

ARSENIO P. BUENAVENTURA ENTERPRISES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GENERAL MESS FOOD SERVICE WORKERS UNION, RESPONDENTS.

G.R. No. 85086. September 24, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari with prayer for the issuance of a writ of preliminary injunction, which seeks to review and annul for lack of jurisdiction the decision of the respondent National Labor Relations Commission (NLRC) promulgated on 11 May 1988 setting aside the decision of the Labor Arbiter.

The sole issue to be decided in this case is whether or not herein petitioner (Arsenio P. Buenaventura Enterprises) is legally bound to employ the bona fide members of the respondent union (General Mess Food Service Workers Union) who were not hired by petitioner, granting that they pass the same standards applied by the petitioner in hiring its employees.

Petitioner is a sole proprietorship engaged in the business of supplying manpower services. It assumed the mess services at the United States Naval Facility, Subic Naval Base, Olongapo City on 1 April 1987 under a new contract with the U.S. Navy. The members of the respondent union were hired by Rizal Maintenance and Service Corporation (RMSC) whose contract of service with the U.S. Navy expired on 31 March 1987. Out of the two hundred twenty (220) employees of RMSC, petitioner re-hired one hundred forty-eight (148), and employed forty-five (45) new ones.

As a result of the non-hiring of a number of respondent union's officers and members, the respondent union, on 31 March 1987, filed a Notice of Strike with the Zambales Provincial Labor Office at Olongapo City and actually struck on the day petitioner assumed the mess services on 1 April 1987. The respondent union charged petitioner "with Unfair Labor Practice based on dismissals, without just cause, of union officers and members which in effect, constitute Union Busting."[1]

No settlement was reached at the conciliation level, hence, the case was referred to the Regional Arbitration Branch No. III, San Fernando, Pampanga, for compulsory arbitration on 21 May 1987 and was docketed as NLRC Case No. RAB-III-5-3210-87.

Respondent union alleges that its officers and members are protected by the RP-US Bases Labor Agreement of 27 May 1968. In other words, notwithstanding the expiration of the mess services of the outgoing contractor (RMSC), the petitioner, as incoming contractor, is obliged to hire the bona fide employees of the outgoing contractor, citing for support the case of Guerrero's Transport Services, Inc. vs. Blaylock Transportation Services Employees Association Kilusan (BTEA-KILUSAN), et al.[2]

On 29 December 1987, the Labor Arbiter rendered a decision declaring petitioner not guilty of unfair labor practice, illegal dismissal and/or refusal to employ respondent union's officers and members.[3]

The Labor Arbiter held:

"We agree with the respondent that the contract of mess attendant service did not oblige the respondent to absorb all the employees of RMSC. We further agree that the RP-US Bases Labor Agreement and the Supreme Court ruling in the Guerrero case did not provide for a security of tenure for the contract employees of contractors and concessionaires. They simply require incoming contractors to give priority consideration to employees of outgoing contractors." [4]

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"Because of their failure to file application for employment, they barred themselves from being rehired, as there can be no processing to start with. Only those who applied could be processed by the employer, for final screening and approval by U.S. Navy authorities." [5]

Respondent union appealed the Labor Arbiter's decision to the NLRC and on 11 May 1988, respondent Commission rendered the now questioned decision setting aside the Labor Arbiter's decision and directing petitioner to employ the bona fide members of respondent union who were not absorbed after having passed the same standards applied by petitioner in the hiring of its employees. [6]

Said the respondent NLRC:

"Suffice it to state that appellee, in recognition of the right of RMSC's workers to be absorbed, took in many of said workers with the exception of some whom it perceived to be a threat. It would not be amiss to state here that those who were rehired was (sic) admitted by appellant itself were 'union officers and the more staunch members of the union.' Perhaps, what could provoke appellee to close its doors towards those employees was the fact that they had struck on the very day it assumed the new contract of mess services on 1 April 1987. But for the reason that the un-absorbed employees were militant in their union activities and/or did not belong to favored union, we see no reason why they should not be accorded the same privilege as those who were rehired." [7]

Thus, petitioner filed this petition and on 12 October 1988, this Court issued a restraining order enjoining the respondents from enforcing the questioned NLRC decision.

The provisions concerning labor relations and terms and conditions of employment of Filipino citizens in the United States Military Bases in the Philippines are embodied in the RP-US Bases Labor Agreement signed in Manila on 27 May 1968. The provision that is relevant to the issue at hand is Article I, Paragraph 6 on Security of Employment which states:

"6. Security of Employment. Consistent with their military requirements, the United States Armed Forces shall endeavor to provide security of employment and, in the event certain activities or services are contracted out, the United States Armed Forces shall require the contractor or concessionaire to give priority consideration to affected employees for employment. The United States Armed Forces shall at the same time give to such employees priority consideration for reemployment by the base. If reemployed by the base, such employment shall be without loss of seniority." (Italics supplied)

Petitioner contends that, while it is admitted that security of tenure is guaranteed under the RP-US Bases Labor Agreement, the same only applies to federal and civilian employees who have been directly hired by the U.S. Government to work in U.S. facilities in the Philippines. Petitioner argues that such guarantee does not extend to those employed under contracts or concessions. Those hired by labor contractors or concessionaires are only to be afforded "priority considerations," as ruled in the GUERRERO case.

Therefore, in compliance with the aforementioned labor agreement, petitioner maintains that, as early as March 1987, it (petitioner) required the former employees of RMSC to file their respective applications for employment

with the petitioner. Out of the two hundred twenty (220) workers of RMSC, it hired one hundred forty-eight (148), and those not hired were those who did not apply for work.

We find merit in the petition.

In *Guerrero's Transport Services, Inc. vs. Blaylock Transportation Services Employees Association-Kilusan (BTEA-KILUSAN)*, et al.,[8] it was held that:

"Pursuant to Section 6 of Article I of the Philippine-U.S. Labor Agreement of May 27, 1968, the United States Armed Forces undertook, consistent with military requirements, 'to provide security for employment, and, in the event certain services are contracted out, the United States Armed Forces shall require the contractor or concessioner to give priority consideration to affected employees for employment.' (Italics supplied.)

"A treaty has two (2) aspects — as an international agreement between states, and as municipal law for the people of each state to observe. As part of the municipal law, the aforesaid provision of the treaty enters into and forms part of the contract between petitioner and the U.S. Naval Base authorities. In view of said stipulation, the new contractor is, therefore, bound to give 'priority' to the new employment of the qualified employees of the previous contractor. It is obviously in recognition of such obligation that petitioner entered into the afore-mentioned Compromise Agreement."

The factual circumstances in the cited *GUERRERO* case are quite similar to those of the case at bar. In the said case, the United States Naval Base authorities at Subic, Zambales, conducted a public bidding for a five-year contract for the right to operate and/or manage the transportation services inside the naval base. This bidding was won by Santiago Guerrero, owner-operator of Guerrero's Transport Services, Inc. over Concepcion F. Blaylock, the then incumbent concessionaire doing business under the name of "Blaylock Transport Services," whose 395 employees were members of the union BTEA-KILUSAN. When Guerrero's Transport Services, Inc. refused to employ the members of the union, the latter filed a complaint with the NLRC against the former to compel it to employ the union members pursuant to Article I, Section 6 of the subject Agreement.

This Court in the said case rendered a decision ordering Guerrero's Transport Services, Inc. to employ members of the union who satisfied the following criteria: (a) bona fide employment with the Blaylock Transport Services at the time its concession expired; and (b) they pass the final screening and approval by the appropriate authorities of the U.S. Naval Base.

The respondent Commission in the present case stated in its decision that those who were not rehired were "union officers and the more staunch members of the union." And the fact that they were militant in their union activities and/or did not belong to a favored union were not enough grounds, according to the NLRC, for them not to be accorded the same privilege as those who were rehired.[9]

Generally, the rule is that findings of fact of the respondent Commission are entitled to great respect. But the judgment below can be reversed when public respondents have overlooked certain significant facts which are sufficient to alter the questioned decision. That situation confronts us now.[10]

The respondent Commission has totally disregarded the finding of the Labor Arbiter that the respondent union's officers and members who were not re-hired by petitioner, had failed to file applications for employment and thus barred themselves from being rehired as there could be no processing to start with.

A perusal of the *GUERRERO* case would show that the orders issued by then Secretary of Labor Blas F. Ople and Labor Arbiter De los Reyes spoke of applicants to be processed for absorption. It would seem that application is a pre-requisite before one can be screened and finally approved. Thus, in the said case, the Secretary of Labor had to resolve first the issue of the credibility of the alleged applications of the members of the union.

The RP-US Bases Labor Agreement does not speak of automatic absorption by the incoming contractor of the employees of the outgoing contractor but rather emphasizes priority consideration for those who wish to be reemployed by the incoming contractor. And such right of the former employees will only operate upon formally signifying their intent to continue with their employment. Without such manifestation, the incoming contractor cannot be expected to hire all the employees of the outgoing contractor.

In its decision, respondent Commission merely quoted the decision of the Labor Arbiter regarding the allegation that a number of the respondent union's members were absorbed and those who were not absorbed were those who allegedly did not re-apply with the petitioner. The respondent Commission did not explicitly affirm the conclusion of the Labor Arbiter but neither did it reverse the decision of the Labor Arbiter regarding this matter.

In the Comment of the Solicitor-General, he alleges that the NLRC made a finding that the employees of the previous contractor who were not hired had filed their applications with petitioner but they were not employed, as testified to by Mr. Mirabueno and Mr. Andaya, members of the respondent union. But this finding is not reflected in the decision of the respondent Commission. If such allegation was clearly and substantially supported by evidence, why did the respondent Commission fail to use such evidence to refute and disprove the conclusion reached by the Labor Arbiter?

We therefore rule that petitioner is not legally bound to employ the bona fide members of the respondent union who failed to apply for said employment in the first place.

"That there should be concern, sympathy, and solicitude for the rights and welfare of the working class, is meet and proper. That in contro-versies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writings should be resolved in the former's favor is not an unreasonable or unfair rule. But that disregard of the employer's own rights and interests can be justified by that concern and solicitude is unjust and unacceptable." [11]

WHEREFORE, the petition is GRANTED. The decision of the respondent Commission in NLRC Case No. RAB-III-5-3210-87 dated 11 May 1988 is SET ASIDE and the decision of the Labor Arbiter dated 29 December 1987 is REINSTATED. Without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, pp. 23-24

[2] G.R. No. L-41518, June 30, 1976, 71 SCRA 621

[3] Rollo, p. 34

[4] Rollo, pp. 29-30

[5] Rollo, p. 32

[6] Rollo, p. 21

[7] Rollo, p. 19

[8] Supra.

[9] Rollo, p. 7

[10] Haverton Shipping Ltd., et al. vs. NLRC, et al., G.R. No. 65442, April 15, 1985, 135 SCRA 685

[11] Stanford Microsystems, Inc. vs. NLRC, et al., G.R. No. 74187, January 28, 1988, 157 SCRA 410

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