SUPREME COURT
SECOND DIVISION

ASSOCIATED WATCHMEN AND SECURITY UNION (PTWO),
***Petitioner*,**

-versus-

G.R. No. L-14120
February 29, 1960

THE HON. JUDGES JUAN LANTING, ARSENIO MARTINEZ, EMILIANO TABIGNE, of the Court of Industrial Relations and MACONDRAY AND COMPANY, INC.,
***Respondents*.**
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D E C I S I O N

LABRADOR, *J.*:

The Republic Ships Security Agency is one of three agencies employed by certain shipping agencies in the City of Manila and respondent Macondray and Company, Inc., in guarding ships or vessels arriving at the port of Manila and discharging cargo on its piers. The other watchmen and security agencies are the K. Tagle Ship Watchmen Agency and the City Watchmen and Security Agency. Thirty-eight affiliates of the Republic Ships Security Agency belong to the petitioner labor union.

On or about February 18, 1956, petitioner union and its members declared a strike against 19 shipping firms in the City of Manila. The strike was certified by the President of the Philippines to the Court of Industrial Relations and the latter court immediately took cognizance of the strike. Attempts were made by the Court of Industrial Relations to settle the strike. At the hearing or conference before the court on March 16, 1956, the strikers, through counsel, expressed their desire to return back to work and maintain the status quo. Attorney for the respondents offered to see the shipping companies concerned and to ask them to try to have the 47 watchmen, who claim to have been discharged, to be reemployed. The strikers agreed to this proposal and on April 6, 1956, a petition was filed before the Court of Industrial Relations asking for reinstatement of 47 strikers who belong to the petitioner Associated Watchmen and Security Union (PTWO). The manager of respondent Macondray and Company, Inc. expressed willingness to employ the strikers belonging to the petitioner union under the condition that the agency to which they belong file a bond in the sum of P5,000 in favor of Macondray and Company, Inc. to respond for any negligence, misfeasance or malfeasance of any of the watchmen of petitioner (Exhibit "1", respondent). This requirement of filing a bond was also demanded of the other two security agencies, the K. Tagle Ship Watchmen Agency and the City Watchmen and Security Agency. However, the Republic Ships Security Agency, to which most of the members of the petitioner union belonged, failed to comply with the demands of Macondray and Company, Inc. that they furnish such a bond. The manager of the agency was one by the name of Fernando Derupe. Because of the failure of the Republic Ships Security Agency to furnish a bond, Macondray and Company, Inc. refused to employ watchmen from the said agency. Some of the members of the agency transferred to the other two agencies that had furnished a bond and after having joined the said agencies they were employed as watchmen by the respondent Macondray and Company, Inc.

On November 15, 1956, Macondray and Company, Inc. was charged with unfair labor practice for having dismissed and refused to employ 38 members of the petitioner herein. Macondray and Company, Inc. answered the complaint alleging that the members of the petitioner union are not its employees, but employees of the Republic Ships

Security Agency; that the respondent had not demanded a bond from the members of the petitioner union but from the Republic Ships Security Agency; that it has not discriminated against members of the petitioner union.

The judge of the Court of Industrial Relations who tried the case was Judge Jose S. Bautista. The said judge made the following findings of fact:

> "1. On February 18, 1956 there were three (3) watchmen agencies servicing the respondent company with watchmen, namely, the City Watchmen and Security Agency, K. Tagle Ship Watchmen Agency and Republic Ship Security Agency.
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> "Of these three (3) agencies, only the members of the complainant union working under the Republic Ship Security Agency, struck and abandoned vessels of the respondent company. (Testimony of Gunner pp. 49-53, Hearing of November 2, 1957.).
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> "After the said strike of the complaining union on February 18, 1956, a bond of P5,000 was required by the respondent company. No bond was required by the company before the strike. Whereas, K. Tagle Ship Watchmen and the City Watchmen and Security Agency, which did not strike and abandon vessels of the company, filed the required bond, the striking union Associated Watchmen and Security Union refused to file said bond. Consequently, the company stopped giving vessels to Republic Ship Security Agency, hence the watchmen working under said agency were refused reinstatement.
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> "2. It is an admitted fact that the said 38 individuals are members of the complainant union, working under the Republic Ship Security Agency. (Testimony of Fernando Derupe pp. 42-43, Bearing of September 16, 1957.).
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> x x x

> "In other words, the 38 watchmen were compelled to join the other two agencies who had bonds and resign from the complainant union. They had to do this or help Fernando Derupe to post a bond (which Derupe himself did not want to post) or post the bond themselves, which they could not afford to do.
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> "By imposing the posting of the bond as a prerequisite for the reinstatement of the strikers, the company could select agencies, which did not join the strike, could control Derupe, their checker and employee, not to post a bond which in fact Derupe did not post."

Judge Bautista, as a consequence, held that defendant-respondent is guilty of unfair labor practice in view of the circumstances of the case. He reasoned that by imposing the condition of posting a bond on the agency to which members of the petitioner are affiliated, and by the refusal of the owner of the agency to post the bond, the latter as agent of respondent rendered it impossible for the strikers to go back to work. He, therefore, ordered the members of the union to be reinstated with full back wages from February 18, 1956 up to their actual reinstatement and prohibited the respondent from committing further acts of unfair labor practice. The respondent appealed this decision to the court in banc. On the appeal, three of the judges of the court, Judges Lanting, Martinez and Tabigne, voted to reverse the decision of the trial judge and to dismiss the petition for lack of merit. The other two judges voted for the affirmance of the decision.

From the majority decision a petition has been filed with us, alleging that the respondent judges abused their discretion in making findings of fact without sufficient evidence. The majority decision found that there never was a relationship between petitioner union and respondent Macondray and Company, Inc., and that the agencies with which respondent had dealt with were the City Watchmen and Security Agency, K. Tagle Ship Watchmen Agency and the Republic Ships Security Agency. The majority further found that members of the petitioner union who had transferred to the two security agencies which had furnished the bond, were admitted to work, notwithstanding the fact that they continued to be members of the petitioner union; that if members of the petitioner union could not be

employed by the respondent, it is because the agency under which they worked, the Republic Ships Security Agency, had not furnished the bond required of them, which bond was furnished by the two other agencies. We believe that the above findings or conclusions are supported by the evidence.

We also find that the demand of the respondent that the watchmen agencies furnish a bond had become necessary in view of the fact that on or about March 18, 1956, three guards from the Republic Ships Security Agency left the "M/V Talleyrand," a ship of which respondent was an agent, without notice, abandoning their work, and then went on strike without giving advance notice of their intention or desire to do so. The requirement of a bond was, therefore, fully justified by the acts of the members of the petitioner union who were affiliated with the Republic Ships Security Agency and who struck without previous notice.

On the whole, therefore, we find that the majority decision is fully supported by the evidence and by the documents and papers on the record, insofar as it declares that respondent has not been guilty of unfair labor practice.

Judge Bautista, in his dissenting opinion, cites the cases of United States Lines, et al. vs. Associated Watchmen and Security Union (PTWO), G.R. No. L-12208-11, May 21, 1958, and Maligaya Shipwatchmen Agency, et al. vs. Associated Watchmen & Security Union (PTWO), 55 Off. Gaz. [52] 10681, 103 Phil., 920 in which we held that watchmen and security agencies are not contractors of the shipping agencies or shipping companies, but are merely agents of the same in the recruitment of guards, and that the relationship of employer and employee exists between the shipping lines and the security guards themselves. Our decision in the above cases has no materiality or relevance to the question at issue in the case at bar. The refusal of the respondent to employ guards affiliated with a security or watchmen agency that does not furnish a bond can not constitute an unfair labor practice. Such refusal is merely the exercise of respondent's legitimate right to protect its own interests, especially as the members of the petitioner had abandoned a ship they were guarding without previous notice and exposed the ship to losses due to theft and pilferage. It is to be noted that the requirement of filing of

a bond was not demanded from any of the labor unions, or from the petitioner union herein. We cannot conclude that because the respondent company refused to employ the guards affiliated with the Republic Ships Security Agency, which affiliates are members of the petitioner union, respondent committed an unfair labor practice or a discrimination against petitioner union. As the majority of the court below says, respondent never had any contract or agreement with the petitioner union; respondent secured security guards through the three watchmen agencies above mentioned, without reference to the unions to which the different guards may have pertained. The members of the petitioner union or of the shipping agencies are not ordinary permanent and continuous employees, but merely casual guards who are employed only when there is a ship to be guarded and during the stay of the ship in the port of Manila. Under the above circumstances, the judgment of the minority to the effect that members of the petitioner union be returned to their work and paid back wages is not justifiable.

WHEREFORE, we find no sufficient reasons for disturbing the findings of the majority of the judges of the court below to the effect that the acts of the respondent Macondray and Company, Inc. do not constitute an unfair labor practice, and we, therefore, affirm the decision of the said majority, with costs against the petitioner herein.

Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, Endencia, and Gutierrez David, *JJ.*, concur.