

NATIONAL LABOR UNION, PETITIONER, VS. ZIP VENETIAN BLIND AND/OR EUSEBIO NAZARIO, GENERAL MANAGER, RESPONDENTS.*G.R. Nos. 15827-28. May 31, 1961*

Ponente: CONCEPCION, J.

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Appeal by certiorari from an order and a resolution of the Court of Industrial Relations.

Respondent Zip Venetian Blind is a business enterprise engaged in the making of venetian blinds and bamboo blinds. It is owned and managed by Eusebio Nazario—hereinafter referred to as respondent—who resides at 4801 Old Sta. Mesa, Manila, where he has his shop. His sales and administration office is, however, in Room 222, De Leon Building, Rizal Avenue, Manila. There used to be twenty (20) shop workers and delivery men in the factory and twenty-six (26) salesmen and clerks in the sales and administration office.

On April 1, 1956 the twenty (20) factory workers affiliated with the National Labor Union—hereinafter referred to as NLU—a duly registered labor union, which is national in character and has two classes of members, namely, individuals and local unions. Said factory workers of the Zip Venetian Blind belonged to the first class of members of the NLU. Although they had not formed a local union, they called their group as the Zip Manufacturing Laborers Union, with a set of officers among themselves. Felipe Enriquez was their first president and Florentino Santos the first vice-president.

Sometime on April 15, 1956, the NLU presented a petition containing a set of demands. Respondent's reply thereto being unsatisfactory, the NLU filed, on May 11, 1956, a notice of strike, with the Conciliation Service of the Department of Labor, in which negotiations between the NLU and respondent were subsequently held. Meanwhile, or on June 22, 1956, Felipe Enriquez resigned from the presidency of the factory group and as member of the NLU. Hence, Florentino Santos took his place as president of said group. On the date last mentioned, another union, called the Zip Workers Union, composed of the salesmen and clerks in the sales and administration office, filed its own demands from the management.

There being two groups demanding a collective bargaining agreement from the management, the matter of representation was taken up in the conference held in the Conciliation Service. Respondent wanted to deal with only one union for the entire employer unit, whereas counsel for the NLU wanted that the factory workers be considered as an appropriate bargaining unit, distinct and separate from that of the sales-and-office-workers' unit. As the parties could not agree thereon, the conciliator suggested two possible solutions—either to hold a voluntary election among the employees, or to file with the Court of Industrial Relations a petition for certification election. On June 27, 1956, the parties, which had not as yet decided on the course of action to be taken, agreed to resume their negotiations on July 3, 1956.

In the meantime, or on June 28, 1956, respondent had inquired from the Labor Registration Division of the Department of Labor about the registration of the Zip Workers Union and the affiliation of the "Zip Venetian Workers"—referring to the Zip Manufacturing Laborers Union—with the NLU. Said office replied on June 29, 1956

that the Zip Workers Union was registered therein and that the "Zip Venetian Blind Workers (NLU)" was not. On July 2, 1956, the Conciliation Service received a letter of respondent stating, inter alia, that he would "stop * * * further dealings or negotiations with the National Labor Union" because of said non-registration of "the affiliation of the Zip Venetian Blind personnel with the NLU."

On the same date, respondent and the Zip Workers Union executed and signed a collective bargaining contract with closed-shop provisions as to all employees and laborers, except department heads and "other supervisory personnel". Pursuant thereto, the Zip Workers Union forthwith demanded from respondent the dismissal of all non-members of said union. Prior thereto, or on June 30, 1956, five supervisors, namely, Florentino Santos, Benjamin Nebriada, Norberto Montibon, Antonio Unating and Ricardo Amil, had been demoted to factory workers, through a memorandum of said respondent to Jose Amador, who was appointed "Factory Supervisor". In view of their change of status, said former supervisors became subject to the closed-shop provisions aforementioned and were included in the list of personnel whose dismissal was demanded as above stated.

On July 5, 1956, respondent issued another memorandum reading:

"TO ALL ZIP PERSONNEL CONCERNED:

I received a letter from the Zip Workers Union dated July 2, 1956, calling my attention to the fact that I should comply with the Closed Shop Provisions of our collective bargaining agreement.

Forty Eight (48) hours upon receipt of this notice, I therefore expect all the Zip personnel who are not yet members of the Zip Workers Union to join the said labor union.

After the said period, I shall take the necessary steps to see to it that the Closed Shop Provisions of our collective bargaining agreement with the Zip Workers Union is fully complied with by me."

The conference at the Conciliation Service scheduled on July 3, 1956, was no longer held. Inasmuch as the 19 shop workers (excluding Enriquez who had resigned from the group) did not join the Zip Workers Union, on July 7, 1957, respondent notified them of their dismissal one (1) month from notice. Prior to the expiration thereof, or on July 20, 1956, their leader, Florentino Santos, who noticed that respondent's houseboy was doing odd jobs in the shop, warned him not to do so, alleging that the workers were on rotation. The next day, respondent called Santos and dismissed him for alleged interference in the prerogatives of the management. On August 8, 1956, upon expiration of said period of one month, the other 18 shop workers were, also, dismissed.

Hence, the NLU preferred against the Zip Venetian Blind two (2) charges of unfair labor practice—one, filed on July 26, 1956, for the dismissal of Florentino Santos on July 21, 1956, allegedly on account of his union activities (Case No. 1028-ULP); and another, filed on August 8, 1956, for the dismissal, allegedly for the same reason of the 18 factory workers (Case No. 1041-ULP). After the preliminary investigation prescribed in Republic Act No. 875, the corresponding complaint for unfair labor practice was filed against the "Zip Venetian Blind and/or its manager, Eusebio Nazario".

In due course, on March 10, 1959, the Court of Industrial Relations issued an order holding that closed-shop agreements, like the one involved in this case, have "only prospective effect and cannot adversely affect members of another union, more so when this union has even participated in a certification election against the union that has secured, as a consequence of the election, a collective bargaining contract with closed-shop," and that, consequently, the shop workers had been illegally dismissed, although in the belief in good faith on the part of respondent, that said dismissal was required by the closed-shop provisions of the collective bargaining contract with the Zip Workers Union, and ordering the reinstatement of said workers, without back pay. The dispositive part of said order reads:

"In view of the foregoing, the Court hereby orders, as a remedy to effectuate the policies of the Magna Charta of Labor, the immediate reinstatement of the nineteen (19) laborers who were dismissed on July 21 and August 8, 1956 without back wages. Considering that the contract shall endure for a period of three (3) years from July 2, 1956 or barely a few months hereafter, it would be well if the parties, notwithstanding the automatic clause in the contract, agree to hold an election, whether voluntary or through legal processes prescribed therefor, to determine the real majority in the appropriate bargaining unit or units. Meanwhile, the Court considers the closed-shop provision in the contract dated July 2, 1956 to be invalid insofar as the nineteen (19) dismissed laborers are concerned."

A reconsideration of this order having been denied in a resolution of the Court en banc, the NLU interposed the present appeal by certiorari, upon the ground that the lower court erred in disallowing the claim of the 19 factory workers for wages, based upon respondent's alleged good faith in dismissing them. The NLU, in effect, assails this good faith on the part of respondent, but the pronouncement of the lower court thereon is a finding of fact, which we cannot review on appeal by certiorari (Sec. 6, Rep. Act No. 875; *Indias vs. Phil. Iron Mines*, 101 Phil., 297; 54 Off. Gaz., [6] 1817; *Operators, Inc. vs. Pelagio*, 99 Phil., 893; 52 Off. Gaz., [17] 7268; *Dee C. Chuan & Sons, Inc. vs. Nahag*, 95 Phil., 837; *Atok Big Wedge Mining Co. vs. Atok Big Wedge Mutual Benefit Assn.*, 93 Phil., 62; *Javellana vs. Barilea*, 92 Phil., 600; *H.E. Heacock vs. NLU, et al.*, 95 Phil., 553; 50 Off. Gaz., [9] 4233; *Dee C. Chuan vs. CIR*, 85 Phil., 365; 47 Off. Gaz., 3476; *Kaisahan ng Manggagawa (CLO) vs. CIR*, 81 Phil., 566; *Olaivar vs. Meralco*, 71 Phil., 503, 505). Besides, said finding depends upon the credibility and weight of the evidence thereon, which the lower court is in a better position than we are to determine. Again, the collective bargaining contract in question explicitly provided in section 3 of Article II thereof:

"The EMPLOYER further agrees not to maintain in its employ any laborer or employee who is not a member of the UNION."

This stipulation, on its face applied to persons already in respondent's service at the time of the making of the contract. Hence, respondent may have really believed that it was found thereunder to dismiss all laborers and employees who were not members of the Zip Workers Union. It could not reasonably be expected to anticipate that the courts would hold otherwise.

Lastly, in *Confederated Sons of Labor vs. Anakan Lumber Co., et al.*, L-12503 (April 29, 1960), under conditions analogous to those obtaining in the case at bar, although the intent to have a closed-shop in the latter is clearer, we uphold the finding of good faith on the part of the employer, as well as the denial of back pay.

For this reason, and because the court is vested by law with discretion to award or not to award back pay (*Union Phil. Education Employees vs. Phil. Education Co.*, 91 Phil., 93; *Antamok Goldfields Mining Co. vs. CIR, et al.*, 70 Phil., 346; *United Employees Welfare Assn. vs. Isaac Peral Bowling Alleys*, 104 Phil., 640; 56 Off. Gaz., [42] 6469; *Velez vs. PAV Watchmen's Union and CIR*, 107 Phil., 689; 58 Off. Gaz., 1309; *National Fastener Corp. vs. CIR, et al.*, 110 Phil., 623; 59 Off. Gaz., [26] 4055; Sec. 5[c], Rep. Act No. 875), the order and the resolution appealed from are hereby affirmed, without costs.

Bengzon, C.J., Padilla, Labrador, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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