SUPREME COURT
EN BANC

FREEMAN SHIRT MANUFACTURING CO., INC., and SAW MUI, General Manager,
***Petitioners*,**

-versus-

G.R. No. L-16561
January 28, 1961

COURT OF INDUSTRIAL RELATIONS, KAPISANAN NG MGA MANGGAGAWA SA DAMIT BALANGAY-NAFLU and FREEMAN SHIRT EMPLOYEES LABOR UNION,
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ DAVID, *J.*:

In a certification election ordered by the Court of Industrial Relations between the Kapisanan ng mga Manggagawa Sa Damit Balangay (NAFLU) and Freeman Shirt Employees Labor Union, the latter won and was certified as the sole collective bargaining representative of the employees of the Freeman Shirt Manufacturing Co., Inc. Thereafter, the company and the winning union entered into a collective bargaining agreement respecting terms and conditions of

employment. Included in the agreement is a provision on union security which reads as follows:

> "2. Union Security; Union Shop. — Membership in the UNION shall be a condition to continued employment in the COMPANY. Employees who are not members of the UNION on the effectivity of this Agreement and who fails to become a member of the UNION within thirty (30) days after such date of effectivity, shall be dismissed by the COMPANY from employment upon notice of that fact by the UNION to the COMPANY; any person hired by the COMPANY during the term of this Agreement who fails to become a member of the UNION within thirty (30) days after becoming a regular employee shall likewise be dismissed upon notice of that fact by the UNION to the COMPANY. Any employee who, during the term of this Agreement, resigns from the UNION or is expelled therefrom in accordance with the Constitution and By-Laws of the UNION shall likewise be dismissed by the COMPANY upon notice of that by the UNION to the COMPANY."

The Collective Bargaining Agreement was duly publicized among the employees of the company. Before the expiration of the period of 30 days within which all employees were required to join the union under pain of separation from employment should they fail to do so, the union and the company warned all employees who had not yet theretofore complied with the agreement that the company would have no choice but to dismiss them should they fail to join the union within the prescribed period. Ten employees, namely, Marcela Reyes, Claudia, Escobia, Leonila C. Gatus, Corazon Velasquez, Bernardina Clarin. Remedios Jacinto, Corazon Maningas, Isidra Paredes, Enriqueta Gapuson and Estelita Papa, refused to join the union, and, in consequence, were dismissed by the company upon demand by the union.

The above-named persons then initiated the present proceedings, through the Kapisanan Ng Mga Manggagawa sa Damit Balangay Freeman (NAFLU) of which they were members, by the filing of a complaint for unfair labor practice against the Freeman Shirt

Manufacturing Co., its general manager and the Freeman Shirt Employees' Labor Union, it being charged that the company dominated the union and that said company violated sec. 4(a) of Republic Act No. 875 for having dismissed the ten laborers.

After due hearing, the Industrial Court absolved the company of the charges of unfair labor practice and ordered the dismissal of the complaint. However, holding that the closed-shop agreement authorized in sec. 4, subsec. (a) (4) of Republic Act No. 875 is applicable only to new employees to be hired or to non-union members, and not to those already in the company's service, the Industrial Court ordered the reinstatement of the dismissed employees. Reconsideration of the decision insofar as it orders the reinstatement of the complainants having been denied by the Court en banc, the company and its general manager brought the case to this Court through the present petition for *certiorari*.

We do not think the lower court committed any error in ordering the reinstatement of the dismissed employees.

A closed-shop agreement has been considered as one form of union security whereby only union members can be hired and workers must remain union members in good standing as a condition to continued employment. (Francisco's Labor Laws, Vol. 1, 3rd ed., p. 368; Handler Case on Labor Law, p. 67.) Such union security clause embodied in collective bargaining agreements is sanctioned under the Industrial Peace Act, sec. 4, subsec. a(4) which provides as follows:

> "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."

Indeed, its validity has already been upheld by this Court. (Tolentino, et al. vs. Angeles. et al., G.R. No. L-8150, May 30, 1956; NLU vs.

Aguinaldo's Echague, 51 Off. Gaz. 2899; Ang Malayang Manggagawa Ng Ang Tibay Enterprises, et al., vs. Ang Tibay, et al., G.R. No. L-8259, December 23, 1957; Bacolod-Murcia Milling Co., Inc., et al., vs. National Employees' Workers Security Union, 53 Off. Gaz., 615; Confederated Sons of Labor vs. Anakan Lumber Co., et al, G.R. No. L-12530, April 29, 1960).

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 service 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]).

Section 12 of the Industrial Peace Act providing that when there is reasonable doubt as to who the employees have chosen as their representative the Industrial Court can order a certification election, would also become useless. For once a union has been certified by the court and enters into a collective bargaining agreement with the employer a closed-shop clause applicable to all employees be they union or non-union members, the question of majority representation among the employees would be closed forever. Certainly, there can no longer exist any petition for certification election, since eventually the majority or contracting union will become a perpetual labor union. This alarming result could not have been the intention of Congress. The Industrial Peace Act was enacted precisely for the promotion of unionism in this country.

Since a closed-shop clause in a collective bargaining agreement is inapplicable to employees who were already in the company's service at the time of its execution, the dismissal of the employees herein concerned is unjustified. (Local 7, Press & Printing Free Workers (FFW) et al. vs. Tabigne, etc., et al., G.R. No. L-16093, November 29, 1960; I Francisco, Labor Laws, 3rd ed., 374-375, citing Electric

Vacuum Cleaner Co., NLRB No. 75, 1939, cited in II Teller, Labor Disputes and Collective Bargaining, 867-868).

Petitioners contend that the dismissal of the charges of unfair labor practices against the company precludes any order for reinstatement. The contention is untenable, for the dismissal here was made pursuant to a closed shop agreement which is unauthorized by law. In short, the dismissal was illegal. Ordinarily, the order for reinstatement should have carried with it an award for back pay. Considering, however, that there is no local decision on point, we are inclined to agree with the lower court and give the company the benefit of the doubt regarding its claim that it acted in good faith and in the honest belief that, as the law now stands, it could dismiss the employees who refused to join the winning or contracting union.

IN VIEW OF THE FOREGOING, the decision complained of is affirmed, with costs against the petitioners.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, Barrera and Paredes, *JJ.*, concur.