SUPREME COURT
FIRST DIVISION

ALHAMBRA INDUSTRIES, INC.,
***Petitioner*,**

-versus-

G.R. No. L-25984
October 30, 1970

COURT OF INDUSTRIAL RELATIONS and ALHAMBBA EMPLOYEES ASSOCIATION (FTUP),
***Respondents*.**
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D E C I S I O N

TEEHANKEE, *J.*:

Appeal by *Certiorari* from respondent court's Decision in an unfair labor practice case that the fifteen drivers and helpers not recognized by petitioners are in truth and in fact its employees, and not separate and independent employees of its salesmen and propagandists, and are therefore entitled retroactively to all the privileges, rights and

benefits provided for all its other regular employees under its collective bargaining agreement with respondent union.

The complaint for unfair labor practice 1 for violation of section 4(a) subsections (4) and (6) of the Industrial Peace Act, was filed by the acting prosecutor of respondent court against petitioner, upon the charges of respondent union that fifteen of the union members, employed as drivers and helpers of petitioner, were being discriminated against by petitioner's not affording them the benefits and privileges enjoyed by all the other employees for no justifiable reason other than their union membership; and that the union had asked petitioner to negotiate with respect to said fifteen drivers and helpers who were being excluded from the benefits of their subsisting collective bargaining agreement, but petitioner refused to do so. The union prayed for a desistance order and that petitioner be ordered to bargain collectively in good faith and to grant the drivers and helpers the same benefits and privileges extended to and enjoyed by all its other employees.

In answer, petitioner denied the unfair labor practice imputed to it and countered that the fifteen drivers and helpers were not its employees, but separate and independent employees of its salesmen and propagandists who exercised discretion and control over their selection, employment, compensation, suspension and dismissal.

It is admitted that respondent union is sole and exclusive collective bargaining representative for all the employees of petitioner and that collective bargaining agreements had been successively signed between the union and petitioner on March 14, 1962 and on February 18, 1964. Both the union and petitioner exhausted steps 1 to 3 of the grievance machinery provided in the collective bargaining agreement with regard to the union's claim that the benefits thereof should be extended to the fifteen drivers and helpers and the petitioner's contrary stand that they were not its "employees." Hence, as they could not resolve by conferences this dispute, the union invoked the final step in the grievance machinery, after written notice thereof, and elevated the issue of the true status of said drivers and helpers to respondent court through its complaint for unfair labor practice.

Respondent court in its decision, affirmed by its resolution en banc of April 11, 1966, categorically held petitioner's disclaimer of the employee status of the drivers and helpers to be baseless and untenable, as follows: "In accordance with the 'memorandum of instructions,' Exhibit '24,' which the respondent corporation issues to the salesman or propagandist, it is really from here that the latter is authorized by the former to engage the services of a driver or helper. So that even when the driver or helper does not apply directly to the respondent corporation for the job but to the salesman or propagandist, nevertheless, the authority of the salesman or propagandist to employ the driver or helper emanates from the respondent corporation. It is, therefore, apparent that in truth and in fact, the respondent corporation is the 'employer' of the driver or helper and not the salesman or propagandist who is merely expressly authorized by the former to engage such services.

> "The salary of the driver or helper also comes from the respondent corporation in the form of 'driver allowance' which is appropriated for the purpose. This allowance is given to the salesman or propagandist who in turn pays the same to the driver or helper for salaries or wages. Of course, we realize that this mode of paying the salaries or wages of the driver or helper indirectly through the salesman or propagandist will save the respondent corporation the burden of record keeping and other similar indirect costs. Nevertheless, it could not be denied that it is the respondent corporation that pays the wages and salaries of the driver or helper.
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> "The duties and obligations of the driver or helper do not come from the salesman or propagandist but are expressly stated by the respondent corporation in the 'memorandum of instructions.' He does not only accompany the salesman or propagandist in all the trips, but also drives or watches the truck which is the property of the respondent corporation. He also assists the salesman in making deliveries to different stores and in the preparation of inventories. These duties are the dictates of respondent corporation and not of the salesman or propagandist. It is therefore clear that the terms and conditions of employment of the driver or helper are those fixed and determined by the respondent corporation. From all the

> foregoing consideration we are convinced that the driver or helper is an 'employee' of respondent corporation."

It therefore rendered the following judgment against petitioner:

> "IN CONCLUSION, THEREFORE, we rule and so hold that all the fifteen (15) drivers and helpers whose names are listed in the 'Partial Stipulation of Facts' are employees of the respondent Alhambra Industries, Inc., and as such they should be given and/or extended all the privileges, rights and benefits that are given to all other regular employees, including those fringe benefits provided for in the Collective Bargaining agreement signed and concluded between the complainant union and the respondent corporation, retroactive as of the effectivity of the first agreement of March 14, 1962 up to the present."

Petitioner, in this appeal, does not dispute the respondent court's basic ruling that the fifteen drivers and helpers are in truth and in fact its employees and that its making use of its salesmen and propagandists, as the ostensible "employers" of the drivers and helpers was in effect but an elaborate artifice to deprive the drivers and helpers of their status as employees of petitioner, entitled to enjoy all the privileges, rights and benefits provided for all other employees under the collective bargaining agreements.

The lone error assigned by petitioner in its brief is that respondent court "acted in excess of jurisdiction in entering judgment against petitioner in spite of its finding that the petitioner had not committed any act of unfair labor practice." 2 Petitioner uses as props for this lone assigned error respondent court's statements in the body of its decision that (S)ince the grant of benefits to the drivers will depend on a finding by the Court that they are 'employees' of the respondent corporation and not on account of their membership with the complainant union or activities therein, then the charge of discrimination against the respondent corporation is without basis in fact and in law. Settled is the rule in this jurisdiction that in order to adjudge an employer of discrimination in accordance with the Act, it must be due to the union affiliation or activities of the employee concerned" and that "both parties tried their level best to decide the

issue before the Court is the last step provided for in their grievance machinery, Step No. 4 . . . Since the grant of benefits to the drivers and helpers hinges on the decision of the Court that they are 'employees' of the respondent corporation, then the latter could not have been guilty of refusal to bargain in accordance with the Act." Petitioner, invoking section 5(c) of the Industrial Peace Act, 3 thus contends that "it is mandatory upon the respondent court to order the dismissal of the complaint, once it finds out that no unfair labor practice has been committed" and it, should have "left the parties alone to settle their differences through conciliation, mediation and recourse to the ordinary courts."

Petitioner's appeal must be dismissed. It is speciously grounded on mere form rather than the realities of the case. In form, respondent court gently treated petitioner's scheme to deprive the fifteen drivers and helpers of their rightful status as employees and did not denounce it as a betrayal of the salutary purpose and objective of the Industrial Peace Act, 4 but instead remarked that since the grant of employees' benefits hinged on the court's decision on their status as such employees, petitioner "could not have been guilty of refusal to bargain in accordance with the Act." The reality, however, is that respondent court expressly found that "in truth and in fact, (petitioner) corporation is the 'employer' of the driver or helper and not the salesman or propagandist who is merely expressly authorized by the former to engage such services." Petitioner's failure to comply with its duty under the collective bargaining agreement to extend the privileges, rights and benefits thereof to the drivers and helpers as its actual employees clearly amounted to the commission of an unfair labor practice. And consequently respondent court properly ordered in its judgment that said drivers and helpers "should be given and/or extended all the privileges, rights and benefits that are given to all the other regular employees retroactive as of the effectivity of the first agreement of March 14, 1962 up to the present." In so ordering, respondent court was but discharging its function under section 5(c) of the Act, supra, to order the cessation of an unfair labor practice and "take such affirmative action as will effectuate the policies of this Act."

Failure on petitioner's part to live up in good faith to the terms its collective bargaining agreement by denying the privileges and benefits thereof to the fifteen drivers and helpers through its device of

trying to pass them off as 'employees' of its salesmen and propagandists was a serious violation of petitioner's duty to bargain collectively and constituted unfair labor practice in any language. 5 As succinctly stated by Mr. Justice Castro in Republic Savings Bank vs. Court of Industrial Relations, 6 in unfair labor practice cases, "(T)he question is whether the (respondent) committed the act charged in the complaint. If it did, it is of no consequence either as a matter of procedure or of substantive law, what the act is denominated - whether as a restraint, interference or coercion, as some members of the Court believe it to be, or as a discriminatory discharge as other members think it is, or as refusal to bargain as some other members view it, or even as a combination of any or all of these."

ACCORDINGLY, the judgment appealed from is affirmed. The writ of preliminary injunction heretofore issued on May 17, 1966 is lifted and set aside. With costs against petitioner.

Concepcion, *C.J.*, Reyes, Dizon, Makalintal, Zaldivar, Castro, Fernando and Barredo, *JJ.*, concur.
Villamor, *J.*, did not take part.
Makasiar, *J.*, is on leave.

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[1] Case No. 3805-ULP, "Alhambra Employees Ass'n. (FTUP) vs. Alhambra Industries, Inc."
[2] Petitioner's brief, p. 4.
[3] "If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative action as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without backpay and including rights of the employees prior to dismissal including seniority. Such order may further require such person to post the Court's order and findings in a place available to all the employees and to make reports from time to time showing the extent to which the Court's order has been complied with. If after investigation the Court shall be of the opinion that no person named in the complaint has engaged in or is engaging in any unfair labor practice, the Court shall state its findings of fact and shall issue an order dismissing the

said complaint. If the complaining party withdraws its complaint, the Court shall dismiss the case."

[4] See Social Security System vs. Court of Appeals, L-25406, Dec. 24, 1968 (26 SCRA 458).

[5] See Security Bank Employees Union vs. Security Bank & Trust Co., L-28536, Apr. 30, 1968 and cases cited.

[6] L-20303, Resolution, October 31, 1967, (21 SCRA, 661).