SUPREME COURT
THIRD DIVISION

REYNALDO BAUTISTA,
***Petitioner*,**

-versus-

G.R. No. L-52824
March 16, 1988

HON. AMADO C. INCIONG, in his capacity as Deputy Minister of Labor and ASSOCIATED LABOR UNIONS (ALU),
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ, JR., *J.*:

This is an illegal dismissal case. The respondent Deputy Minister dismissed the complaint of herein petitioner principally on the ground that no employer-employee relationship existed between the petitioner and respondent Associated Labor Unions (ALU).

The facts as found by the National Capital Region Director of the then Ministry of Labor (MOL) Region IV are as follows:

> "Complainant (petitioner) was employed by ALU as 'Organizer' in 1972 with a starting salary of P250.00 a month. As such he

> paid his monthly SSS contributions, with the respondent as his employer. On March 15, 1979, He was left in the office of ALU while his other co-organizers were in Cainta, Rizal attending a certification election at Chrysler Philippines, as he was not the organizer assigned in said company. On March 16, 1979, he went on sick leave for ten (10) days. His SSS sickness benefit application form signed by ALU's physician was given to ALU for submission to the SSS. On March 16, 1979, complainant reported back for work upon expiration of his leave but was informed by ALU's Area Vice-President for Luzon of his termination effective March 15, 1979. Hence, this complaint filed on March 28, 1979. On April 18, 1979, however, ALU filed a clearance application to terminate complainant's services effective March 16, 1979 on the ground of abandonment of work." *(p. 48, Rollo)*

Based on these findings, the Director ruled in favor of the petitioner and ordered the respondent Union to reinstate the petitioner to his former position with full backwages and to pay him emergency allowance, 13th month pay and to refund his Mutual Aid Fund Deposit in the amount of P370.00.

Respondent ALU appealed to the Ministry of Labor. On October 23, 1979, the respondent Deputy Minister set aside the order of the Director and dismissed the petitioner's complaint for lack of merit. In his order, the Deputy Minister found that the petitioner was merely accommodated by the respondent union after he was dismissed by his former employer sometime in 1972 and that his membership coverage with the SSS which shows that respondent ALU is the one paying the employer's share in the premiums is not conclusive proof that respondent is the petitioner's employer because such payments were performed by the respondent as a favor for all those who were performing full time union activities with it to entitle them to SSS benefits. The Deputy Minister further ruled that the non-existence of an employer-employee relationship between the parties is bolstered by the fact that respondent ALU is not an entity for profit but a duly registered labor union whose sole purpose is the representation of its bona fide organization units where it is certified as such.

In this petition, the petitioner contends that the respondent Deputy Minister committed grave abuse of discretion in holding that there was no employer-employee relationship between him and the respondent union so much so that he is not entitled to the benefits that he is praying for.

We agree with the petitioner.

There is nothing in the records which support the Deputy Minister's conclusion that the petitioner is not an employee of respondent ALU. The mere fact that the respondent is a labor union does not mean that it cannot be considered an employer of the persons who work for it. Much less should it be exempted from the very labor laws which it espouses as a labor organization. In the case of Brotherhood Labor Unity Movement in the Philippines v. Zamora, (147 SCRA 49, 54), we outlined the factors in ascertaining an employer-employee relationship:

> "In determining the existence of en employer-employee relationship, the elements that are generally considered are the following: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called `control test' that is the most important element (Investment Planning Corp. of the Phils. v. The Social Security System, 21 SCRA 924; Mafinco Trading Corp. v. Ople, supra, and Rosario Brothers, Inc. v. Ople, 131 SCRA 72)."
>
> "In the case at bar, the Regional Director correctly found that the petitioner was an employee of the respondent union as reflected in the latter's individual payroll sheets and shown by the petitioner's membership with the Social Security System (SSS) and the respondent union's share of remittances in the petitioner's favor. Even more significant, is the respondent union's act of filing a clearance application with the MOL to terminate the petitioner's services. Bautista was selected and hired by the Union. He was paid wages by the Union. ALU had the power to dismiss him as indeed it dismissed him. And

definitely, the Union tightly controlled the work of Bautista as one of its organizers. There is absolutely no factual or legal basis for Deputy Minister Inciong's decision."

We are, thus, constrained to reverse the findings of the respondent Deputy Minister. However, the records show that antipathy and antagonism between the petitioner and the respondent union militate against the former's reinstatement. ALU would not want to have a union organizer whom it does not trust and who could sabotage its efforts to unionize commercial and industrial establishments. Severance pay, therefore, is more proper and in order. As we have ruled in the case of Asiaworld Publishing House, Inc. v. Hon. Blas Ople, et al., (G.R. No. 56398, July 23, 1987) quoting the case of Balaquezon EWTU v. Zamora, (97 SCRA 5, 8):

> *"It should be underscored that the backwages are being awarded on the basis of equity or in the nature of severance pay. This means that a monetary award is to be paid to the striking employees as an alternative to reinstatement which can no longer be effected in view of the long passage of time or because of the realities of the situation.* (Italics supplied)

WHEREFORE, the petition is hereby **GRANTED** and the decision of the respondent Deputy Minister is **ANNULLED** and **SET ASIDE**. The Order of Regional Director Francisco L. Estrella is **REINSTATED** and ordered executed but instead of returning the petitioner to his former position, the private respondent is ordered to pay him an amount equal to his backwages for only three years and the separation pay to which he may be entitled as of the end of the three year period under the applicable law or collective bargaining agreement.

SO ORDERED.

Fernan, Feliciano, Bidin and Cortes, *JJ*., concur.