SUPREME COURT
EN BANC

ALLIED FREE WORKERS' UNION (PLUM),
***Petitioner*,**

-versus-

G.R. Nos. L-22951
***and* L-22952**
January 31, 1967

COMPANIA MARITIMA, MANAGER JOSE C. TEVES, and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
x----------x

COMPANIA MARITIMA and MANAGER JOSE C. TEVES,
***Petitioners*,**

-versus-

G.R. No. L22971
January 31, 1967

ALLIED FREE WORKERS' UNION (PLUM) and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
x----------x

D E C I S I O N

BENGZON, *J.*:

The three cases before this Court are the respective appeals separately taken by the parties hereto from an Order[1] of the Court of Industrial Relations en banc affirming its trial judge's decision, rendered on November 4, 1963, in CIR Case 175-MC and CIR Case 426-ULP. Thus L-22971 is the appeal of MARITIMA[2] in CIR Case 175-MC; L-22952 is AFWU's[3] appeal in the same case; and L-22951 refers to AFWU's appeal in CIR Case 426-ULP. Since these cases were jointly tried and decided in the court a quo and they involve the same fundamental issue — the presence or absence of employer-employee relationship — they are jointly considered herein.

MARITIMA is a local corporation engaged in the shipping business. Teves is its branch manager in the port of Iligan City. And AFWU is a duly registered legitimate labor organization with 225 members.

On August 11, 1952, MARITIMA, through Teves, entered into a CONTRACT[4] with AFWU, the terms of which We reproduce:

> "— ARRASTRE AND STEVEDORING CONTRACT —
>
> "Know All Men by These Presents:
>
> "This contract made and executed this 11th day of August, 1952, in the City of Iligan, Philippines, by and between the COMPANIA MARITIMA, Iligan Branch, represented by its Branch Manager in Iligan City, and the ALLIED FREE WORKERS UNION, a duly authorized labor union, represented by its President:
>
> "WITNESSETH:
>
> "1. That the Compania Maritima hereby engage the services of the Allied Free Workers Union to do and

perform all the work of stevedoring and arrastre services of all its vessels or boats calling in the port of Iligan City, beginning August 12, 1952.

"2. That the Compania Maritima shall not be liable for the payment of the services rendered by the Allied Free Workers Union, for the loading, unloading and deliveries of cargoes as same is payable by the owners and consignees of cargoes, as it has been the practice in the port of Iligan City.

"3. That the Allied Free Workers Union shall be responsible for the damages that may be caused to the cargoes in the course of their handling.

"4. That this contract is good and valid for a period of one (1) month from August 12, 1952, but same may be renewed by agreement of the parties; however Compania Maritima reserves the right to revoke this contract even before the expiration of the term, if and when the Allied Free Workers Union fails to render good service.

"IN WITNESS WHEREOF, we hereunto sign this presents in the City of Iligan, Philippines, this 11th day of August, 1952.

(Sgd.) SALVADOR. T. LLUCH
President
Allied Free Workers Union
Iligan City

(Sgd.) JOSE C. TEVES
Branch Manager
Compania Maritima

"SIGNED IN THE PRESENCE OF:

1. (Sgd.) JOSE CUETO
2. (Sgd.) SERGIO OBACH"

During the first month of the existence of the CONTRACT, AFWU rendered satisfactory service. So, MARITIMA, through Teves, verbally renewed the same. This harmonious relations between MARITIMA and AFWU lasted up to the latter part of 1953 when the former complained to the latter of unsatisfactory and inefficient

service by the laborers doing the arrastre and stevedoring work. This deteriorating situation was admitted as a fact by AFWU's president. To remedy the situation — since MARITIMA's business was being adversely affected — Teves was forced to hire extra laborers from among "stand-by" workers not affiliated to any union to help in the stevedoring and arrastre work. The wages of these extra laborers were paid by MARITIMA through separate vouchers and not by AFWU . Moreover, said wages were not charged to the consignees or owners of the cargoes.

On July 23, 1954, AFWU presented to MARITIMA a written proposal[5] for a collective bargaining agreement. This demand embodied certain terms and conditions of employment different from the provisions of the CONTRACT. No reply was made by MARITIMA. On August 6, 1954, AFWU instituted proceedings in the Industrial Court[6] praying that it be certified as the sole and exclusive bargaining agent in the bargaining unit composed of all the laborers doing the arrastre and stevedoring work in connection with MARITIMA's vessels in Iligan City. MARITIMA answered, alleging lack of employer- employee relationship between the parties.

On August 24, 1954, MARITIMA informed AFWU of the termination of the CONTRACT because of the inefficient service rendered by the latter which had adversely affected its business. The termination was to take effect as of September 1,1954. MARITIMA then contracted with the Iligan Stevedoring Union for the arrastre and stevedoring work. The latter agreed to perform the work subject to the same terms and conditions of the CONTRACT. The new agreement was to be carried out on September 1, 1954.

On August 26, 1954, upon the instance of AFWU, MARITIMA found itself charged before the Industrial Court[7] of unfair labor practices under Sec. 4(a), (1), (3), (4) and (6) of Rep. Act No, 875. MARITIMA answered, again denying the employer-employee relationship between the parties.

On September 1, 1954, members of AFWU, together with those of the Mindanao Workers Alliance — a sister union — formed a picket line at the wharf of Iligan City, thus preventing the Iligan Stevedoring

Union from carrying out the arrastre and stevedoring work it contracted for.[8] This picket lasted for nine days.

On September 9, 1954, MARITIMA filed an action[9] to rescind the CONTRACT, enjoin AFWU members from doing arrastre and stevedoring work in connection with its vessels, and for recovery of damages against AFWU and its officers. Incidentally, this civil case has been the subject of three proceedings already which have reached this Court. The first 10 involved a preliminary injunction issued therein on September 9, 1954, by the trial court prohibiting AFWU from interfering in any manner with the loading and unloading of cargoes from MARITIMA's vessels. This injunction was lifted that very evening upon the filing of a counterbond by AFWU. Subsequently, a motion to dissolve said counterbond was filed by MARITIMA but the hearing on this incident was enjoined by Us on March 15, 1955, upon the institution of the petition for prohibition and injunction in said L-8876.[11] Meanwhile, AFWU members-laborers were able to continue the arrastre and stevedoring work in connection with MARITIMA's vessels.

On December 5, 1960, the CFI decision in the civil case was promulgated. It ordered the rescission of the CONTRACT and permanently enjoined AFWU members from performing work in connection with MARITIMA's vessels. AFWU then filed its notice of appeal, appeal bond and record on appeal.[12] The subsequent incidents thereto gave rise to the two other proceedings which have previously reached Us here.

On January 6, 1961, upon motion of MARITIMA, an order of execution pending appeal and a writ of injunction against AFWU was issued by the trial court in the civil case. This enabled MARITIMA to engage the services of the Mindanao Arrastre Service to do the arrastre and stevedoring work on January 8, 1961. However, AFWU filed a petition for certiorari, injunction and prohibition[13] here and on January 18, 1961, was able to secure a writ of preliminary injunction ordering the maintenance of the status quo prior to January 6, 1961. Thus, after January 18, 1961, AFWU laborers were again back doing the same work as before.

The third incident that reached us[14] involved an order of the same trial court in the same civil case, dated January 11, 1961, which amended some clerical errors in the original decision of December 5, 1960. Upon motion of MARITIMA, the trial court, on March 24, 1962, issued an order for the execution of the decision of January 11, 1961, since AFWU did not appeal therefrom, and on March 31, 1962, a writ of execution ousting the 225 AFWU members-laborers from their work in connection with the loading and unloading of cargoes was issued and a levy on execution upon the properties of AFWU was effected. Accordingly, on April 1, 1962, MARITIMA was again able to engage the services of the Mindanao Arrastre Service.

On April 16, 1962, upon the institution of the petition for certiorari, injunction, prohibition and mandamus, a preliminary injunction was issued by Us against the orders of March 24 and 31, 1962. But then, on May 16, 1962, upon motion of MARITIMA, this preliminary injunction was lifted by Us insofar as it related to the execution of the order ousting the AFWU laborers from the stevedoring and arrastre work in connection with the MARITIMA vessels.[15] Such then was the status of things.

On November 4, 1963, after almost 10 years of hearing the two cases jointly, the Industrial Court finally rendered its decision. The dispositive part provided:

> "IN VIEW OF ALL THE FOREGOING CIRCUMSTANCES, the complaint of the union for unfair labor practices against the Compania Maritima and/or its agent Jose C. Teves and the Iligan Stevedoring Union and/or Sergio Obach is hereby dismissed for lacks of substantial evidence and merit.
>
> "In pursuance of the provisions of Section 12 of Republic Act 875 and the Rules of this court on certification election, the Honorable, the Secretary of Labor or any of his authorized representative is hereby requested to conduct certification election among all the workers and/or stevedores working in the wharf of Iligan City who are performing stevedoring and arrastre service aboard Compania Maritima vessels docking at Iligan City port in order to determine their representative for collective bargaining with the employer, whether these desire to

> be represented by the petitioner Allied Free Workers Union or neither [sic]; and upon termination of the said election, the result thereof shall forthwith be submitted to this court for further consideration. The union present payroll may be utilized in determining the qualified voters, with the exclusion of all supervisors.
>
> "SO ORDERED."

As already indicated, the fundamental issue involved in these cases before Us consists in whether there is an employer-employee relationship between MARITIMA, on the one hand, and AFWU and/or its members-laborers who do the actual stevedoring and arrastre work, on the other hand.

THE UNFAIR LABOR PRACTICE CASE (L-22951[*] [CIR Case No. 426-ULP])

Petitioner AFWU's proposition is that the court a quo erred (1) in concluding that MARITIMA had not refused to bargain collectively with it, as the majority union; (2) in not finding that MARITIMA had committed acts of discrimination, interferences and coercions upon its members-laborers, and (3) in concluding that the CONTRACT may not be interfered with even if contrary to law or public policy.

It is true that MARITIMA admits that it did not answer AFWU's proposal for a collective bargaining agreement. From this it does not necessarily follow that it is guilty of unfair labor practice. Under the law[16] the duty to bargain collectively arises only between the "employer" and its "employees". Where neither party is an "employer" nor an "employee" of the other, no such duty would exist. Needless to add, where there is no duty to bargain collectively the refusal to bargain violates no right. So, the question is: Under the CONTRACT, was MARITIMA the "employer" and AFWU and/or its members the "employees" with respect to one another?

The court a quo held that under the CONTRACT, AFWU was an independent contractor of MARITIMA. This conclusion was based on the following findings of fact, which We can no longer disturb, stated in the CIR decision:

"7. The petitioner union operated as a labor contractor under the so-called 'cabo' system; and as such it has a complete set of officers and office personnel (Exh. 'F' and 'F-1) and its organizational structure includes the following: General President, with the following under him — one vice-president, legal counsel, general treasurer, general manager and the board of directors. Under the general manager is the secretary, the auditors, and the office staff composing of the general foreman, general checker, general timekeeper, and the respective subordinates like assistant foreman, capataz, assistant general checker, Field Checker, office time keeper, and field timekeeper all appointed by the general manager of the union and are paid in accordance with the union payroll exclusively prepared by the union in the office. (See t.s.n. pp. 32-36, June 9, 1960; pp. 78-80, February 16, 1961; pp. 26-28, August 9, 1960). The payrolls where laborers are listed and paid were prepared by the union itself without the intervention or control of the respondent company and/or its agent at Iligan City. The respondent never had any knowledge of the individual names of laborers and/or workers listed in the union payroll or in their roster of membership.

"8. The union engaged the services of their members in undertaking the work of arrastre and stevedoring either to haul shippers' goods from their warehouses in Iligan City to the Maritima boat or from the boat to the different consignees. The charges for such service were known by the union and collected by them through their bill collector. This is shown by the preparation of the union forms known as 'conduci' or delivery receipts. These 'conduci' or receipts contain informations as to the number and/or volume of cargoes handled by the union, the invoice number, the name of the vessel and the number of bills of lading covering the cargoes to be delivered. Those delivery receipts are different and separate from the bills of lading and delivery receipts issued by the company to the consignees or shippers. Cargoes carried from the warehouses to the boat or from the boat to the consignees were always accompanied by the union checker who hand carry the 'conduci'. Once goods are delivered to their

destination the union through its bill collectors prepare the bills of collection and the charges thereon are collected by the union bill collectors who are employees of the union and not of the respondent. The respondent had no intervention whatsoever in the collection of those charges as the same are clearly indicated and described in the labor contract, Exhibit 'A'. There were, however, instances when the respondents were requested to help the union in the collection of charges for services rendered by members of the union when fertilizers and gasoline drums were loaded aboard the Compania Maritima boats. This was necessary in order to facilitate the collection of freight and handling charges from the government for auditing purposes. When cargoes are to be loaded. the shipper usually notifies the petitioner union when to load their cargoes aboard Compania Maritima boats calling in the port of Iligan City; and when a boat docks in said port, the union undertakes to haul the said shipper's goods to the boat. In doing this work, the union employs their own trucks other vehicles or conveyance from shipper's warehouse to the boat or vice-versa. The respondent has no truck of any kind for the service of hauling cargoes because such service is included in the contract executed between the parties. (See Exh. 'A')

"9. The union members who were hired by the union to perform arrastre and stevedoring work on respondents' vessels at Iligan port were being supervised and controlled by the general foreman of the petitioner union or by any union assistant or capataz responsible for the execution of the labor contract when performing arrastre and/or stevedoring work aboard vessels of the Compania Maritima docking at Iligan City. The foreman assigned their laborers to perform the required work aboard vessels of the respondent. For instance, when a boat arrives, the general foreman requests the cargo report from the chief mate of the vessel in order to determine where the cargoes are located in the hold of the boat and to know the destination of these cargoes. All the laborers and/or workers hired for said work are union members and are only responsible to their immediate chief who are officers and/or employees of the union. The respondent firm have their own separate representatives like checkers who extend aid to the

union officers and members in checking the different cargoes unloaded or loaded aboard vessels of the Compania Maritima. There were no instances where officers and employees of the respondent Compania Maritima and/or its agent had interfered in the giving of instructions to the laborers performing the arrastre and/or stevedoring work either aboard vessels or at the wharf of Ilagan City. As contractor, the union does not receive instructions as to what to do, how to do, and works without specific instructions. They have no fixed hours of work required by the Maritima.

"10. While cargoes were in transit either from the warehouse to the boat or from the boat to the different consignees, any losses or damages caused with the said cargoes were charged to the account of the union; and the union likewise imposed the penalty or fine to any employee who caused or committed the damages to cargoes in transit. Other disciplinary measure imposed on laborers performing the said work were exercised by the general foreman of the union who has blanket authority from the union general manager to exercise disciplinary control over their members who were assigned to perform the work in a group of laborers assigned by the union to perform loading or unloading cargoes when a Compania Maritima boat docked at Iligan City. The respondents have not at any time interfered in the imposition of disciplinary action upon the laborers who are members of the union. In one instance, under this situation, the president of the union himself dismissed one inefficient laborer found to have been performing inefficient service at the time (t.s.n. pp. 17-18, February 15, 1961).

x x x

"13. Erring laborers and/or workers who are affiliates of the union were directly responsible to the union and never to the respondent. Respondent cannot, therefore, discipline and/or dismiss erring workers of the union." (Italics supplied)

And in absolving MARITIMA of the unfair labor charge on this point, the court a quo concluded:

"From the foregoing circumstances and findings, the Court is of the opinion that no substantial evidence has been presented to sustain the charge of unfair labor practice acts as alleged to have been committed by herein respondent. The Court finds no interference in the union activities, if any, of the members of the Allied Free Workers Union as these persons engaged in the stevedoring and arrastre service were employed by the Allied Free Workers Union as independent contractor subject to the terms and conditions of their then existing labor contract Exhibit 'A'. To construe the contract otherwise would tend to disregard the rights and privileges of the parties intended by them in their contract. (Exhibit 'A'). This Court believes that it may not interfere in the implementation of the said labor contract in the absence of abuse by one party to the prejudice of the other.

"Further, the Court finds that the petitioner, aside from its labor contract (See Exhibit 'A') with the respondent Compania Maritima also has other labor contracts with other shipping firms on the stevedoring and arrastre work; and that this contract obligated the petitioner as an independent labor contractor to undertake the arrastre and stevedoring service on Compania Maritima boats docking at Iligan City Port. The petitioner is an independent contractor as defined in the contract Exhibit 'A' and in the evidence submitted by the parties. 'An independent contractor is one who in rendering services, exercises an independent employment or occupation and represents the will of his employer only as to the results of his work and not as to the means whereby it is accomplished; one who exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work; and who engaged to perform a certain service, for another, according to his own manner and methods, free from the control and direction of his employer in all matters connected with the performance of the service except as to the result of the work' (see 56 C.J.S. pp. 41-43; Cruz, et al. vs. Manila Hotel. et al. G.R. No. L-9110, April 30,

1957). These factors were present in the relation of the parties as described in their contract Exhibit 'A'.

x x x

"In Viaña vs. Al Lagadan, et al., G.R. No. L-8967, May 31, 1956, the Supreme Court states the rule as follows:

> *"'In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employees; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct — although the latter is the most important element (35 Am. Jur. 445). Assuming that the share received by the deceased could partake of the nature of wages — on which we need not and do not express our view — and that the second element, therefore, exists in the case at bar, the record does not contain any specific data regarding the third and fourth elements.'*

"The clear implication of the decision of the Supreme Court is that if the defendant has no power of 'control' — which, according to the Supreme Court, is the 'most important element' — there is no employer-employee relationship." (Italics supplied)

The conclusion thus reached by the court a quo is in full accord with the facts and the applicable jurisprudence. We totally agree with the court a quo that AFWU was an independent contractor. And an independent contractor is not an "employee."[17]

Neither is there any direct employment relationship between MARITIMA and the laborers. The latter have no separate, individual contracts with MARITIMA. In fact, the court a quo found that it was AFWU that hired them. Their only possible connection with MARITIMA is through AFWU which contracted with the latter. Hence, they could not possibly be in a better class than AFWU which dealt with MARITIMA.[18]

In this connection, it is interesting to note that the facts as found by the court a quo strongly indicate that it is AFWU itself who is the "employer" of those laborers. The facts very succinctly show that it was AFWU, through its officers, which (1) selected and hired the laborers, (2) paid their wages, (3) exercised control and supervision over them, and (4) had the power to discipline and dismiss them. These are the very elements constituting an employer-employee relationship.[19]

Of course there is no legal impediment for a union to be an "employer."[20] Under the particular facts of this case, however, AFWU appears to be more of a distinct and completely autonomous business group or association. Its organizational structure and operational system is no different from other commercial entities on the same line. It even has its own bill collectors and trucking facilities. And that it really is engaged in business is shown by the fact that it had arrastre and stevedoring contracts with other shipping firms in Iligan City.

Now, in its all-out endeavor to make an "employer" out of MARITIMA, AFWU, citing an impressive array of jurisprudence, even goes to the extent of insisting that it be considered a mere "agent" of MARITIMA. Suffice it to say on this point that an agent can not represent two conflicting interests that are diametrically opposed. And that the cases sought to be relied upon did not involve representatives of opposing interests.

Anent the second point raised: AFWU claims that the court a quo found that acts of interferences and discriminations were committed by MARITIMA against the former's members simply for their union affiliation.[21] However, nowhere in the 32-page decision of the court a quo can any such finding be found. On the contrary, said court made the following finding:

> *"18. There is no showing that this new union, the Iligan Stevedoring Union, was organized with the help of the branch manager Jose C. Teves. The organizer ,of the union like Messrs. Sergio Obach, Labayos and Atty. Obach and their colleagues have never sought the intervention, help or aid of the respondent Compania Maritima or its branch manager*

Teves in the formation and/or organization of the said Iligan Stevedoring Union. It appears that these people have had previous knowledge and experience in handling stevedoring and in the arrastre service prior to the employment of the Allied Free Workers Union in the Iligan port. The charge of union interference and domination finds no support from the evidence." (Italics supplied)

More worthy of consideration is the suggestion that the termination of the CONTRACT was in bad faith. First of all, contrary to AFWU's sweeping statement, the court a quo did not find that the termination of the CONTRACT was "in retaliation" to AFWU 's demand for collective bargaining. On the contrary, the court a quo held that MARITIMA's authority to terminate the contract was rightfully exercised:

"21. The evidence does not show substantially any act of interference in the union membership or activities of the petitioner union. The rescission of their contract is not a union interference contemplated in the law.

x x x

"Further, the Court is satisfied that, there is no act or acts of discrimination as claimed by herein petitioner to have been committed by the respondent firm or its branch manager Teves. Evidence is clear that Teves, in representation of the principal, the respondent Compania Maritima, has also acted in good faith in implementing the provisions of their existent contract (Exhibit 'A'), and when he advised the union of the rescission of the said contract effective August 31, 1954, he did so in the concept that the employer firm may so terminate their contract pursuant to paragraph 4 of Exhibit 'A' which at the time was the law controlling between them." (Italics supplied)

We are equally satisfied that the real reason for the termination of the CONTRACT was AFWU's inefficient service. The court a quo drew its conclusion from the following findings:

"11. During the first month of the existence of the labor contract Exhibit 'A', the petitioner union rendered satisfactory service. Under this situation, the Compania Maritima's representative at Iligan City was authorized to renew verbally with the extension of the contract Exhibit 'A' from month to month basis after the first month of its expiration. This situation of harmony lasted up to the latter part of 1953 when the Compania Maritima and its branch manager agent complained to the union of the unsatisfactory service of the union laborers hired to load and unload cargoes aboard Compania Maritima boats. This deteriorating situation was admitted as a fact by the union president (See Exh., '3', '3-A' and '3 - B'; See also t.s.n. pp. 65-66, August 9, 1960).

"12. There was a showing that the laborers employed by the union lagging behind their work under the contract, so much so of the respondent company in Iligan City suffered adversely during the year 1954; and this was due to the fact that respondents' vessels were forced to leave cargoes behind in order not to disrupt the schedule of departures. The union laborers were slow in loading and/or unloading freight from which the respondent Compania Maritima secured its income and/or profits. At times, cargoes were left behind because of the union's failure to load them before vessel's departure. In order to solve this inefficiency of the complaining union, the branch manager of the Compania Maritima was forced to hire extra laborers from among 'stand-by' worker not affiliated to any union for the purpose of helping in the stevedoring and arrastre work on their vessels because, at that time, the union was not performing and/or rendering efficient service in the loading and unloading of cargoes."

x x x

"14. Because of the deterioration of the service rendered to the respondent, the branch manager of the respondent Compania Maritima informed the union of its intention to rescind the contract Exhibit 'A' because the company had been suffering losses for such inefficient service. (See Exhibit 'N'). Respondent Teves reported to the Maritima's head office on the

financial losses of the company in its operations. (See Exhibits 'Y', 'Y-1' to 'X-5').

"15. On August 24, 1954, branch manager Jose C. Teves of the Iligan City Maritima Branch, wrote the petitioner union informing them of the termination of their contract, Exhibit 'A' (See Exhibit 'N'). This step was taken after the company found the union were inefficient in performing their jobs, and the business that Maritima boats have to leave on schedule without loading cargoes already contracted to be transported." (Italics supplied)

Perhaps, AFWU might say that this right to terminate appearing in paragraph 4 of the CONTRACT is contrary to law, morals, good customs, public order, or public policy.[22] However, it has not adduced any argument to demonstrate such point. Moreover, there is authority to the effect that the insertion in a contract for personal services of a resolutory condition permitting the cancellation of the contract by one of the contracting parties is valid.[23] Neither would the termination constitute "union-busting". Oceanic Air Products vs. CIR,[24] cited by AFWU, is not in point. That case presupposes an employer- employee relationship between the parties disputants — a basis absolutely wanting in this case.

AFWU's third point is again that MARITIMA's act of terminating the CONTRACT constituted union interference. As stated, the court a quo found as a fact that there is no sufficient evidence of union interference. And no reason or argument has been advanced to show that the fact of said termination alone constituted union interference.

THE CERTIFICATION ELECTION CASE (L-22952[*] & L-22971 [CIR Case No. 175-MC])

In the certification election case, the court a quo directed the holding of a certification election among the laborers then doing arrastre and stevedoring work. Both MARITIMA and AFWU have appealed from that ruling. The latter maintains that the lower court should have directly certified it as the majority union, entitled to represent all the workers in the arrastre and stevedoring work unit, whereas MARITIMA contends that said court could not even have correctly

ordered a certification election considering that there was an absence of employer-employee relationship between it and said laborers.

There is no question that certification election could not have been proper during the existence of the CONTRACT in view of the court a quo's finding that there was no employment relationship thereunder between the parties. But after the termination of the CONTRACT on August 31, 1954, what was the nature of the relationship between MARITIMA and the laborers-members of AFWU?

From the finding that after the rescission of the CONTRACT, MARITIMA continued to avail of the services of AFWU, the court a quo concluded that there came about an implied employer-employee relationship between the parties. This conclusion cannot be sustained.

First of all, it is contradicted by the established facts. In its findings of fact, the court a quo observed that after the rescission, the AFWU laborers continued working in accordance with the "cabo" system, which was the prevailing customs in the place. Said the court:

> *"20. After the rescission of the contract Exhibit 'A' on August 31, 1964, the Allied Free Workers Union and its members were working or performing the work of arrastre and stevedoring service aboard vessels of the Compania Maritima docking at Iligan City port under the 'cabo system' then prevailing in that territory; and the customs and conditions then prevailing were observed by the parties without resorting to the conditions of the former labor contract Exhibit 'A'.* (Italics supplied)

Under the "Cabo" system, the union was an independent contractor. This is shown by the court a quo's own finding that prior to the CONTRACT between MARITIMA and AFWU, the former had an oral arrastre and stevedoring agreement with another union. This agreement was also based on the "cabo" system. As found by the court a quo:

> *"4. That prior to the execution of Exhibit 'A', the arrastre and stevedoring work was performed by the Iligan Wharf*

Laborers Union headed by one Raymundo Labayos under a verbal agreement similar to the nature and contents of Exhibit 'A'; and this work continued from 1949 to 1952.

"5. Under the oral contract, the Iligan Laborers Union acting as an independent labor contractor engaged [in] the services of its members as laborers to perform the contract work of arrastre and stevedoring service aboard vessels of the Compania Maritima calling and docking at Iligan City; and for the services therein rendered the union charged shippers and/or consignees in accordance with the consignment or place, and the proceeds thereof shall be shared by the union members in accordance with the union's internal rules and regulations. This system of work is locally known as the 'cabo system'. The laborers who are members of the union and hired for the arrastre and stevedoring work were paid on union payrolls and the Compania Maritima has had nothing to do with the preparation of the same.

"6. Because of unsatisfactory service rendered by the Iligan Wharf Labor Union headed by Labayos, the Compania Maritima through its agent in Iligan City cancelled their oral contract and entered into a new contract, Exhibit 'A' with the Allied Free Workers Union (PLUM) now petitioner in this case. The terms and conditions of the same continued and was similar to the oral contract entered into with the union headed by Labayos.

"7. The cancellation of the oral contract with the Iligan Wharf Labor Union headed by Labayos was due to the inefficient service rendered by the said union. The labor contract entered into by the petitioner herein (Exh. 'A') was negotiated through the intervention of Messrs. Salvador Lluch, Mariano Ll. Badelles, Laurentino Ll. Badelles, Nicanor T. Halivas and Raymundo Labayos. The contract was prepared by their legal panel and after several negotiations, respondent Teves reluctantly signed the said written contract with the union with the assurance however that the same arrangement previously had with the former union regarding the performance and execution of the arrastre and stevedoring

> *contract be followed in accordance with the custom of such kind of work at Iligan City. The petitioner union, operated as a labor contractor under the so-called 'cabo' system;* (Italics supplied)

From the above findings, it is evident that, insofar as the working agreement was concerned, there was no real difference between the CONTRACT and the prior oral agreement. Both were based on the "cabo" system. Under both, (1) the union was an independent contractor which engaged the services of its members as laborers; (2) the charges against the consignees and owners of cargoes were made directly by the union; and (3) the laborers were paid on union payrolls and MARITIMA had nothing to do with the preparation of the same. These are the principal characteristics of the "cabo" system on which the parties based their relationship after the termination of the CONTRACT.

Hence, since the parties observed the "cabo" system after the rescission of the CONTRACT, and since the characteristics of said system show that the contracting union was an independent contractor, it is reasonable to assume that AFWU continued being an independent contractor of MARITIMA. And, being an independent contractor, it could not qualify as an "employee". With more reason would this be true with respect to the laborers.

Moreover, there is no evidence at all regarding the characteristics of the working arrangement between AFWU and MARITIMA after the termination of the CONTRACT. All we have to go on is the court a quo's finding that the "cabo" system was observed — a system that negatives employment relationship. The four elements generally regarded as indicating the employer-employee relationship — or at the very least, the element of "control" — must be shown to sustain the conclusion that there came about such relationship. The lack of such a showing in the case at bar is a fatal to AFWU's contention.

Lastly, to uphold the court a quo's conclusion would be tantamount to the imposition of an employer-employee relationship against the will of MARITIMA. This cannot be done, since it would violate MARITIMA's exclusive prerogative to determine whether it should enter into an employment contract or not, i.e., whether it should hire

others or not.[25] In Pampanga Bus Co. vs. Pambusco Employees' Union,[26] We said:

> *"The general right to make a contract in relation to one's business is an essential part of the liberty of the citizens protected by the due process clause of the Constitution. The right of a laborer to sell his labor to such person as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the constitution. 'If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression.'"* (Italics supplied)

Therefore, even if the AFWU laborers continued to perform arrastre and stevedoring work after August 31, 1954, it cannot be correctly concluded — as did the court a quo — that an employer-employee relationship — even impliedly at that — arose when before there never had been any. Indeed, it would appeal unreasonable and unjust to force such a relationship upon MARITIMA when it had clearly and continuously manifested its intention not to have any more business relationship whatsoever with AFWU because of its inefficient service. It was only to comply with injunctions and other judicial mandates that MARITIMA continued to abide by the status quo, extending in fact and in effect the operation of the MARITIMA-AFWU contract.

The only remaining question now is whether, in the particular context of what We have said, the lower court's ruling ordering a certification election can be sustained. As already stated, the duty to bargain collectively exists only between the "employer" and its "employees". However, the actual negotiations — which may possibly culminate in a concrete collective bargaining contract — are carried on between the "employer" itself and the official representative of the "employees"[27] — in most cases, the majority labor union. Since the only function of a certification election is to determine, with judicial sanction, who this official representative or spokesman of the "employees" will be,[28] the order for certification election in question cannot be sustained. There being no employer-employee relationship between the parties

disputants, there is neither a "duty to bargain collectively" to speak of. And there being no such duty, to hold certification elections would be pointless. There is no reason to select a representative to negotiate when there can be no negotiations in the first place. We therefore hold that where — as in this case — there is no duty to bargain collectively, it is not proper to hold certification elections in connection therewith.

The court a quo's objective in imposing the employer-employee relationship may have to do away with the "cabo" system which, although not illegal, is in its operation regarded as disadvantageous to the laborers and stevedores. The rule however remains that the end cannot justify the means. For an action to be sanctioned by the courts, the purpose must not only be good but the means undertaken must also be lawful.

A true and sincere concern for the welfare of AFWU members-laborers would call for reforms within AFWU itself, if the evil of the so-called "cabo" system is to be eliminated. As We suggested in Bermiso vs. Hijos de Escaño,[29] the remedy against the "cabo" system need not be sought in the courts but in the laborers themselves who should organize into a closely-knit union "which would secure the privileges that the members desire thru the election of officers among themselves who would not exploit them."

WHEREFORE, the appealed decision of the Court of Industrial Relations is hereby affirmed insofar as it dismissed the charge of unfair labor practice in CIR Case 426-ULP, but reversed and set aside insofar as it ordered the holding of a certification election in CIR Case No. 175-MC, and the petition for certification in said case should be as it is hereby, dismissed. No cost. So ordered.

Concepcion, *C. J.*, Reyes, J. B. L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Castro, *JJ.*, concur.

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[1] Dated February 4, 1964.
[2] Short for Compania Maritima and Manager Jose C. Teves.
[3] Short for Allied Free Workers' Union (PLUM).
[4] Short for the arrastre and stevedoring contract.

[5] See Annex "B" of Petition in L-22951-52.
[6] CIR Case No. 175-MC.
[7] CIR Case No. 426-ULP.
[8] Subsequently, this union was dissolved and its registration cancelled because of its failure to carry out its agreement with MARITIMA.
[9] Civil Case No. 577 in the Court of First Instance of Lanao del Norte.
[10] Allied Free Workers' Union (PLUM) vs. Judge Apostol, G.R. No. L-8876, Oct. 31, 1957.
[11] We finally declared the preliminary injunction issued by the Court of First Instance as invalid. (Decision of Supreme Court in L- 8876, Oct. 31, 1957).
[12] CFI of Lanao del Norte has since been ordered by this Court in L-19651 to proceed considering these steps taken to appeal its decision. See infra, Note 15.
[13] Allied Free Workers Union (PLUM) vs. Hon. Estipona, G.R. No. L- 17934. Our decision was promulgated on Dec. 28, 1961, wherein We set aside the said order of January 6, 1961.
[14] Allied Free Workers' Union (PLUM) vs. Hon. Estipona, G.R. No. L-19651, June 30, 1566.
[15] In L-19651, We held the orders of March 24 and 31, 1962 as invalid because the decisions of January 11, 1961 and December 5, 1960 were the same, and We also ordered the Court of First Instance to proceed to the hearing for the approval of the AFWU appeal.
[*] Same rollo as L-22952.
[16] Sec. 13, Rep. Act No. 875.
[17] Cruz vs. Manila Hotel, G.R. No. L-9110, April 30, 1957.
[18] Cruz vs. Manila Hotel, supra, see also Chuan & Sons vs. CIR, 85 Phil. 365.
[19] Viaña vs. Al Lagadan, G.R. No. L-8967 May 31,1956; 99 Phil. 408.
[20] Sec. 2(c), Rep. Act No. 875.
[21] Petition in L-22951-52, p. 14.
[22] Art. 1306, civil Code of the Philippines.
[23] Taylor vs. Uy Tieng, 43 Phil. 873.
[24] G.R. Nos. L-187005, January 31, 1963.
[*] Same rollo as L-22951.
[25] Fernandez & Quiason, Law of Labor Relations, 1963 ed., pp. 43- 48.
[26] Phil. 541, 543.
[27] Secs. 12(2) and 13, Rep. Act No. 875.
[28] Sec. 12(b), Rep. Act No. 875.
[29] G.R. No. L11606, February 28,1959.