SUPREME COURT
EN BANC

FINDLAY MILLAR TIMBER COMPANY,
***Petitioner*,**

-versus-

G.R. Nos. L-18217
& L-18222
September 29, 1962

PHILIPPINE LAND-AIR-SEA LABOR UNION (PLASLU) and COURT OF INDUSTRIAL RELATIONS, ETC.,
***Respondents*.**
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D E C I S I O N

BAUTISTA ANGELO, *J.*:

Two cases for unfair labor practice were filed before the Court of Industrial Relations by some employees and laborers of Findlay Millar Timber Company which were affiliated with the Philippine Land-Air-Sea Labor Union, referred to herein as PLASLU, for short, against said company and some of its principal officials. One was filed on August 15, 1955, docketed as Case No. 41-ULP-Cebu, relating to the alleged dismissal of 60 employees as a result of some discriminatory acts, and another was filed on June 28, 1966, docketed as Case No. 6-ULP-MIN, covering alleged dismissal of 29 employees named in the complaint. The theory of both complaints is that the

company and its co-respondent officials, individually or collectively, interfered with, restrained, or coerced the PLASLU's affiliates or members who complained in the exercise of their right to self-organization by inquiring into their union affiliation and activities, by convincing them to withdraw from their union or join another as a condition for continued employment with the company, by threatening them with dismissal if they did not resign from their union, by discriminating against them through the application of the rotation system, and reducing them to part-time work as compared to those who resigned their union affiliation and joined another who were continued on full-time basis.

The company and its co-respondents denied the commission of unfair labor practices. Among other things, they emphasized that many of the complainants were in fact no longer working in the company in March and August, 1955; that the complainants ceased to work of their own choice or desire because of the inadequacy of working days assigned to them by reason of the operation of the rotation system which made the complainants prefer not to work any more, or make living elsewhere, or devote their time to their own farms. In other words, the respondents indicated that the dismissal, lay-off, and rotation complained of, were justified by the circumstances then prevailing, to wit: the burning sawmill of the company, inadequate work business reverses and financial difficulties, and the labor-saving devices that were resorted to in order to lower the cost of production and continue uninterruptedly the work of the company. They also called attention to the closed shop agreement entered into between the company and the Western Lanao Labor Union (WELLU) in order to apprise the industrial court of the latter s activities relative thereto.

The two cases are assigned to Judge Jose S. Bautista for the reception of evidence, who thereafter rendered decision dismissing the charges. His Honor found that the lay-off or separation of complainants was justified under the closed shop agreement entered into between the company and the Western Lanao Labor Union (WELLU) even if some of them voluntarily abandoned their employment in view of the rotation system adopted by the company because of financial difficulties.

The complainants filed a motion for reconsideration which was vigorously opposed by respondents, in support of which both submitted lengthy and well-reasoned arguments, and on January 6, 1961, the industrial court en banc reversed the decision of the trial judge stating in its dispositive part: "the decision of the Trial Court is set aside, and those who were dismissed through the alleged closed-shop be reinstated and paid their back wages accordingly it being apparent that it was the Company that dismissed them and not prompted by, or the blame traced to, the union."

The company interposed the present petition for review. The questions which in our opinion need to be discussed in this instance which are decisive of the issues raised in the petition for review may be boiled down to the following: whether respondent court erred (1) in incorrectly assuming that the complainants were dismissed by reason of the closed shop provision contained in the collective bargaining agreement entered into between the company and the WELLU (2) in overruling the trial judge's views on the legal effects of said closed shop agreement (3) in disregarding the finding of the trial judge that the PLASLU was organized for the purpose of defeating the closed shop provision agreed upon and in not finding the complainants took advantage of the activities of the WELLU to build up their cases of unfair labor practice against the company and its co-respondents; and (4) in not holding that only the grievances of complainants who testified should be determined and failure of those who failed to appear constitute an abandonment of their own grievances.

The contention that respondent court erred in incorrectly assuming without foundation in fact that the complainants were dismissed by reason of the closed shop provision contained in the collective bargaining agreement entered into between the company and the WELLU is untenable, for the trial judge has precisely predicated his ruling on dismissal on the finding that the complainants were separated on the strength of said closed shop provision by making it applicable not only to those to be employed in the future but also to those who are already in the service of the company. This can clearly be gleaned from the decision of the trial judge. In fact the main issue considered by the trial judge in connection with the charges filed by complainants was whether the closed shop agreement which was

entered into between the parties was valid and, if so, whether its effects should be made applicable to both old and new employees. The judge then went on to discuss the different elements that must concur for the establishment of a valid collective bargaining agreement as to which, after considering that all the requisite elements were present, reached the conclusion that the collective bargaining agreement in question was valid, it appearing that the WELLU had in its membership the greatest number of laborers and employees in the company, and that there was no proof that it was a company-dominated union, while on the other hand, the WELLU was the one selected to be their bargaining unit representative by the majority of the laborers and employees as required by law. The trial judge then proceeded to make an analysis of the provisions of the closed shop and from their tenor as well as from precedents obtaining in the United States on the matter he held that said closed shop clause is not only legal but applicable to old and new employees. And, among the many authorities he has cited, he quoted the following from Rothenberg: "A 'closed shop' may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employee in interest are a part" (Rothenberg on Labor Relations p. 48; Emphasis supplied).

Indeed, according to the trial judge, this is what can be inferred from the clause on the closed shop appearing in the collective bargaining agreement, for, among other things, said clause says, "The Employer agrees to employ none but members in good standings of the Union and to hire and order any or all regular and extra employees who shall be needed." Clearly, these terms liberally interpreted, cover both employees who are actually in the service as well as those that may be hired in the future. And this liberal interpretation, in the light of American precedents, led the trial judge to conclude: "With this, therefore, as the facts that actually transpired and the wordings in the closed-shop contract between the management and the contracting union, WELLU, it is clear that the contract is valid and that if affects both new and old employees. He consequently held that the

separation of the complainants was justified and dismissed the charges.

It is true that the trial judge, in passing, also mentioned the fact that as a consequence of the retrenchment policy adopted by the company as a result of the burning of its sawmill on May 22, 1953, it was compelled to adopt a rotation system in the employment of its laborers in an effort to continue all of them in the service even at a reduced work which eventually led some to abandon their job in order to find employment elsewhere; but the trial judge only considered such circumstances as an additional ground for dismissal of the charges, the main ground being the operation and effect of the closed chop clause contained in the bargaining agreement. The respondent court, therefore, was justified in concentrating its discussion on the validity, scope and extent of the closed shop provision in disregard of other factual evidence extent in the record.

We see no error in the action of respondent court in may be in accord with American law and jurisprudence, as the time they were expressed, no longer hold water today for jurisdiction. It may be true that the trial judge's views they run counter to decisions recently rendered by this Court. Thus, in the case of Freeman Shirt Manufacturing Co., Inc., et al. vs. Court of Industrial Relations, et al., vs. Court of Industrial Relations, et al., 110 Phil., 963, this Court said:

> "The closed-shop agreement authorized under Sec. 4 Subsec. a (4) of the Industrial Peace Act above quoted should however, apply only to persons to be hired or to employees who are not yet members of any labor organization. It is inapplicable to those already in the services who are members of another union. To hold otherwise, i.e., that the employees in a company who are members of a minority union may be compelled to disaffiliate from their union and join the majority or contracting union, would render nugatory the right of all employees to self-organization and to form, join or assist labor organization of their own choosing, a right guaranteed by the Industrial Peace Act (Sec. 3, Rep. Act No. 875) as well as by the Constitution (Art. III, Sec. 1 [6].[1]"

Considering that the views expressed by respondent court on the legal effect of a closed shop clause are in line with the view expressed by this Court in the Freeman case, supra, we cannot but conclude that the trial judge erred in his interpretation of the closed shop in question which served as a justification for the separation of the complainants herein. This justifies the action taken by respondent court in overruling the trial judge's views on the matter.

It should, however, be observed that the employer, petitioner herein, cannot be blamed if in its interpretation of the closed shop provision was led to apply its effects not only to future employees but also to those who were already, in the service considering not only the ambiguous terms into which the same is couched but also the meaning of a closed shop as understood in American jurisdiction, and therefore, it is fair to presume that before the promulgation of our decision in the Freeman case the employer acted having in mind the closed shop as construed in the United States after whose statutes our Republic Act No. 875 was patterned, for authorities abound insinuating that, in the application of law of American origin the rulings of the Supreme Court of the United States construing similar provisions are considered of persuasive effect and may be followed as authority.[2] So, it is fair to presume, we repeat, that when petitioner separated the complainants because of their refusal to disaffiliate themselves from the PLASLU and join the WELLU which has a collective bargaining agreement with the employer, it merely acted in pursuance of the terms of the closed shop clause in the light of American jurisprudence thereby justifying its claim that it has acted on the matter not without justification. It is therefore, fair to conclude that the employer had acted in good faith. In reaching this view, this Court holds the opinion that while complainants are entitled to reinstatement on the theory that their separation was based upon a mistaken interpretation of the closed shop provision, they are not however entitled to back wages because their separation was effected in good faith.

Having reached the foregoing conclusion, we do not deem it necessary to discuss the other issues raised by petitioner in its brief.

WHEREFORE, the Decision of respondent court which is in the form of Resolution issued on January 6, 1961 is modified in the sense

that those who were dismissed improperly as foresaid should be reinstated but without back wages.

No pronouncement as to costs.

Bengzon, *C.J.*, Padilla, Labrador, Concepcion, Reyes, Paredes, Dizon and Makalintal, *JJ.*, concur.

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[1] See also Local 7, Press & Printing Free Workers (FFW), et al. vs. Hon. Judge Emiliano Tabigne, et al., 110 Phil. 275.
[2] Ibañez de Aldecoa vs. Hongkong & Shanghai Bank, 30 Phil., 228; Cuyugan vs. Santos, 34 Phil., 100; Cerezo vs. Atlantic, Gulf & Pacific Co., 33 Phil., 426.
