SUPREME COURT
EN BANC

HILARION TOLENTINO, LUIS LAMONDAÑA, NERIO MONCES, ALFONSO SERRANO, LAURO GARCES, ENRIQUE COSTALES, JUSTINIANO ORTEGA and TEOFILO MARTINES,
***Petitioners*,**

-versus-

G.R. No. L-8150
May 30, 1956

RAMON ANGELES, FELIX MAPILI, MANULI SALVADOR and DOMINADOR BOLINAO,
***Respondents*.**
x----------x

D E C I S I O N

PADILLA, *J.*:

This is an Appeal by *Certiorari* under Rule 44 from a Decision rendered on 2 August 1954 and the resolution in banc adopted on 24 August 1954 by the Court of Industrial Relations denying a motion of 13 August 1954 filed by the petitioners for reconsideration of the Decision.

On 15 July 1953 a report in the form of a complaint was filed by the respondents and members of the Bisig ñg Manggagawa ñg Manila Yellow Taxicab Co., Inc., a legitimate labor union duly registered with the Department of Labor, hereafter called Union, representing at least ten per centum of its membership, charging the petitioners with unfair labor practices under the provisions of section 17, Republic Act No. 875, and requesting for certification election under the provisions of section 12 (b) and (c) of the same Act. They alleged that Ramon Angeles was dismissed from his employment as driver in the Manila Yellow Taxicab Co., Inc., hereafter called Company, and from the membership in the Union, without the benefit of investigation and hearing but upon the instigation and intrigue of the petitioners; and that Felix Mapili, Manuel Salvador and Dominador Bolinao were dismissed also from their employment as driver in the Company by virtue of and pursuant to a closed-shop agreement between the Company and the Union, as a result of their unjust and arbitrary expulsion from the Union by the petitioners, president, vice-president, secretary and members of the board of directors. They claimed that their expulsion from the Union caused by the petitioners was due, among others, to their attempt to inquire into and inspect the books of account and other records relative to financial activities of the Union.[1] They prayed, that the petitioners be required to cease and desist from such unfair labor practice; that the respondents dismissed from the Company and the Union be reinstated with back pay in their employment in the Company and membership in the Union; and that an election of the officers of the Union be ordered.

On 1 August 1953, the petitioners filed their answer denying and admitting certain facts set forth in the complaint and alleging that respondent Ramon Angeles was dismissed after due investigation conducted on 27 June 1953 and found guilty of having committed a grave offense against the interest of the company, and that respondents Felix Mapili, Manuel Salvador and Dominador Bolinao were dismissed also after due hearing and investigation, in order to preserve the collective interest and security of all the members of the Union.

After hearing, the Court of Industrial Relations rendered a decision the dispositive part of which is, as follows:

> FOR THE ABOVE CONSIDERATION, the Court hereby declares the closed-shop condition of the agreement Exhibit "9" null and void and the respondents guilty of unfair labor practice under the provisions of Section 4(b) of Republic Act No. 875, and therefore, requires them:
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> (a) To cease and desist from such unfair labor practice;
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> (b) To post this order within ten (10) days, after it has become final, in a place within the premises of the Manila Yellow Taxicab Co., Inc. accessible to all its employees and to report to this Court that same has been complied with; and
>
> (c) To pay a fine collectively in the amount of five hundred pesos (P500). Annex A.)

The petitioners contend that the resolution of the Court in banc denying their motion for reconsideration of the decision was not adopted in accordance with law and hence null and void; that Republic Act No. 875 does not apply to the case at bar, because the alleged acts constituting unfair labor practice were committed before the Act took effect; that even assuming that Republic Act No. 875 applies to the case, still the Court of Industrial Relations committed an error when it held that the closed-shop agreement entered into by and between the Company and the Union is null and void; and that the Court committed an error in imposing a collective fine of P500 on the petitioners.

The Court of Industrial Relations made the following findings:

> The evidence adduced by the parties established the following facts:
>
> > That Ramon Angeles, Dominador Bolinao, Manuel Salvador and Felix Mapili are the complainants in this case, who are members of the Bisig ñg Manggagawa ñg Manila Yellow Taxicab Co., Inc. and drivers of the Manila Yellow Taxicab Co., Inc.; that three of them, namely, Ramon Angeles, Manuel Salvador and Felix Mapili, and

> two others, also members of said union and drivers of the same company, on June 2, 1953, filed with the Department of Labor a complaint against the respondents in this case for forcible deductions of their salaries and/or undue collections, etc.; that pursuant thereto the Labor Organization Unit of the Department of Labor took cognizance of the case and conducted the investigation on June 17, 1953; that on June 11, 1953, however, the above named four complainants were summoned to appear before the board of directors of the union because of their complaint in the Department of Labor and upon their appearance and failure of the board to investigate them, they (complainants) requested the members of the board to hold a general meeting in order to air their grievances to all the members of the union and justify their action in filing the complaint in the Department of Labor; that said request was never granted, and instead the complainants later on received letters of dismissal from the company upon demand of the union pursuant to the closed shop agreement executed between the Manila Yellow Taxicab Co., Inc. and the Bisig ñg Manggagawa ñg Manila Yellow Taxicab Co., Inc. on March 16, 1953. (Exhibit "9")

The dates and causes of dismissal of complainants appear in the corresponding letters of dismissal stated below:

1. Ramon Angeles was dismissed on July 1, 1953 for "running with your flag-up with passenger" according to the letter dated July 1, 1953 marked as Exhibit "3";

2. Dominador Bolinao was dismissed on July 3, 1953 upon demand of the union to the company for having been expelled as member pursuant to the close shop agreement Exhibit "9" as shown in the letter of July 3, 1953 marked as Exhibit "B";

3. Manuel Salvador was dismissed on July 3, 1953 for the same reason as above stated in accordance with the letter dated July 3, 1953 marked as Exhibit "B-1";

4. Felix Mapili was dismissed on July 3, 1953 for similar reason as stated in No. 2 above as mentioned in the letter of July 3, 1953 marked as Exhibit "B-2".

As may be seen from the above quoted complaint the same contains a petition for certification election and charges of unfair labor practice. However, as there is no evidence to support said petition for certification election the same is hereby denied.

This case then shall be treated only for unfair labor practice.

From the face of the aforesaid facts it is clear that the dismissal of the last three (3) drivers from their work, except the first one, was due to the closed-shop condition of the agreement Exhibit "9", following their expulsion from the union. The closed-shop condition of the agreement, Exhibit "9", states as follows:

> "3. That the Union manifests and recognizes the right and authority of the Employer to select its drivers, employees and laborers: Provided, That in all positions of drivers in the company, no appointee shall be allowed to work unless he or she is a bona fide member of the Union: And Provided Further, That the Union shall be clothed with prerogatives to recommend to the company the dismissal or removal of any driver who has violated the rules and regulations of the Union or who, thru his misconduct, negligence or disloyalty has become a persona non grata to the Union, after an investigation."

The complainants in this case have been expelled from the union, according to the resolution of the board of directors of the union dated June 17, 1953 (Exhibit "8"), because said complainants "with their activities fomented confusion, disorder and discontentment" among the members of the union and tried "to undermine and destroy the Union." The complaint filed by the complainants in the Department of Labor, as shown by the above facts, can not possibly be considered a violation of the rules and regulations of the union nor a misconduct, negligence or disloyalty on the part of said complainants pursuant to the above quoted condition inasmuch as said complaint was to seek an investigation of an irregularity. It can

be said further that the complaint was in the exercise of complainants' right as provided for in section 4 of Commonwealth Act No. 213.

It is obvious, therefore, that the action of the board of directors of the union in expelling from its membership and demanding the dismissal from the company of the three (3) drivers, namely, Dominador Bolinao, Manuel Salvador and Felix Mapili under the pretext that they have violated the rules and regulations of the union or through misconduct, negligence or disloyalty they have become persona non grata to the union, without proving satisfactorily that an investigation into said charges was ever conducted, is very arbitrary and unjust and not only a violation of the above quoted condition but also caused the employer to discriminate against the said three (3) complainants in this case. Therefore, pursuant to section 4(b), subsection (2) of Republic Act No. 875, said action constitutes unfair labor practice.

Furthermore, said close-shop condition of the agreement exhibit "9" is null and void (section 8[c] of said Republic Act). Because such closed-shop condition permits either party or both, the commission of unfair labor practice as in fact the respondents in this case have committed in demanding from the company the dismissal of the above mentioned three (3) drivers.

It may be argued in this connection that this Court, being a special Court, does not have the power and jurisdiction to declare and decide on the validity or legality of said closed-shop condition. This is not so, because according to section 5(c) of said Act, this Court has power and jurisdiction to abrogate such closed-shop condition if such condition "is effected by means of, or which resulted in, unfair labor practice" (Rothenberg on Labor Relations, p. 577; N. L. R. B. vs. Superior Tanning Co., 117 F. [2nd] 881; N. L. R. B. vs. National Licorice Co., 309 Co., 309 U. S. 350 modifying 104 F. [2nd] 885; etc.)

Since the dismissal of Ramon Angeles, is other than an unfair labor practice, the Court, therefore, is without power and jurisdiction to decide the same, even under Commonwealth Act No. 103, section 19, for lack of jurisdictional number of workers involved.

There is no merit in the contention that the resolution appealed from signed by four judges of the Court of Industrial Relations is null and void. The fact that they signed the resolution means that they sat together in consultation and in passing upon the motion for reconsideration filed by the petitioners, and the number of judges that took part therein is one more than the number required to render and adopt a resolution. If the concurrence of three judges is enough for the Court of Industrial Relations to render a valid decision or resolution, it stands to reason that three judges are enough to constitute a quorum.

> "The complainants (herein respondents) in this case have been expelled from the Union, according to the resolution of the (its) board of directors dated June 17, 1953 (Exhibit '8'), because said complainants 'with their activities fomented confusion, disorder and discontentment' among the members of the Union and tried 'to undermine and destroy the Union,'" but the Court of Industrial Relations found that "The complaint filed by the complainants (herein respondents) in the Department of Labor, as shown by the above facts, cannot possibly be considered a violation of the rules and regulations of the Union nor a misconduct, negligence or disloyalty on the part of said complainants (herein respondents) pursuant to the above quoted condition inasmuch as said complaint was to seek an investigation of an irregularity. It can be said further that the complaint was in the exercise of complainants' right as provided for in section 4 of Commonwealth Act No. 213."

The petitioners draw the attention of this Court to the resolution of the board of directors of the Union dated 11 June 1953 (Exhibit 8, Annex E of the petition) and contend that such resolution of the board of directors of the Union found untrue by the Court of Industrial Relations cannot be the basis of the decision and resolution appealed from because as the acts complained of as constituting unfair labor practice were committed before 11 June 1953, Republic Act No. 875 which took effect on 17 June 1953 cannot be applied. A law that penalizes an act not punishable at the time it was performed is ex post facto. However, retroactivity of laws that are remedial in nature is not prohibited. And taking into consideration the declared policy of Republic Act No. 875 to eliminate the causes of industrial

unrest and to promote sound and stable industrial peace,[1] there seems to be no valid reason why the law could not be applied to acts taking place before its enactment which would cause or bring about an industrial unrest. The acts of the petitioners, as found by the Court of Industrial Relations, are sufficient to support the pronouncement that they constitute unfair labor practice, as provided for in section 4, paragraph (b), sub-paragraph (2) of Republic Act No. 875.

But the Court of Industrial Relations erred when it held that the closed-shop agreement (Exhibit 9; Annex C) is null and void because it contravenes section 8, paragraph (c) of Republic Act No. 875, which provides:

> Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual firm, company, association or corporation and any employee or prospective employee of the same shall be null and void if thereby —
>
> (a) x x x;
>
> (b) x x x;
>
> (c) Either party undertakes or promises to permit the commission of any of the unfair labor practices defined in section four hereof.

We do not believe that such an agreement is null and void because it is expressly authorized by section 4(a), paragraph 4, of the same Act, which provides:

> It shall be unfair labor practice for an employer:
>
> x x x
>
> (4) 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;
>
> Section 8(c) of the Act above copied refers to "Every undertaking or promise constituting or contained in any contract or agreement of hiring or employment between any individual firm, company and any employee or prospective employee of the same shall be null and void if thereby — (c) Either party undertakes or promises to permit the commission of any of the unfair labor practices defined in section four hereof." It contemplates and refers to an undertaking or promise by an individual firm and an employee or prospective employee and not to a close-shop agreement which is lawful, as provided for in section 4(a), paragraph 4, of the Act. We fail to see the illegality of the close-shop agreement entered into by and between the Union and the Company in the absence of showing that the officers of the Union were not the true choice of the members thereof, as they should be in accordance with section 12 of the Act.

The prayer or request of the respondents for certification election is no longer urged by them.

What was unfair and discriminatory was the unlawful and unjust expulsion or dismissal from the Union of Felix Mapili, Manuel Salvador and Dominador Bolinao, three of the herein respondents, without justifiable cause that brought about their dismissal by the Company in accordance with the closed-shop agreement.

Lastly, without deciding and withholding our opinion on whether under the Constitution the Court of Industrial Relations, as at present organized and constituted, may be authorized or empowered to impose a fine upon a party found by it guilty of unfair labor practice,

as provided for in section 25 of Republic Act No. 875, we agree with counsel for the petitioners that the Court of Industrial Relations could not impose a fine collectively upon the petitioners, because section 25 of Republic Act No. 875, being of penal character, should not and could not be applied retroactively.

Upon the foregoing considerations, the decisions appealed from affirmed by the resolution also appealed from is modified by striking therefrom the penalty of P500 imposed collectively upon the petitioners and the declaration that the closed-shop agreement is null and void, and adding to it a directive to the petitioners, members of the Board of Directors of the Bisig ñg Manggagawa ñg Manila Yellow Taxicab Co., Inc. to reinstate the three respondents, Felix Mapili, Manuel Salvador and Dominador Bolinao to the membership in the Union[1] The rest of the decision is affirmed, with costs against the petitioners.

Paras, *C.J.*, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, and Endencia, *JJ.*, concur.

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[1] Section 17(1), Republic Act No. 875.
[1] Section 1, Republic Act No. 875.
[1] Reinstatement with back pay, as provided for in section 5(c), Republic Act No. 875, cannot be ordered because the Manila Yellow Taxicab Co., Inc. is not a party to these proceedings.
