CHANROBLES PUBLISHING COMPANY

SUPREME COURT
EN BANC

PHILIPPINE AMERICAN EMBROIDERIES, INC., ALBERT NASSER and JACK NASSER,
***Petitioners*,**

-versus-

G.R. No. L-20143
January 27, 1969

EMBROIDERY & GARMENT WORKERS UNION,
***Respondent*.**
x----------x

D E C I S I O N

MAKALINTAL, *J.*:

This case originated with a complaint before the Court of Industrial Relations (Case No. 1880-ULP) filed by Embroidery and Garment Workers Union against Philippine American Embroideries, Inc.; Albert Nasser and Jack Nasser, corporate President and Vice-President, respectively; and Kapisanan Ng Mga Manggagawa sa Phil-Am Embroideries, Inc. The complaint charged unfair labor practice under Section 4(a) (1), (4) and (6) of Republic Act No. 875. The specific allegations are not reproduced in the record before us, but the issues are set forth in the decision of the trial Judge, Hon. Emiliano C. Tabigne, as follows: "(1) Did the respondents refuse to bargain with

the complainant in violation of Section 4(a) 6 of the Industrial Peace Act? (2) Did the respondents commit interference in the union activities or affairs of the members of the petitioner union? (3) Did the respondents commit discrimination against the members of the union affecting their tenure of employment? (4) Did the respondents lock-out the employees and/or workers especially the members of the petitioning union?" The trial Judge ruled against the complainant on all these issues and dismissed the complaint. On motion for reconsideration, however, the Court en banc, by a divided vote, resolved as follows:

> "IN VIEW OF THE FOREGOING CONSIDERATIONS, this Court En Banc hereby:
>
> 1. Finds the respondents Philippine American Embroideries, Inc., Albert Nasser and Jack Nasser guilty of unfair labor practice in violation of Sections 4 (a), subparagraphs (4) and (6);
>
> 2. Orders the reinstatement of the members of complainant union (Exhibits "E", "E-1" to "E-51") to their former or substantially the same positions to any department of the company, with back wages from the date of their dismissals up to the time they are actually taken into active employment, without loss of any rights, benefits or privileges;
>
> 3. Orders the company, Albert Nasser and Jack Nasser to cease and desist from further committing such other unfair labor practices;
>
> 4. Dismisses the portion of the complainant referring to the charge of company domination.
>
> SO ORDERED."

The foregoing resolution was penned by Presiding Judge Jose S. Bautista and concurred in by Associate Judge Baltazar M. Villanueva. Associate Judge Arsenio I. Martinez concurred and dissented in a separate opinion, and Associate Judge Amando C. Bugayong

concurred in the result thereof. Associate Judge Emiliano C. Tabigne maintained his previous stand and filed a long dissent.

The case is now before Us on petition for review by Philippine American Embroideries, Inc., Albert Nasser and Jack Nasser, respondents below.

The resolution sought to be reviewed is based on a number of facts referred to therein as "indubitable and non-controversial," to wit:

> "1. The respondent Philippine American Embroideries, Inc. is a corporation managed by the Nasser brothers; (Answer of respondent and p. 7 T.S.N., June 22, 1960)
>
> "2. Sometime in 1956 it started its machine made department for scalloping handkerchiefs at 1132 Isaac Peral, Manila; (Decision p. 5 and p. 8, t.s.n., June 6, 1960)
>
> "3. It has been the practice to lay-off employees who could not fulfill their respective quotas. (Decision, p. 11)
>
> "4. In the last week of October, 1958, the complainant union was organized with a total membership of about one hundred seventy (170) among the workers in the machine made department of respondent company; (Decision, p. 12 and Exhs. "E", "E-1" to "E-151")
>
> "5. On October 31, 1958, the respondent received a letter (Exhibit "B") from the complainant union informing the company of:
>
> (a) its existence;
>
> (b) its command of majority among the employees in the company; and
>
> (c) its desire to bargain collectively with the management;

"6. On November 3, 1958, the company received the collective bargaining proposals (Exh. "C") embodying the usual terms and conditions of work like increase of wages, security of employment, and fringe benefits;

"7. In the afternoon of the same day, November 3, 1958, the company through Albert Nasser, announced the closure of the Machine Made Department, thereby dismissing all the members of the complainant, and the opening of a new department, the Knitting Gloves Department.

'A. In the meeting of all the workers, I announced to all the workers and officers the closure of the Machine Made Department and the opening of the new department Knitting Gloves Department and also the filling of their application so that they can join again with the company.' (pp. 31-32, t.s.n., June 22, 1960) (Italics supplied)

At this juncture it must be noted that the closure of the Machine Made Department at 1132 Isaac Peral, Manila, did not mean the cessation of the business of making scalloped handkerchiefs. The company continued to make scalloped handkerchiefs by transferring the pieces of machinery to various places in the provinces. (Direct testimony of Jack Nasser, pp. 8-9, t.s.n., June 6, 1960)

"8. On November 15, 1958, the company replied to the demand for collective bargaining (Exhs. "B" and "C") but asked the union to first prove its majority before dealing with it as the bargaining agent of said unit.

'With reference to your letter addressed to the Philippine American Embroideries, Inc., dated November 3, 1958, and pursuant to our conversations in Regional Office No. 3 on November 10, 1958, I wish to inform you that it is the desire of the Philippine American Embroideries, Inc. that your union should first obtain a certification from the Court of Industrial Relations that it represents the majority of the

collective bargaining unit it seeks to represent, that is, all the employees of the Philippine American Embroideries, Inc. before dealing with you as the sole collective bargaining agent for the said unit. This request is made in view of the fact that the Philippine American Embroideries, Inc. is of the belief that your union does not represent the majority of all its employees.' (Exh '1').

"9. On November 26, 1958, the instant case filed against the company, Albert Nasser, Jack Nasser, President and Vice-President, respectively, of the company and including the Kapisanang Manggagawa sa Phil-American Embroideries, Inc. and praying among others, for the 'disenfranchising of the Kapisanang Manggagawa sa Phil-American Embroideries, Inc. for being a company-dominated union." (Complaint, p. 5)

"10. All the respondents filed their respective answers; (Answer of company dated December 16, 1958 and Answer of respondent Union dated December 15, 1958.)

"11. On April 14, 1959, the union members who were dismissed reiterated their unconditional offer to work, in the following tenor:

'In the conference between your Atty. Manuel O. Chan and the Embroidery and Garment Workers Union, it is a matter of record that I categorically stated the unconditional offer to work of each and every member of the union.

'Yesterday at the Court of Industrial Relations, the said Atty. Chan informed us that there are openings at the Gloves Department of your corporation. The members of the union have been trying here to find employment after their separation from your company and, therefore, the information conveyed is welcome. In the name of each and every member of the union and in

their behalf I once more offer other services without any condition.' (Exh. '1').

"12. The company refused the collective offer and instead insisted that the application be made individually by the union members (Exh. 'D-1');

"13. During the numerous hearings, the respondent Kapisanang Mangagawa sa Phil-American Embroideries, Inc., despite notices thereof, failed to appear in some hearings until the case was submitted for decision; (Minutes of the hearings of December 3, 1960 and January 24, 1961)."

Petitioners do not dispute the facts above set forth, but aver that the resolution fails to state and consider other facts likewise indubitable and non-controversial, and indispensable for a just and legal determination of the issues involved. These other facts, indeed, while related in the decision of the trial Judge and elaborated upon in his dissent to the resolution of the Court en banc, are not only unchallenged but appear to be borne out by the record.

The first material finding in the resolution of the Court en banc is that contained in number 3, to the effect that "it has been the practice to lay off employees who could not fulfill their quotas." The statement is plain enough, but stripped of the other relevant facts and circumstances it fails to picture the situation in proper perspective. Those facts and circumstances are stated in the decision of the trial judge, thus:

"Regarding the alleged lock-out, the Court is also convinced that there was no such lock-out as claimed. The principal witnesses for the complainant, Felicidad Ros and Concepcion Rayala, testified as to the alleged incidents that led to the laying-off of members of the complainant union. They claimed that since the start of the operation of the machine-made department in 1956, the company resorted to the practice of laying-off workers, after giving them warnings of 15 days or one month for their failure to meet their quotas, and that only those who were industrious and able to meet or fulfill their quotas, were not laid-off. On this point Felicidad Ros testified as follows:

Q. — Those who were given warning; who became candidates for laying off were given opportunity to fulfill or make their quota, were they not?

A. — Yes, sir.

Q. — And after making their quota or fulfilling their quota, they were not laid-off. Is it not?

A. — Yes, they were not laid off because they were able to meet the quota. But for a certain period of fifteen (15) days or one month when they were given warning.

Q. — And during that period of fifteen (15) days or one month when they were given time to fulfill their quota and they were able to meet their quota, they were not laid-off?

A. — Yes, sir.

Q. — The others who were laid off were laid-off because they were unable to make their quota. Is that not a fact?

A. — Yes, sir.

It is clear from the above testimony that the practice of the company is laying-off workers started in 1956, and indeed, the reasons therefor were justified for, as admitted by Mrs. Ros, only those who were not industrious and unable to fulfill their quotas were laid-off. Such practice was not motivated by the union activities and/or affiliations of said workers."

Relative to findings Nos. 4, 5 and 6 in the resolution under review, the following additional facts found by the trial Judge in his decision are relevant and material: that since the early part of 1958 the workers in the "machine-made" department of petitioner company — the department making scalloped handkerchiefs — had been informed by management about the losses incurred in its operation. Witness

Felicidad Ros so testified, and admitted on cross-examination that it was precisely to avoid financial collapse and closure of the department that the employees were given quotas, and that the matter had been the subject of conferences between management and representatives of said employees. The unfavorable situation continued nevertheless: the financial statements presented in evidence show a loss of P62,444.55 in 1957 and a loss of P45,872.47 in 1958, or a total of P108,317.03.

In the light of these facts, significantly omitted in the resolution of the Court En Banc, the real reasons behind the closure of the "machine-made" department and the formation of the respondent union are brought into clearer focus. The decision to close could not have been so sudden as the resolution said it was: the adverse financial condition of the department had lasted almost two years. The testimony of Felicidad Ros in fact discloses that the employees organized themselves by affiliating with the Embroidery and Garment Workers' Union "in order to prevent their lay-off due to the cessation of work."

> "Q. — But the fact remains that it was only in October 1958 that you decided to organize a labor union by affiliating with the Embroidery & Garment Worker's Union?
>
> A. — Yes, sir.
>
> Q. — This was because, as you stated, you were afraid to be laid off?
>
> A. — Yes, sir, we were afraid.
>
> Q. — And you thought that you can prevent the lay-off of yon and your companions by affiliating with the Embroidery & Garment Workers Union?
>
> A. — Yes, sir! (t.s.n., pp. 17-18, September 4, 1956; p. 12, Annex "A", Petition)."

The respondent union was organized in the last week of October 1958. Petitioner company was advised thereof by letter on October 31,

and received the union's collective bargaining proposals on the following November 3. The Court en banc found (finding No. 7, supra) that in the afternoon of the same day, Nov. 3, the management announced the closure of the "machine-made" department and the opening of a new one — the Knitting Glove Department. The employees who were dismissed by reason of the closure were told to file applications with the new department. The Court was of the opinion, however, that there was no bonafide closure of the business because the company "continued to make scalloped handkerchiefs by transferring the pieces of machinery to various places in the provinces." This apparently was the basis of the Court's conclusion that the real reason for the dismissal of the employees in the "machine-made" department was their union activities.

It is with respect to the finding that the company continued to make scalloped handkerchiefs that there exists a divergence among the members of the Industrial Court. The evidence is that the machines were leased to independent contractors in the provinces; but whether they turned out scalloped handkerchiefs or infant wear[1] with those machines is quite unimportant insofar as the charge of unfair labor practice is concerned. For it is a fact that the "machine-made" department had been suffering financial reverses in its operation; and it is also a fact that the employees had been forewarned of its closure unless the situation improved, and that when such closure became unavoidable the employees, without forming a local union of their own, hurriedly affiliated themselves with respondent Embroidery and Garment Workers Union as a means of preventing the loss of their jobs.

The following observations of the trial Judge, Hon. Emiliano C. Tabigne, in his dissenting opinion are apropos:

"Even on the assumption that the workers in the department were already members of a labor union at the inception of the operation of the business in 1956, it cannot deter or prevent the decision of respondent to close the business if to proceed any further will only mean financial ruin or business collapse. What more in a case like the one at bar when it is distinctly shown that the motive of the complaining witnesses to suddenly join the union, after respondent company had already decided to close the department, was to prevent

respondent from proceeding with its decision to close and to secure for themselves a continuing employment? It is very clear from the records that the decision to close the department was for a justifiable and legitimate reason. To attribute the closing of the machine made department and the consequential separation of the employees affected therein, to the affiliation of the complaining witnesses to the complainant union is to subscribe to the illegal motive or purpose of the complainants and disregard entirely the legitimate and legal ground which motivated respondent company in closing the department, for I believe, no authority or law can stop an employer from closing operation of its business when it is on the red, much less are the employees empowered, by reason of their union affiliation or color, to compel the company to continue operation just so to secure for them (laborers or employees) continuous employment" (Pages 8-9, Tabigne, J., Dissenting, Annex "B" of Petition).

The presentation of proposals for purposes of collective bargaining on November 3, 1958 could not have been the motive for the closure of the "machine-made" department on the same day. There was then no existing labor dispute; indeed the company learned of the formation of the union only three days before. There was no conceivable reason why such a drastic step as the complete cessation of operations should be resorted to as a measure of retaliation against the employees for their supposed union activities when there were yet no such activities to speak off.

To be sure, there was a demand for collective bargaining contained in the letter of November 3, 1958. But the company did not ignore it, or refuse to bargain at all. What it did was to ask the union to prove that it counted with a majority of the employees, and to secure from the Court of Industrial Relations a certification to that effect. This was not only the legally approved procedure, but was dictated by the fact that the company had an existing collective bargaining agreement with another union, namely, the "Kapisanang Manggagawa sa Phil-American Embroideries, Inc."

Finding Nos. 11 and 12 of the Court En Banc are that the employees who had lost their jobs unconditionally offered to work but that the company refused their collective offer and insisted that they submit their applications individually. This, according to the majority of the

lower Court, constituted unfair labor practice. The conclusion is non-sequitur. Unfair labor practice can hardly be inferred from a willingness to accept applications for work. The dissent of the trial Judge states the matter quite clearly:

> "Even with respect to Exhibit 'D' petitioner, which was also marked Exhibit "2" for respondent company, a letter by the former to the latter dated April 4, 1959, the complaining witnesses did not ask for reinstatement to their former position in the Machine-Made Department which was closed on November 3, 1958, but they only requested to be employed in the Knitting Glove Department which is the newly created department of respondent company. For clarity the last paragraph of Exhibit 'D', petitioner, is quoted hereunder:
>
> > 'Lastly, may I be honored with a reply regarding your acceptance of their services should there be vacancies in order that the same may be immediately transmitted to them.'
>
> From the foregoing, it is an implied if not an expressed admission by complainants, through their own counsel, that there was no room or legal ground for reinstatement to the already defunct department from where they originally worked but that they only wanted to be employed in the Knitting Glove Department of the respondent company, and while jobs cannot be promised to everybody, the complainants were advised to file their corresponding applications and if they are found to be qualified they may be accommodated to fill any vacancy" (p. 15, Tabigne, J-Dissenting, Annex "B" of Petition)."

Considering all the undisputed facts, both as stated in the resolution of the Court en banc and in the dissent thereto, we are convinced that petitioner company was not guilty of unfair labor practice as charged, and that the closure of its department where the members of respondent union were employed was not an act of discrimination or a means of dismissal but rather the result of continued losses in operations — a ground that is entirely justified by law.

The Resolution appealed from is reversed and set aside, and the complaint is dismissed, with costs.

Concepcion, *C.J.*, Reyes, Dizon, Zaldivar, Sanchez, Ruiz Castro, Capistrano, Teehankee and Barredo, *JJ.*, concur. Fernando, *J.*, did not take part.

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[1] Testimony of Inocencia D. Garcia, one of said contractors.

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