to the time the petition for certification election is decided and a new agreement entered into with the Union that may be duly certified as the proper bargaining unit. Without any agreement to govern the relations between labor and management in the interim, the situation would well be productive of confusion and result in breaches of the law by either party (*Victorias Milling Co. vs. Victorias-Manapla Workers Organization vs. Court of Industrial Relations and Free Visayan Workers*, Nos. L-18467 & 18470, Sept. 30, 1963). The question may be asked: What would be the effect on the renewed bargaining agreement if a union other than the one that executed it should be certified? In a similar case it has been held that the union thus certified would have to respect the contract, but that it may bargain with the management to shorten the life of the contract if it is too long (*General Maritime Stevedores Union of the Philippines, et al., vs. South Sea Shipping Lines, et al.*, 108 Phil. 1112).

Section 4(a) of the Industrial Peace Act provides that it shall be unfair labor practice for an employer:

"(4) to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act or in any other Act or statute of the Republic of the Philippines shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section twelve, but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization." (As amended by Republic Act 3350 which took effect on June 17, 1961).

The dismissal of petitioners was in compliance with an existing collective bargaining agreement, the validity of which is sanctioned by the provision just quoted, and therefore does not constitute an unfair labor practice exclusively cognizable by the Industrial Court.

Because of their dismissal petitioners picketed the vessels of respondent company. This gave rise to the complaint in the Court of First Instance (Civil Case No. R-7743) to enforce the contract with the United Seamen's Union of the Philippines, to recover damages, and at the same time to restrain petitioners from "molesting, stopping, obstructing, and interfering with the free movements of the employees of plaintiff's vessels and all its passengers, prospective and actual, as well as shippers, prospective and actual, within the port of the City of

Cebu". Actually, the intention of respondent company in filing the action was to shift to the union the liabilities that arose by virtue of petitioners' dismissal as provided in the renewed collective bargaining contract, particularly the first paragraph of Article II, which states: " x x x provided, however, that the UNION shall assume all the responsibilities and shall answer for any and all liabilities that may arise by virtue of such dismissal."

As the issue involved in the instant case, although arising from a labor dispute, does not refer to one affecting an industry which is indispensable to the national interest and certified by the President to the Industrial Court, nor to minimum wage under the Minimum Wage Law, or to hours of employment under the Eight-Hour Labor Law, nor to an unfair labor practice, but seeks the enforcement of a provision of the collective bargaining agreement, and to recover damages occasioned by the alleged unlawful acts of petitioner, jurisdiction pertains to the ordinary courts and not to the Industrial Court. (PAFLU et al. vs. Tan & REMA, Inc., 99 Phil. 854; Dee Cho Lumber Workers' Union vs. Dee Cho Lumber Co., 101 Phil. 417; Cebu Port Labor Union vs. State Marine Corp., et al., 101 Phil. 468; Phil. Sugar Institute vs. CIR, 106 Phil. 401, and in Elizalde Paint & Oil Factory vs. Bautista, G. R. No. L-15994, Nov. 23, 1960).

The remaining question to be resolved is whether or not the procedure followed by the lower court in issuing the injunction is correct. In *Associated Watch-men & Security Union vs. Union States Lines, et al.*, (101 Phil. 896), it was held that if a labor dispute exists the provisions of the Magna Charta of Labor (R.A. 875) should be strictly followed. The same ruling was laid down in *PAFLU vs. TAN, et al.*, supra, and in *PAFLU vs. Barot, et al.* (99 Phil. 1008). On the other hand, if no labor dispute exists the court may issue an ordinary injunction in accordance with the Rules of Court. While the trial court had jurisdiction to take cognizance of the case, the injunction issued by it was nevertheless void because the procedure laid down by Section 9 (d) of R.A. 875 was not followed in its issuance. The law provides that the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of the complaint made under oath, and the testimony in opposition thereto, if offered, should be heard and that a finding of fact by the court must be made, to the effect that unlawful acts have been threatened and will be committed unless restrained; that substantial and irreparable injury to complainant's property will follow; that as to each item or relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief; that complainant has no adequate remedy at law; and that public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. The instant case being an outgrowth of a labor dispute, the trial court cannot grant the injunction merely under Section 6, Rule 60 of the Rules of Court (now Section 6, Rule 58), but must follow what is provided for in R.A. 875 (*Allied Free Workers' Union, et al. vs. Hon. Judge Segundo Apostol, et al.*, 102 Phil. 292).

Wherefore, the order of the lower court dated November 8, 1962 is set aside and the case is remanded to the court of origin for further proceedings. The preliminary injunction issued by this Court is modified accordingly. No pronouncement as to costs.

Dizon, Acting C.J., Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Concepcion, C.J., and Reyes, J., on official leave of absence.

Sanchez, J., concurs in the result.

[1] "That the Company hire all unlicensed members of the crew needed for the service of the Company through the hiring office of the Union and that membership in good standing with the Union shall be a strict requirement as a condition of employment of all unlicensed members employed by the said Company x x x x"

"Upon written notification by the Union that an unlicensed member of the crew is no longer in good standing with

the UNION, the COMPANY shall immediately dismiss such crew member from employment; provided, however, that the UNION shall assume all the responsibilities and shall answer for any and all liabilities that may arise by virtue of such dismissal." [Paragraph 1 and 2, Article II, Close Shop Agreement.]

[2] The petitions for certification election were still pending when the collective bargaining agreement was renewed, and also when respondents herein filed their answer to the instant petition for certiorari.

[3] Petitioners here were not members of either the Philippine Labor Federation or the General Maritime Stevedores Union.

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