

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PROGRESSIVE DEVELOPMENT
CORPORATION, JORGE L. ARANETA,
JUDY A. ROXAS, MANUEL B. JOVER,
RAMON LLORENTE and
PROGRESSIVE EMPLOYEES UNION,
*Petitioners,***

-versus-

**G.R. No. L-39546
November 29, 1977**

**COURT OF INDUSTRIAL RELATIONS
and ARANETA COLISEUM
EMPLOYEES ASSOCIATION,
*Respondents.***

X-----X

DECISION

FERNANDEZ, J.:

This is a Petition for Review the Decision of the Court of Industrial Relations in Case No. 3304-ULP entitled "Araneta Coliseum Employees Association, complainant, versus Progressive Corporation, et al., respondents", the dispositive part of which reads:

"WHEREFORE, all of the foregoing considered, and as so recommended, the respondents in this case should be, as they

are hereby, declared GUILTY of having committed the unfair labor practice acts complained of, and, as a consequence thereof, are therefore ordered to cease and desist from further committing the same or similar acts and to reinstate the individual complainants to their former or substantially equivalent employment in respondent corporation, without loss of seniority status and other benefits and/or privileges, with back wages from the time of their dismissal up to April 11, 1972 when this case was considered submitted for Decision, considering the delay encountered in the disposition of this case.

The Chief of the Examining Division of this Court, or his duly authorized representative, is hereby directed to proceed to the premises of the respondent corporation to examine its pertinent payrolls, vouchers and other books of accounts necessary to compute the monetary liability of respondents in line with this Decision, and to submit immediately thereafter his Report on the results of such computation for further disposition of the Court.

SO ORDERED.

Manila, Philippines, March 15, 1974.

(SGD.)

ALBERTO S. VELOSO
Associate Judge^[1]

The motion for reconsideration of the aforementioned decision was denied in a resolution en banc dated October 10, 1974.^[2]

In September 1962, Araneta Coliseum Employees Association (ACEA), a legitimate labor organization in behalf of forty eight (48) members, instituted Case No. 3304-ULP for unfair labor practice in the Court of Industrial Relations against Progressive Development Corporation (PDC), a domestic business entity operating the Araneta Coliseum, Jorge Araneta, Judy A. Roxas, Manuel B. Jover and Ramon Llorente, as officers of the corporation PDC and Progressive Employees Union (PEU), a labor organization existing in the PDC.

The complaint alleged that the PDC, through its officers, initiated a move to disauthorize the counsel of the complainant ACEA from appearing in a union conference with the respondents, petitioners herein; that the supervisors of PDC encouraged, and assisted in, the formation of the Progressive Employees Union (PEU) and coerced the employees, particularly the individual complainants, to disaffiliate from the complainant union and to affiliate with the PEU; that in July and August 1962 the respondents, petitioners herein, discriminated against the individual complainants by either not giving them their working schedules, lessening their number of working days and eventually dismissing them from their employment, because of their refusal to disaffiliate from their union and join the Progressive Employees Union; and the individual complainants are:

- “1. Antonio Buluran
2. Mario Bagaybayan
3. Bonifacio Cendanio
4. Eduardo Evangelista
5. Juan Cumiran
6. Antonio Martin
7. Arthur Melbielb
8. Amando Reyes, Jr.
9. Jaime Serrano
10. Dominador Semon
11. Azarcon Roberto
12. Jaime Villazo
13. Pedro Estabello
14. Garcia Edilberto
15. Rodolfo Macalino
16. Eduardo Misa
17. Bernardo Orquia
18. Florentino Ricardo
19. Jorge Buan
20. Bestituto Makilala
21. Gregorio Viray
22. Carlos Celistino
23. Federico Bola
24. Jose Dueñas
25. Aida Avenia

26. Mira Divinagracia
21. Amaparo Fernandez
28. Rose Haguisan
29. Aurora Reyes
30. Remedios Berdanea
31. Felisa Siason
32. Luz Caquiela
33. Benodian Nieva
34. Dimarocot Aquino
35. Domingo Malate
36. Reynaldo Asis
37. Feliciano Cabuang
38. Carmencita Anakan
39. Welhelmina Basco
40. Corazon Feliciano
41. Florecerfina Guerra
42. Antonio Jalla
43. Rosa de delos Santos
44. Ida Velasquez
45. Erlando Martin
46. Solidad Fernando
47. Margie Osorio
48. Sulpicio Makali”^[3]

Said individual complainants prayed that after declaring the respondents, petitioners herein, guilty of unfair labor practice acts, the complainants be ordered reinstated to their former positions with back wages and all the rights and privileges formerly appertaining thereto.

The respondents, corporation PDC, Jorge L. Araneta, Judy A. Roxas and Manuel B. Jover claimed in their answer that the individual complainants were merely casuals or temporary employees and their services depended on the availability of work as ushers, usherettes, guards and janitors when there were shows, performances or exhibits at the Araneta Coliseum. They alleged that they did not interfere with the complainant union and in fact they met and conferred with said union’s counsel; that they did not initiate nor assist the PEU; that they did not discriminate against the individual complainants nor dismiss them as said complainants were only casuals or temporary

employees; that the services of complainant Gregorio Viray were terminated because the office to which he was assigned was closed; and that complainant Reynaldo Asis was dismissed for collecting his salary without actually rendering the corresponding services.^[4]

The Progressive Employees Union (PEU) denied that the officers and supervisors of the corporation PDC initiated and assisted in its formation and claimed that its organization is the joint efforts of the overwhelming majority of the employees and laborers of the corporation PDC, free from any undue influence, interference and/or intimidation from any party. The PEU claimed that the institution of the unfair labor practice case by the complainants is a desperate attempt to unduly delay the proceedings in Case No. 1054-MC for certification election.^[5]

Ramon Llorente denied all imputations against him in the complaint and alleged that Gregorio Viray, a casual janitor, was separated when his office was closed. Llorente claimed that he severed his employment with the PDC in June 1962 and could not have committed the acts complained of against him in July and August 1962.^[6]

The Court of Industrial Relations found the following facts to be established by the evidence of record:

“From the evidence on record, the following facts are established, to wit:

1. That the complainant union was registered in the Department of Labor with Registration No. 3367-IP, dated September 11, 1961, and that the individual complainants are members thereof;
2. That the Progressive Development Corporation (PDC) is a domestic entity engaged in show business and operates the Araneta Coliseum, with respondents Jorge Araneta, Judy A. Roxas, Manuel B. Jover and Ramon Llorente as its officers;

3. That, on September 19, 1961, the complainant union formally informed the management of its existence (Exh. 'KK-1') and the management acknowledged the same on October 25, 1961 (Exh. 'B', 'B-1' & 'B-2');
4. That, on January 6, 1962, a 24-item proposal was sent by the complainant union to the management thru respondent Jorge Araneta (Exh. 'C'), which was only received by respondent Ramon Llorente (Exh. 'C-1');
5. That, on February 19, 1962, thru Nicolas Santiago, the management answered the said proposals (Exh. 'D');
6. That, on February 23, 1962, relative to the management's answer (Feb. 19, 1962), the complainant union requested the management for a negotiation conference on February 21, 1962 (Exh. 'E'), but Mr. Santiago requested them that the same be postponed to March 1, 1962, (Exh. 'E-1');
7. That, on February 28, 1962, Mr. Nicolas Santiago requested for the cancellation of the projected conference of March 1, 1962, alleging as reason therefor the 'hurried departure of the managing Director, Mr. Jorge Araneta for the United States' (Exh. 'F) and requested for a later date, which he will inform the union;
8. That, on April 21, 1962, the complainant union reminded Mr. Nicolas Santiago that, in view of the fact that Mr. Jorge Araneta had already arrived, they requested for a conference (Exh. 'M', 'H', & 'I'), which was set for June 14, 1962 at the office of the Araneta Enterprises Bldg., Cubao, Quezon City (Exh. 'J');
9. That, on June 13, 1962, respondent Ramon Llorente requested the President of the complainant union Antonio (Tony) Buluran, to see him in his residence

to take up with him the agenda for tomorrow's meeting (June 14, 1962) (Exh. 'E').

It was this meeting, as well as the circumstances that preceded the same, which the union claims started the management's exertion of all efforts to discourage membership in the complainant union, and which eventually culminated in the formation of the respondent union, The Progressive Employees Union (PEU), allegedly formed purportedly to bust the complainant union."^[7]

The Progressive Development Corporation and its officers assigned the following errors:

I.

THE RESPONDENT INDUSTRIAL COURT ERRED IN FINDING THE PETITIONERS GUILTY OF UNFAIR LABOR PRACTICE IN SPITE OF PETITIONERS' CONTENTION THAT THE INDIVIDUAL COMPLAINANTS WHO WERE HIRED AS USHERS, USHERETTES, JANITORS OR ATTENDANTS WERE MERELY CASUALS AND THAT THEIR HIRINGS DEPENDED ENTIRELY ON ACTUAL SHOWS OR PERFORMANCES IN THE ARANETA COLISEUM.

II.

THE RESPONDENT INDUSTRIAL COURT ERRED IN FINDING THE PETITIONERS GUILTY OF UNFAIR LABOR PRACTICE IN DISMISSING INDIVIDUAL COMPLAINANT GREGORIO VIRAY FOR HIS ALLEGED UNION MEMBERSHIP WITH THE RESPONDENT UNION ARANETA COLISEUM EMPLOYEES ASSOCIATION, FOR SHORT, ACEA, DESPITE PETITIONERS' CONTENTION THAT SAID GREGORIO VIRAY WAS MERELY A CASUAL WORKER FROM MARCH 1962 UP TO JUNE 1962, AND WHOSE DISMISSAL WAS DUE TO THE ABOLITION OF THE OFFICE WHERE HE WAS ASSIGNED.

III.

THE RESPONDENT INDUSTRIAL COURT ERRED IN FINDING THAT INDIVIDUAL COMPLAINANT REYNALDO ASIS A SECURITY GUARD WAS ALLEGEDLY DISCHARGED DUE TO HIS UNION ACTIVITIES AND THEREFORE CONSTITUTE UNFAIR LABOR PRACTICE ON THE PART OF THE PETITIONERS DESPITE PETITIONERS' CONTENTION THAT THE SAID SECURITY GUARD REYNALDO ASIS WAS DISCHARGED FOR CAUSE FOLLOWING HIS OWN ADMISSION THAT HE PUNCHED HIS TIME CARD AND COLLECTED HIS SALARY WITHOUT RENDERING THE CORRESPONDING SERVICES."^[8]

The Progressive Employees Union filed a separate brief and contended that the Court of Industrial Relations committed as following errors:

"I.

RESPONDENT COURT OF INDUSTRIAL RELATIONS ERRED IN DECLARING PARTICULARLY PROGRESSIVE EMPLOYEES UNION GUILTY OF HAVING COMMITTED THE UNFAIR LABOR PRACTICE ACTS COMPLAINED OF.

II.

RESPONDENT COURT OF INDUSTRIAL RELATIONS ERRED IN HOLDING THAT INDIVIDUAL COMPLAINANTS WERE SUBJECT OF DISCRIMINATIONS AND DISMISSAL FROM THEIR WORK THEREBY ENTITLED TO REINSTATEMENT WITH BACK WAGES."^[9]

It is contended by the petitioners that in view of the irregularity of actual promotions and performances held in Araneta Coliseum, the individual complainants and members of the respondent ACEA were naturally hired by the petitioner company only as casuals, extras or replacements in various positions of ushers, usherettes, porters, attendants and/or janitors, and all in rotation basis only because of the numerous other applicants for accommodation, hence there was

no basis for petitioners to have dismissed with discrimination the individual complainants and members of the respondent ACEA because of petitioners' practice of hiring by rotation.^[10] This contention is without merit. As testified to by Jose Generoso, Jr., President of the Progressive Employees Union, their members were also casual employees but are now regulars. This fact shows that the casual status of the members of ACEA could not have been the cause of their dismissals. Moreover, as testified to by Concordia Araiza, a witness for petitioners, it was the Personnel Manager, Ramon Llorente, who was in charge of assigning ushers and usherettes every time there were scheduled shows and that while the Araneta Coliseum maintained only such number of ushers, usherettes and janitors, if their services were needed, every time there was a scheduled show or during show days, the Coliseum hired additional personnel."^[11] It is, therefore, clear that the services of the members of the ACEA were also needed, their casual status notwithstanding.

It appears that the individual complainants, during show days, were always scheduled to work until June 1962 when they were not included in the schedule anymore.^[12] This virtually amounted to dismissal, without prior notice. Their not being included in the list of schedule since June 1962 could only be the result of petitioners' earlier threat of dismissal should said complainants refuse to heed petitioners' admonition for them to resign from the ACEA.

There is reason to believe that had the individual complainants agreed to resign from the ACEA and to transfer to the PEU, they would not have been separated from their work and would even have been made permanent employees. Thus, a Mrs. Concordia Araiza who was a casual employee of the petitioner corporation, upon her suspension for four (4) hours on representation of the ACEA, became a permanent employee after she handed her resignation from the ACEA Union personally to Jose E. Belmonte, the General Manager of the Progressive Development Corporation.^[13]

From the facts of record, it is clear that the individual complainants were dismissed because they refused to resign from the Araneta Coliseum Employees Association and to affiliate with the Progressive Employees Union which was being aided and abetted by the Progressive Development Corporation.

The assertion of the petitioner Progressive Development Corporation and its officials that they have nothing to do with the formation of the Progressive Employees Union is not supported by the facts of record.

The President then of the Progressive Employees Union was Jose Generoso, Jr., Stage Manager of the Progressive Development Corporation. The stage Manager, Generoso, has supervisory power over the twenty-two (22) employees under him. Generoso was then the No. 2 man in the Araneta Coliseum, being an assistant of the Director of said Coliseum. While the Progressive Employees Union was allegedly organized on June 26, 1962, it was only on July 11, 1962 that its existence was publicly announced when the management of the petitioner corporation refused to meet with the Araneta Coliseum Employees Association. The Progressive Employees Union never collected dues from its members and all their members are now regular employees and are still working in the construction unit of the Philippine Development Corporation. There is evidence that the progressive Employees Union became inactive after the death of Atty. Reonista, the former counsel of the Progressive Development Corporation.^[14] This shows that the Progressive Employees Union was organized to camouflage the petitioner corporation's dislike for the Araneta Coliseum Employees Association and to stave off the latter's recognition.

It is also a fact that the Progressive Employees Union, after exerting efforts to win in the Certification Election, Case No. 1054-MC, did not conclude and enter into a collective bargaining agreement with the management. According to Generoso, the Progressive Employees Union was already disbanded.^[15]

As regards Gregorio Viray, it is not refuted that he was an active member of the ACEA and that he was in charge of around eighteen (18) janitors. There can be no other reason for dismissal except his active membership with the Araneta Coliseum Employees Association because the office where he was working was not closed. After Ramon Llorente with whom Viray was assigned had resigned, his position was taken over by Alicia Nonado Iglesias.^[16]

The contention of the petitioner that Reynaldo Asis collected his salary without actually rendering corresponding services is not supported by the following facts found by the Court of Industrial Relation:

“In the case of Gregorio Viray, it is on record that, while assigned in the office of Mr. Llorente, he was sent to Aida Aveña and Carmencita Anacan for them to sign the disauthorization of Atty. Riño, ACEA’s counsel. Since the two refused to sign, another letter was again sent to Aida Aveña, who again refused to sign. Infuriated by said refusal, Llorente got mad and said that those who cannot follow instructions were not needed by him (tsn. pp. 32-33, June 4, 1964). And this obviously included Viray himself.

It is not refuted that Gregorio Viray was an active member of ACEA and that he was in charge of around eighteen (18) janitors. If, as argued, his dismissal was due to the abolition of the office where he was assigned, it puzzles us to note why he, alone, of the rest of the janitors was singled out for dismissal. And the fact that, after the separation of Mr. Ramon Llorente, with whom Viray was assigned, Mrs. Alicia Nonada Iglesias took over the position of Llorente (it is now Mrs. Iglesias who is in charge of the schedule of ushers and usherettes) completely belie respondents’ allegation that Viray was dismissed because the office where he was working was already closed. This being the case, there can be no other reason for his dismissal except his undisputed active membership with complainant.”^[17]

The evidence shows that Reynaldo Asis, like the other individual complainants, was dismissed because he refused to join the Progressive Employees Union.

The petitioners were correctly found to have committed acts constituting unfair labor practice.

In view of the length of time that has passed since the individual complainants were dismissed in 1962, there is need to apply the formula adopted by this Court in *Davao Free Workers Front vs. CIR* and other cases.^[18]

Under the circumstances and equity of the case, and considering the length of time and the union-busting activities of petitioner, the individual complainants are granted back wages for five (5) years without qualification or deduction.

WHEREFORE, the decision appealed from is hereby affirmed with the modification that the Progressive Development Corporation is ordered to reinstate the individual complainants to their former or substantially equivalent positions with the same rank and compensation and without loss of seniority and other privileges within fifteen (15) days from the promulgation of this decision and said Progressive Development Corporation is further ordered to pay the individual complainants back wages equivalent to five (5) years without qualification or deduction, with costs against the petitioners. This decision is declared immediately executory.

SO ORDERED.

Teehankee, C.J., (Chairman), Makasiar, Muñoz Palma, Martin and Guerrero, JJ., concur.

[1] Rollo, pp. 46-47.

[2] Rollo, p. 67.

[3] Rollo, pp. 30-31.

[4] Rollo, pp. 31-32.

[5] Rollo, p. 32.

[6] Ibid.

[7] Rollo, pp. 32-34.

[8] Brief for the Petitioners, pp. a-c, Rollo, p. 173.

[9] Brief for Progressive Employees Union, pp. A-B, Rollo, p. 191.

[10] Brief for petitioner corporation and its officials, p. 7, Rollo, p. 173.

[11] Rollo, p. 42.

[12] Rollo, pp. 42-43.

[13] Rollo, p. 43.

[14] Rollo, pp. 34-35.

[15] Rollo, pp. 35-36.

[16] Rollo. P. 45.

[17] Rollo, pp. 44-45.

[18] 60 SCRA 408; see also Mercury Drug Co., Inc., et al., vs. Court of Industrial Relations, et al., L-23357, April 30, 1974, 56 SCRA 694; Feati University

Faculty Club vs. Feati University, 58 SCRA 395; and Insular Life Assurance Co., Ltd. Employees Association NATU vs. Insular Life Assurance Co., Ltd., 76 SCRA 50.

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