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SUPREME COURT
SECOND DIVISION

AMERICAN PRESIDENT LINES,
***Petitioner*,**

-versus-

G.R. No. L-51641
June 29, 1982

HONORABLE JACOBO C. CLAVE, in his capacity as Presidential Executive Assistant in representation of the Office of the President, THE NATIONAL LABOR RELATIONS COMMISSION, THE MINISTRY OF LABOR, THE HONORABLE BLAS F. OPLE, MARITIME SECURITY UNION, INDIVIDUAL COMPLAINANTS HEADED BY JULIAN ADVINCULA AND SHERIFF LEON NAVEA, in representation of the Execution Arm of the Ministry of Labor,
***Respondents*.**

x--x

D E C I S I O N

BARREDO, *J.*:

Separate Opinions:

AQUINO, J., concurring:
ABAD SANTOS, J., dissenting:

This is a Petition for *Certiorari* seeking the review, setting aside and annulment of the Decision of the Office of the President, through respondent Presidential Executive Assistant Jacobo C. Clave, dated October 9, 1979 in O.P. Case No. 0871 (NLRC Case No. 3553-ULP), dismissing the appeal of petitioner American President Lines and sustaining the order of the Minister of Labor dated August 22, 1978 which affirmed, with slight modification, the resolution of the National Labor Relations Commission dated November 4, 1976.

On March 21, 1963, the Maritime Security Union, through private respondents (individual complaints headed by one Julian Advincula) filed a complaint against the petitioner for unfair labor practice under Republic Act No. 875. Their complaint, wherein they charged that the petitioner had refused to negotiate an agreement with them and had discriminated against them with regard to their tenure of employment by dismissing them on January 1, 1961, for no other reason than their membership with the union and union activities, was lodged with the defunct Court of Industrial Relations. However, before that court could resolve the case, Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, was enacted and the case was transferred to the National Labor Relations Commission under Arbiter Apolinario Lomabao and docketed therein as NLRC Case No. 3553-ULP.

Arbiter Lomabao found the petitioner to be an employer of the private respondents and guilty of unfair labor practice against them. Thus, he sentenced the petitioner to reinstate the individual complainants of Maritime Security Union as of the filing of the complaint and to pay them straight three (3) years backwages. The National Labor Relations Commission affirmed the Arbiter's decision with the qualification that only those complainants who are sixty years old or younger and capacitated to discharge their former duties should be reinstated without loss of seniority rights and other privileges, and with three years of backwages; and those who could

not be so reinstated should be given separation pay in addition to their backwages for three years.

The Minister of Labor affirmed the decision of the National Labor Relations Commission by his order of August 22, 1978. The petitioner appealed the affirmatory order of the Minister of Labor to the Office of the President which, on September 3, 1979, affirmed such an order. Hence, this petition.

The undisputed facts of the case follow:

On January 4, 1960, the petitioner entered into a contract with the Marine Security Agency for the latter to guard and protect the petitioner's vessels while they were moored at the port of Manila. It was stipulated in the contract that its term was for one year commencing from the date of its execution and it may be terminated by either party upon 30 days' notice to the other.

The relationship between the petitioner and Marine Security Agency is such that it was the latter who hired and assigned the guards who kept watching over the petitioner's vessels. The guards were not known to petitioner who dealt only with the agency on matters pertaining to the service of the guards. A lump sum would be paid by the petitioner to the agency who in turn determined and paid the compensation of the individual watchmen.

Upon prior notice given by the petitioner to the Marine Security Agency, the contract was terminated on January 4, 1961 after it had run its term. After the termination of its contract with Marine Security Agency, the petitioner executed a new contract with the Philippine Scout Veterans Security and Investigation Agency also for the purpose of having its vessels protected while they called at the port of Manila, and this contract was also for a fixed period of one year.

Protesting against the termination, on December 24, 1960, counsel for private respondents cabled the petitioner's office in San Francisco, California as follows:

> "MARINE SECURITY AGENCY MANILA OPERATED BY AMADEO TINSAY PROTESTED UNFAIR CANCELLATION SECURITY CONTRACT FOR SHIPS IN SPITE TEN YEARS SERVICE DUE TO CAPTAIN MORRIS PERSONAL GRUDGE AGAINST TINSAY STOP WE REGRET INVOLVEMENT OF CAPTAIN MORRIS TROUBLE WITH CUSTOMS AUTHORITIES RE CARGO STOP ACCOMPLISHMENT OF TINSAY REFER YOU TO CAPTAIN SANDALIN STOP WE REQUEST RECONSIDERATION OF CANCELLATION CONTRACT BY JANUARY 4, 1961 STOP OUR FORMAL DEMAND FOR PAYMENT OF OVERTIME SUNDAYS AND HOLIDAYS FROM JANUARY 1951 TO DATE WILL BE SENT BY REGISTER MAIL." (Exhibit "14")

This cable was followed by a letter also by the private respondents' counsel to the petitioner. The letter omitted any reference to the private respondents' alleged demands for union recognition or collective bargaining agreement as cause for the termination of the contract.

On February 6, 1961, the respondent Union passed a resolution (Exhibit "22-A") abolishing itself. The resolution is quoted as follows:

> "After due discussion and deliberation on the matter, a motion was made by Mr. C. Juarez to 'ABOLISH' the Union with the following reasons:
>
> 1. Termination of Contract of the Marine Security Agency with the American President Lines.
>
> 2. Inability of the Marine Security Agency to provide employment after we have extended for a month.
>
> 3. Inability of the members and the Union to provide maintenance in the coming months.
>
> Seconded by Mr. A. Legaspi — NO OBJECTION, MOTION APPROVED." (Exhibit "22-A")

Then, on November 17, 1961, private respondents' counsel wrote the petitioner a letter (Exhibit "A") wherein he pointed out that the termination of the contract was "primarily because of misunderstanding that had intervened between the APL represented by your Capt. Morris, and Mr. A. Tinsay, operator of said watchmen's agency," and that "the operator of the Marine Security Agency then allegedly threatened to cause trouble to the APL, and particularly to Capt. Morris."

On December 10, 1962, the respondent union passed another resolution reviving itself.

Therefore, the pivotal issues for Our resolution are: whether or not there existed an employer-employee relationship between the petitioner and the individual watchmen of the Marine Security Agency who are alleged to be members of the respondent union; and whether or not the petitioner refused to negotiate a collective bargaining agreement with the said individual watchmen and discriminated against them in respect to their tenure of employment by terminating their contract on January 1, 1961, because of their union activities.

In Viana vs. Al-Lagadan and Pica, 99 Phil. 408, 411-412, this Court held that:

> "In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct — although the latter is the most important element (35 Am. Jur. 446)."

In the light of the foregoing standards, We fail to see how the complaining watchmen of the Marine Security Agency can be considered as employees of the petitioner. It is the agency that recruits, hires, and assigns the work of its watchmen. Hence, a watchman can not perform any security service for the petitioner's vessels unless the agency first accepts him as its watchman. With respect to his wages, the amount to be paid to a security guard is beyond the power of the petitioner to determine. Certainly, the lump

sum amount paid by the petitioner to the agency in consideration of the latter's service is much more than the wages of any one watchman. In point of fact, it is the agency that quantifies and pays the wages to which a watchman is entitled.

Neither does the petitioner have any power to dismiss the security guards. In fact, We fail to see any evidence in the record that it wielded such a power. It is true that it may request the agency to change a particular guard. But this, precisely, is proof that the power lies in the hands of the agency.

Since the petitioner has to deal with the agency, and not the individual watchmen, on matters pertaining to the contracted task, it stands to reason that the petitioner does not exercise any power over the watchmen's conduct. Always, the agency stands between the petitioner and the watchmen; and it is the agency that is answerable to the petitioner for the conduct of its guards.

The respondents' reliance on Associated Watchmen and Security Union vs. United States Lines, 101 Phil. 896, is unavailing. As We have said in Social Security System vs. Court of Appeals, 39 SCRA 629, that case "involved a determination of whether a labor dispute existed between the watchmen and the companies to which they were assigned by the watchmen's agencies, and applied Section 2 of Republic Act No. 875 (The Industrial Peace Act), which defined a labor dispute as 'any controversy concerning terms, tenure regardless of whether the disputants stand in the proximate relation of employer and employee.'

To be sure, the security guards involved in the Social Security System case (supra) were similarly situated as the individual complainants of the respondent union. In ruling out the existence of an employer-employee relationship between the security guards and the shipping company, this Court then pointed out that:

> "The guards or watchmen render their services to private respondent by allowing themselves to be assigned by said respondent, which furnishes them arms and ammunition, to guard and protect the properties and interests of private respondent's clients, thus enabling that respondent to fulfill its

> contractual obligations. Who the clients will be, and under what terms and conditions the services will be rendered, are matters determined not by the guards or watchmen, but by private respondent. On the other hand, the client companies have no hand in selecting who among the guards or watchmen shall be assigned to them. It is private respondent that issues assignment orders and instructions and exercises control and supervision over the guards or watchmen, so much so that if, for one reason or another, the client is dissatisfied with the services of a particular guard, the client cannot himself terminate the services of such guard, but has to notify private respondent, which either substitute him with another or metes out to him disciplinary measures. That in the course of a watchman's assignment the client conceivably issues instructions to him, does not in the least detract from the fact that private respondent is the employer of said watchman, for in legal contemplation such instructions carry no more weight than mere requests, the privity of contract being between the client and private respondent, not between the client and the guard or watchman. Corollarily, such giving out of instructions inevitably spring from the client's right predicated on the contract for services entered into by it with private respondent.
>
> "In the matter of compensation, there can be no question at all that the guards or watchmen receive compensation from private respondent and not from the companies or establishments whose premises they are guarding. The fee contracted for to be paid by the client is admittedly not equal to the salary of a guard or watchman; such fee is arrived at independently of the salary to which the guard or watchman is entitled under his arrangements with private respondent." (Pages 635-636, SCRA, Vol. 39, June 30, 1971)

This observation can very well resolve the relationship existing in the case at bar.

The respondents have also invoked the decision of this Court in the case of United States Lines vs. Associated Watchmen and Security Union, G.R. No. L-12208-11, May 21, 1958. Again, that case sets no precedent for the present one. For there, this Court merely found that

the questioned findings of the Court of Industrial Relations were supported by substantial evidence within the meaning of the law. However, We cannot make the same pronouncement with respect to the disputed findings of the Office of the President.

The respondents have urged Us to consider the Marine Security Agency as an agent or extension of the petitioner in its relationship with the watchmen. But such a position is absurd. Thus, in Allied Free Workers' Union vs. Compania Maritima, 19 SCRA 258, 271-272, wherein this Court held that the members of a union under contract to perform stevedoring service for a shipping company are not employees of the latter, it was expressly ruled that "an agent can not represent two conflicting interests that are diametrically opposed."

There are other considerations that militate against a finding of employee-employer relationship between the petitioner and the individual watchmen of the agency. To start with, the contract between the petitioner and the agency has, by its own terms, expired. Indeed, after the expiration of the contract with respondent Marine Security Agency, the petitioner engaged the services of the Philippine Scout Veterans Security and Investigation Agency for a period of one year also. In other words, to hold the complaining members of respondent agency as the employees of the petitioner, and therefore, entitled to labor benefits as such, would violate the petitioner's exclusive prerogative to determine whether it should enter into a security service contract or not, i.e., whether it should hire others or not. In Allied Free Workers' Union vs. Compania Maritima (Supra), this Court also laid down the same ratiocination, thus:

> "Lastly, to uphold the court a quo's conclusion would be tantamount to the imposition of an employer-employee relationship against the will of MARITIMA. This cannot be done, since it would violate MARITIMA's exclusive prerogative to determine whether it should enter into an employment contract or not, i.e., whether it should hire others or not. (Fernandez & Quiason, Law of Labor Relations, 1963 ed., pp. 43-48) In Pampanga Bus Co. vs. Pambusco Employees' Union, (68 Phil. 541, 543) We said:

> "The general right to make a contract in relation to one's business is an essential part of the liberty of the citizens protected by the due process clause of the constitution. The right of a laborer to sell his labor to such person as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the constitution. 'If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression.'" (Italics underlined) (Pp. 277-278, SCRA Vol. 19, January 31, 1967)

Moreover, the operation of a watchmen's security agency is governed by Republic Act No. 5487, as amended by Presidential Decrees Nos. 11 and 100, which provides among other things that:

> "Any Filipino citizen or a corporation, partnership or association, with a minimum capital of five thousand pesos, one hundred percent of which is owned and controlled by Filipino citizens may organize a security or watchman agency: Provided, that no person shall organize or have an interest in, more than such agency except those which are already existing at the promulgation of this Decree: Provided, further, that the operator or manager of said agency must be at least 25 years of age, a college graduate and/or a commissioned officer in the inactive service of the Armed Forces of the Philippines of good moral character, having no previous record of any conviction of any crime or offense involving moral turpitude, not suffering from any of the following disqualifications:
>
> (1) Having been dishonorably discharged or separated from the Armed Forces of the Philippines;
>
> (2) Being a mental incompetence;
>
> (3) Being addicted to the use of narcotic drug or drugs; and

(4) Being habitual drunkard." (Pp. 188-189, Rec.)

Petitioner is a foreign corporation. While Republic Act No. 5487 was enacted after the execution on January 4, 1960 of the security service contract between the petitioner and the respondent agency, petitioner is not thereby exempted from the provision of the law. Nothing in the law allows such an exemption. On the contrary, it is the clear intent of the lawmakers to reserve the business of operating a security agency exclusively for Filipino citizens or 100% Filipino entities, and to subject all security agencies to the strict control and regulation of the Philippine Constabulary. It is inconceivable how the purposes of the law could be served if a foreign corporation like the petitioner were allowed to operate a security and watchman's service, which is a situation that would naturally result if the complaining members of the respondent agency are considered as the petitioner's employees. In other words, We cannot uphold an employer-employee relationship when to do so would violate the letter and spirit of the law.

In view of Our finding that there is no employer-employee relationship between the petitioner and the members of the respondent agency, it should necessarily follow that the petitioner cannot be guilty of unfair labor practice as charged by the private respondents. Under Republic Act 875, Section 13, an unfair labor practice may be committed only within the context of an employer-employee relationship.

Nevertheless, if only to resolve the merits of all issues before Us, We will determine if the petitioner did commit the acts characterized by private respondents as "unfair labor practice." In this regard, the respondent Office of the President found for the private respondents as follows:

> "This Office also found that there was indeed an unfair labor practice committed by the respondent-appellant. The evidence indubitably show that the repeated requests of Aurelio G. Reyes, Federico dela Rosa and Petronillo Dizon, all members of the complainant union, to negotiate in behalf of the union with Capt. Edward Morris were unheeded. (p. 7 Decision, Labor Arbiter Lomabao). As such, refusal to negotiate and eventually

> separating individual complaints are, to our mind, acts constituting unfair labor practice." (Page 42, Record)

We find it difficult to believe that the members of the respondent agency made "repeated requests" upon the petitioner through its Captain Morris to negotiate a collective bargaining agreement with the respondent union. Apart from their oral declaration, the private respondents have not presented any written proof that such requests were made. Under Republic Act No. 875, Section 14 (a), the desire to negotiate an agreement should be expressed through a written notice. At the time the members of the agency were allegedly presenting "repeated requests" for negotiation, they were represented by counsel. If such requests were in fact made, counsel would not have failed to advise his clients to tender their requests in the manner required by law.

With regard to the termination of the contract between the petitioner and the respondent agency, We find no evidence that it bears any relationship to the alleged union activities of the individual members of the agency. The hard fact is that the contract had a lifetime of one year. Hence, after that period, and without it being renewed, it lived out its term. While the expiration of the contract might have rendered the members of the respondent agency jobless, it can hardly be attributed to any adverse act by the petitioner.

Indeed, We fail to see any substantial evidence that proves an unfair labor practice by the petitioner. Instead, We note that in his letter to the petitioner dated November 17, 1961 (Exh. A) to complain about the termination of the contract, private respondents' counsel pointed out that the termination was caused primarily by a "misunderstanding" between the operator of the agency and Captain Morris of the petitioner. There was no indication that union activities had something to do with such termination.

Private respondents' counsel also cabled his protest over the termination of the contract to petitioner's office in the United States (Exh. 14). This was followed by a letter (Exh. "10"). Both communications significantly omitted any reference to union activities as a cause for the termination of the contract. There was only the "personal grudge" of Captain Morris against Tinsay.

Perhaps, the most telling evidence of the shallowness of private respondents' charge of unfair labor practice is the respondent union's own resolution to abolish itself (Exh. "22 A"). This resolution was passed on February 6, 1961. If respondent union felt aggrieved by the unfair labor practice it had imputed to the petitioner, why did it abolish itself? Instead of putting an end to its own existence, why did it not prosecute its charge with dispatch considering that an unfair labor practice by an employer is an affront against the very integrity and existence of a union?

What is worse is that in its resolution of abolition, the respondent union confessed that it is the Marine Security Agency that provided employment to its members. To Our minds, there can be no clearer proof that such an admission that it is indeed the agency, not the petitioner, that is the employer of its watchmen.

WHEREFORE, reversing as We do the order being assailed herein, the complaint for unfair labor practice against petitioner is hereby dismissed, without costs.

Guerrero, De Castro and Escolin, *JJ.*, concur.
Concepcion, Jr., *J.*, is on leave.

SEPARATE OPINIONS

AQUINO, J., concurring:

I concur in the result. The watchmen were employees of the American President Lines while guarding the ships (Associated Watchmen and Security Union vs. United States Line, 101 Phil. 896). This was the holding of the Court of Industrial Relations in Maritime Security Union, et al. vs. American President Lines, Case No. 1938-V in its decision dated July 26, 1965 where the parties are the same as the parties herein.

The CIR held that Julian Advincula and his co-watchmen were entitled to additional compensation for nighttime work rendered up

to January 4, 1961 when the term of their employment in the American President Lines expired.

The petition of American President Lines for the review of that CIR decision was denied in this Court's minute resolution of February 25, 1966.

In the instant case, since the watchmen were hired only for a period of one year, they ceased, after that period, to be employees of the American President Lines. APL was not obligated to renew the contract of employment. Hence, the non-renewal of their employment and the act of the American President Lines in hiring the watchmen of another security agency cannot be regarded as an unfair labor practice.

Moreover, the watchmen in filing their complaint for unfair labor practice and reinstatement only two years and two months after the expiration of their employment contract were guilty of laches.

ABAD SANTOS, J., dissenting:

I dissent. The pivotal question in this case is one of fact i.e. whether or not there existed an employer-employee relationship between the American President Lines and the individual complainants.

The Executive Department of the government starting from the Labor Arbiter, to the National Labor Relations Commission, the Minister of Labor and finally the Office of the President found as a fact that there was an employer-employee relationship. This finding of fact is supported by substantial evidence which is discussed in the comment of the Solicitor General, thus:

> "On the contrary, the evidence on record undisputably shows that private respondents became employees of the petitioner shipping company, the American President Lines, when they were hired much earlier even before 1961 after they had been recruited by the Marine Security Agency for the said shipping

company who then hired them to perform guarding duties over its vessels on dock in the Manila ports. This arrangement became the practice starting the early part of 1951 to evade the preferential hiring of union men and the maintenance of the rates of pay then obtaining (See Exhibit "G", pp. 105-106, Records). This arrangement gave birth to the Marine Security Agency which was contracted for the sole purpose of recruiting and supplying watchmen on ships and vessels of the American President Lines (pp. 106-107, id.). It was also observed that the Marine Security Agency which had recruited herein private respondents for the said shipping company was not an 'independent contractor' but a 'mere agent which served as extension of the office' of the said shipping company 'in the recruitment of the watchmen, the computation of the watchmen's wages; and the placement of supervisors of the watchmen'. These reveal that a certain degree of control was exercised by the shipping company over these watchmen (p. 4, Annex "A", Petition). The services of these watchmen were availed of and their compensation paid in lump sum by the shipping company through the watchmen's agency, even if such were done through the said watchmen agency without the direct intervention of the said shipping company (p.4, Annex "A", id.).

"While working as regular employees of the petitioner shipping company, private respondents herein formed and organized on August 3, 1958 (the year 1978 in page 2 of Annex "A", Petition is obviously a typographical error), the Maritime Security Union under Registration Certificate No. 2764-IP issued on August 28, 1959 (See Annex "A", Petition). Bernard Brodbury, a regularly employed supervisor of the American President Lines was also the operator and supervisor of the said watchmen agency. He was paid by the shipping company in that capacity. Amadeo Tinsay who became the operator of the Marine Security Agency when Bernard Brodbury was hospitalized, acted as supervisor of the watchmen of the said shipping company. Tinsay was also paid by the shipping company in that capacity. Tinsay, in effect, supervised the watchmen and security guards, among them herein private respondents, for and in behalf of the said shipping company, the American President Lines, not for himself, nor for the said watchmen agency (pp. 4-5, Annex "A",

id.). Private respondents were 'ultimately working' for the shipping company, and 'ultimately paid' for by the latter (p. 4, Annex "A", id.).

"The foregoing factors or indicia demonstrate that employer-employee relationship existed between petitioner company and herein private respondents. Thus, watchmen similarly situated as those of private respondents were held to be employees of a shipping company for certification election purposes (Associated Watchmen & Security Union (PTWC), et al. vs. United States Lines, et al., L-10333, July 5, 1957; United States Lines, Ltd., et al. vs. Associated Watchmen & Security Union (PTWO), L-12208-11, May 21, 1958). And in another case, this Honorable Court, in dismissing the petition for review filed by the American President Lines (herein petitioner), of the decision of the then Court of Industrial Relations in question, concerning the status of the watchmen recruited by the Marine Security Agency (the same agency involved in this case), virtually upheld the CIR's finding that an employer-employee relationship existed between the said shipping company and the private respondents therein (American President Lines Ltd. vs. Maritime Security Union, et al., L-25617, Feb. 6, 1966). Thus, there can hardly be any dispute that herein private respondents have always been employees of the petitioner shipping company even before the Marine Security Agency through its supervisors Bernard Brodbury and later Amadeo Tinsay executed the questionable one-year contracts with the said shipping company, ostensibly hiring anew watchmen, among them herein private respondents, to perform guarding duties on its vessels on dock in the Manila ports. Consequently even upon expiration of said contracts, private respondents did not cease to be regular employees of the said shipping company."

I have always maintained that the findings of officers who are tasked with the enforcement of laws are entitled to great respect and their acts must be upheld in the absence of grave abuse of discretion, lack of jurisdiction or clear misapplication of the law. This is a case where my personal guideline applies.

On the question as to whether or not the American President Lines is guilty of unfair labor practice, it suffices to quote from the decision of the Office of the President, thus:

> "This Office also found that there was indeed an unfair labor practice committed by the respondent-appellant. The evidence indubitably show that the repeated requests of Aurelio G. Reyes, Federico dela Rosa and Petronillo Dizon, all members of the complainant union, to negotiate in behalf of the union with Capt. Edward Morris were unheeded. (p. 7, Decision, Labor Arbiter Lomabao). As such, refusal to negotiate and eventually separating individual complaints are, to our mind, acts constituting unfair labor practice."

In my opinion, the instant petition should be dismissed for lack of merit.

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