SUPREME COURT
FIRST DIVISION

GENERAL MARITIME STEVEDORES' UNION OF THE PHILIPPINES, ET AL.,
***Petitioners*,**

-versus-

G.R. No. L-14689
July 26, 1960

SOUTH SEA SHIPPING LINE, ET AL.,
***Respondents*.**
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D E C I S I O N

MONTEMAYOR, *J.*:

This is a Petition for *Certiorari* to Review an Order of the Court of Industrial Relations (CIR), dated September 23, 1958, dismissing the petition for certification election filed by the General Maritime Stevedores' Union, later referred to as GMSU, and its co-petitioners, as well as the order of the court en banc denying the motion for reconsideration. The purpose of the petition to review is to set aside the order of dismissal and to give due course to GMSU petition for certification election.

Acting on a petition dated October 23, 1953 of the United Seamen's Union of the Philippines, later referred to as USUP, in case No. 43-MC, the CIR issued an order dated February 28, 1955, directing that

an election be held among the unlicensed members and crew of the respondent South Sea Shipping Lines, later referred to as Shipping Lines. In said order, the USUP and GMSU were considered eligible to be voted for. The certification election was held on April 15 and June 10, 1955, after which the CIR issued another order dated June 17, 1955, certifying USUP as the exclusive bargaining representative of the laborers and employees of the Shipping Lines. On June 28, 1957, a collective bargaining agreement was entered into between the Shipping Line and the USUP. Art. 10 of the agreement provided as follows:

> "This Agreement shall take effect on July 21, 1957, to continue in full force and effect for two (2) years until July 20, 1959 and thereafter for another period of two (2) years, unless either party shall notify the other in writing not less than sixty (60) days prior to the expiration date hereof of its intention or election to terminate the agreement as of the end of the current term."

GMSU insists that the agreement entered into was but a renewal of an agreement between the USUP and Shipping Line entered into sometime in 1955. This statement seems to have been confirmed by the Shipping Line in its answer where it stated that "after the above-mentioned order (referring to the order dated June 17, 1955) or to be specific, on June 28, 1955, a collective bargaining agreement was entered into between the respondent."

On April 30, 1958, that is a little more than two years after the holding of the last certification election, GMSU and its co-petitioners filed with the CIR a petition for certification election, Case No. 546-MC, later numbered as Case No. 547-MC, alleging that there were two labor unions, to which were affiliated unlicensed crew members of the Shipping Line, namely, the GMSU and the USUP; that as members of the GMSU petitioners constituted 10% of all the unlicensed crew members of the Shipping Line; and that there had not been a certification election within twelve months before the filing of the petition.

The Shipping Line in its answer, expressed its attitude of strict neutrality and its willingness to abide by the order of the CIR

although in its amended answer, it also alleged that it considered the existing collective bargaining agreement between itself and the USUP as binding until annulled.

The USUP intervened and filed a motion for dismissal of the petition claiming that there was an existing collective bargaining agreement between itself and the Shipping Line entered into on June 28, 1957, for a period of two years up to July 26, 1959, which period was reasonable, and which agreement contained reasonable conditions of employment, and that the existence of such agreement barred another certification election. As already stated, the CIR granted the motion to dismiss and refused to give due course to the GMSU's petition for certification election.

To support its order, the CIR invoked the "contract-bar rule", explaining that the then existing contract between the Shipping Line and the USUP, which was for a period of two years, up to July 20, 1959, contained provisions regarding wages, closed shops, check off, grievances, machinery and other conditions regarding employment relationships. According to the CIR, these circumstances plus the fact that there was no showing that the contracting union was company dominated support the validity and reasonableness of the agreement between the Shipping Line and the USUP, the duly certified bargaining representative, and that the existence of such contract barred the holding of a certification election. The CIR further stated:

> "The 'contract-bar rule' is procedural which this Court in its discretion may apply or waive as the facts of any given case may demand in the interest of stability and fairness in collective bargaining agreements. (Case No. 54 MC-Cebu, PCLUE vs. Caltex, June 25, 1957). The facts of the present case considered, it is the opinion of this Court that the policies of the Industrial Peace Act of promoting stable, sound employer-employee relations is effectuated by collective bargaining agreement of reasonable duration. The contract between the intervenor and the company falls under this criterion."

The GMSU, however, equally maintains that it is mandatory for the CIR to order a certification election once a petition is signed and submitted by at least 10% of all the workers in a bargaining unit; and

it is also shown that no certification election had been held within twelve months prior to the filing of such petition pursuant to the provisions of Section 12 (b) and (c), Republic Act No. 875, the pertinent portions of which read:

> "(b) Whenever a question arising concerning the representation of employees, the Court may investigate such controversy and certify to the parties in writing the name of the labor organization that has been designated or selected for the appropriate bargaining unit. Such a balloting shall be known as 'certification election' and the Court shall not order certifications in the same unit more often than once in twelve months. The organization receiving the majority votes casts in such election shall be certified as the exclusive bargaining representative of such employees."
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> "(c) In an instance where a petition is filed by at least ten percent of the employees in the appropriate unit requesting an election, it shall be mandatory on the Court to order an election for the purpose of determining the representative of the employees for the appropriate bargaining unit."

The GMSU has expressed fear that if a certification election was not held as per its petition, the agreement between the respondent under its renewal clause, may again be renewed with or without modification by the parties as a result of which, the existence of the contract as renewed may again be utilized as an argument for barring a subsequent petition for certification election, thereby completely depriving petitioners of the right and opportunity to prove that they constituted the majority of the workers and employees of the Shipping Line.

What is meant by the "Contract-Bar Policy"? When ever a substantial number of employees in an appropriate bargaining agreement desires to be represented by a union or organization other than that which had negotiated a collective bargaining contract with the management, the CIR is faced with the dilemma of the right of contract or the right of representation:

> "Whenever a contract is urged as a bar, the Board is faced with the problem of balancing two separate interests of employees and society which the act was designed to protect: the interest in such stability is as essential to encourage the effective collective bargaining, and the sometimes conflicting interest in the freedom of employees to select and change their representatives. In furtherance of the purpose of the act, we have repeatedly held that employees are entitled to change their representatives, if they so desire, at reasonable intervals; or conversely, that a collective bargaining contract may preclude a determination of representatives for a reasonable period." (Reed Roller Bit Co., 72 NLRB 927).
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> "It sometimes occurs that representation petitions are brought when a bargaining contract already exists. There is then a question of whether the Board shall respect the contract and let it constitute a bar or institute proceedings despite the contract." (Bowman, Public Control of Labor Relations, p. 135.)

As a solution to this problem, there are three possibilities:

> "One solution of the problem would be to hold that a collective bargaining agreement valid when made is a bar to a new certification throughout its existence, regardless of the length of its term.
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> "A second solution is to hold that employees may shift their allegiance during the term of the agreement but that the contract continues in force with the new union simply replacing the old.
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> "The solution to the problem which the National Labor-Relations Board has adopted lies between the extremes: 'The board has normally refused to proceed to an election, in the presence of a collective bargaining contract where the contract granted exclusive recognition is to be effective only for a reasonable period and was negotiated by a union representing at the time a majority of the employees (in an appropriate unit) prior to any claim by a rival labor organization.'" (Cox, Cases on Labor Law, pp. 497-498).

The National Labor Relations Board, later referred to as the Board, which is the counterpart of our CIR, regards the conflict as one which requires it to strike a balance between the desirability of achieving stability in industrial relations secured through bargaining, on the one hand, and the benefits flowing from the grant of employee full freedom in their choice of representative, on the other:

> "But the conflict implicit in the situation is so clear that the Board has recognized the necessity for some solution. While it is apparent that the Board will not allow the existence of an agreement to preclude all change, on the other hand it has not suggested absolute abrogation of the contract." (51 Yale Law Journal p. 470, Change of Bargaining Representative).

In resolving this conflict, the Board "initially took the unqualified view that the existence of agreements was no bar to certification of bargaining representatives." (Teller, Labor Disputes and Collective Bargaining, Vol. 2, p. 901). So, in the Matter of New England Transportation Co. (1936) 1 NLRB 130, the Board directed an election despite existing contracts between the company and an employees' association:

> "The whole process of collective bargaining and unrestricted choice of representatives assumes the freedom of the employees to change their representatives, while at the same time continuing the existing agreements under which the representatives must function. These representatives are, of course, free to bargain with respect to the termination of an existing contract.
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> The above ruling gave support to the doctrine of substitution whereby a change of representatives would alter an existing contract only by "substituting the new union for the old under its substantive terms" (51 Yale Law Journal, Change of Bargaining Representatives, p. 466). However, the Board subsequently took the position that a collective bargaining agreement of reasonable duration is "in the interest of the stability of industrial relations", a bar to certification elections.

(Vol. 2, Teller, Labor Disputes and Collective Bargaining, p. 902). Thus, evolved the "contract-bar policy."

In adopting the "contract-bar policy", the Board, however, was careful in refusing to announce an inflexible rule as to its authority, and whenever possible, it avoided a determination of the contract's effect on its power of certification election:

> "Again the Board is bounded by no stereotyped procedure; rather, the Board exercises discretion to let the circumstances determine whether proceedings shall go on.
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> "This Board action was not charted by Congress, but the dilemma of right of contract or right of representation is real. The resolution of the dilemma is not to decide whether the primary purpose of the Act is to insure employee freedom to choose representatives, or to encourage collective contracts, for either choice leaves an unsatisfactory situation. Hence the Board's compromise seems wise, even though it is in a sense contradictory. Such Board flexibility and the refusal to draw sharp rules open the door to criticism, but the dilemma demonstrated the necessity of giving broad discretionary power to an administrative agency." (Public Control of Labor Relations, Bowman, p. 135, 137).

The United States Circuit Court of Appeals, recognizing the Board's power to promulgate rules and regulations to carry out the purpose of the Act, gave the Board broad discretion to apply the "contract-bar policy," as it saw fit, thus:

> "The Board's rule that the existence of a valid written and signed bargaining agreement between an employer and an appropriate bargaining representative is a bar to a certification proceedings for a different representation, if applicable to the facts in this case, is a procedural rule which the Board in its discretion may apply or waive as the facts of the given case may demand in the interest of stability and fairness in collective bargaining agreements. The Board is not the slave of its rules." National Labor Relations Board vs. Grace Co. 184 Fed. 2nd p. 126 (U. S. Circuit Ct. of App., 8th Circuit.)

> "Where 'contract bar policy' of National Labor Relations Board, along with exceptions thereto, as applicable to representation proceedings, were solely of board's creation, board could reasonably expand or restrict such policy as it saw fit." (Syllabus) Kearney & Trecker Corp. vs. National Labor Relations Board, 210 Fed. 2nd p. 852 (U.S. Circuit Ct. of App., 7th Circuit)

During the period "when the techniques and potentialities of collective bargaining were first being slowly developed under the encouragement and protection of Federal Legislation," the Board laid greater emphasis upon the right of laborers to select their representatives frequently than upon prolonged adherence to the bargaining agreement. (General Motors Corporation, 102 NLRB 1140). As a result, when the contract-bar policy was first initiated, only one- year contracts were held to be a bar to certification election. (e.g., M & J Tracy, Inc. 12 NLRB 936 (1939); Columbia Broadcasting System, Inc. 8 NLRB 508 (1938) Hubinger Company, 3 NLRB 802)

> "The net result of the Board's viewpoint that collective bargaining agreements of reasonable duration will constitute a bar to certification, but that agreements unduly long which have been in effect for at least a year will not constitute a bar is, when read in connection with the cases, equivalent to the rule that collective bargaining agreements prevent certification proceedings for a period of one year from the time of their execution." (2 Teller, Labor Disputes and Collective Bargaining, p. 905).

Thus, in the case of Superior Electric Products Co., NLRB (1948), the collective bargaining agreement of one year duration entered into at the time when the contracting union represented a majority of the respondent employees was held to be a bar to certification election. And in the Metro Goldwyn Mayer case, 7 NLRB 662, involving collective bargaining agreement to five years duration, the Board granted the petition for election filed after the agreement had run one year with a reiteration of its belief that employees' "choice of their representatives could not be shackled for an unduly long period just because of the existence of a contract." However, in 1947, the Board

held that thereafter, it would regard a two year contract as a bar to an election until its expiration, because collective bargaining had:

> "So emerged from a stage of trial and error (that) the time has come when stability of industrial relations can better be served, without unreasonably restricting employees in their right to change representatives, by refusing to interfere with bargaining relations secured by collective agreements for two years' duration." (Matter of Reed Roller Bit Co. 72 NLRB 927 (1947).
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> "In the light of our experience in administering the Act, we believe that a contract for a term of 2 years cannot be said to be of unreasonable duration. For large masses of employees collective bargaining has but recently emerged from a stage of trial and error, during which its techniques and full potentialities were being slowly developed under the encouragement and protection of the Act. To have insisted in the past upon prolonged adherence to a bargaining agent, once chosen, would have been wholly incompatible with this experimental and transitional period. It was especially necessary, therefore to lay emphasis upon the right of workers to select and change their representatives. Now, however, the emphasis can better be placed elsewhere."

HOWEVER, in 1953, the same Board announced that:

> "The time has arrived when stability of labor relations can be better served, without unreasonably restricting employees in their right to change representatives, by holding as a bar collective bargaining agreements even for 5 years' duration (when) a substantial part of the industry concerned is covered by contracts with a similar term."

In the case of General Motors Corporation, 102 NLRB 1140 (1953), involving a five year contract, the Board refused to order a certification election despite the lapse of more than 2 1/2 years since the agreement became effective. From all this, it may be seen that the National Labor Relations Board has not adopted an iron-clad policy, rigid and fixed, but rather one to be applied according to the changing conditions and industrial practices.

In this jurisdiction, we have had occasion to apply the "contract-bar policy". In the case of Philippine Long Distance Employees' Union vs. PLDT and Free Telephone Workers Union, 97 Phil., 424; 51 Off. Gaz. [9] 4519, through Mr. Justice Bengzon, we made the following observation:

> "It is interesting to note in this regard that in the United States, where we copied the present Industrial Peace Act, an existing collective bargaining contract with a union is a bar to subsequent certification election when it has a definite and reasonable period to run and has not been in existence for too long a period (history, industry and customs may affect reasonableness of the contract term). Werne Law of Labor Relations, p. 27 citing U.S. Finishing Co. 63 NLRB 575). Normally, the National Labor Relations Board have been in existence for more than two years, as no obstacle to determining bargaining representatives. Werne op cit. pp. 28-29, citing several cases.)"
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> "As this contract between the Company and the petitioner was signed December 1, 1951, it had been in operation more than two years in August, 1954 when the certification election was ordered. It is therefore no bar to the certification even under American Labor Laws."

In a subsequent case, Acoje Mines and Acoje United Workers Union vs. Acoje Labor Union and Acoje Mining Co. Inc., 105 Phil., 814; 56 Off. Gaz. (6) 1157, on the issue of whether or not upon submission of a petition for certification election by at least 10% of all the workers in a bargaining union, it is mandatory for the CIR to order a certification election — with no exceptions, pursuant to Section 12 (c), Republic Act No. 875, through the same Justice, we made the following statement:

> "The above command of the Court is not so absolute as it may appear at first glance. The statute itself expressly recognizes one exception: When a certification election had occurred within one year. And the judicial administrative agencies have found two exceptions: where there is an unexpired bargaining

> agreement not exceeding two years and when there is a pending charge of company domination of one of the labor unions intending to participate in the election."

After reviewing the cases decided by the NLRB of the United States and our own cases, we have arrived at the conclusion that it is reasonable and proper that when there is a bargaining contract for more than a year, it is too early to hold a certification election within a year from the effectivity of said bargaining agreement; also that a two year bargaining contract is not too long for the purpose of barring a certification election. For this purpose, a bargaining agreement may run for three, even four years, but in such case, it is equally advisable that to decide whether or not within those three or four years, a certification election should not be held, may well be left to the sound discretion of the CIR, considering the conditions involved in the case, particularly, the terms and conditions of the bargaining contract.

We also hold that where the bargaining contract is to run for more than two years, the principle of substitution may well be adopted and enforced by the CIR to the effect that after two years of the life of bargaining agreement, a certification election may be allowed by the CIR; that if a bargaining agent other than the union or organization that executed the contract, is elected, said new agent would have to respect said contract, but that it may bargain with the management for the shortening of the life of the contract if it considers it too long, or refuse to renew the contract pursuant to an automatic renewal clause.

On September 15, 1959, while this case was still pending in this Tribunal, petitioner filed a manifestation to the effect that the contract between the USUP and the Shipping Line had expired on June 28, 1959, and that the same had not been renewed. We asked for the comment of the other party. The respondent United Seamen's Union in its counter manifestation dated July 6, 1960, stated that the collective bargaining agreement involved, executed on July 28, 1957, was automatically renewed for a period of two years from July 28, 1959 to July 28, 1961, pursuant to the automatic renewal clause, for the reason that neither party notified the other in writing not less than sixty days prior to the expiration date, of its desire to terminate

the agreement. So, it would appear that the contract will still be effective up to July 28, 1961, that is to say, about a year from today.

According to the claim or contention of the petitioners the bargaining agreement of July 28, 1957 was but a renewal of the same or similar agreement of July 1955, so that the bargaining agreement has been in existence for about five years, which is too long a period within which a certification election has not been held.

In view of the foregoing, we believe and hold that the appealed order of the CIR dismissing the petition for certification election and refusing to allow the selection of a new bargaining agent, was valid under the circumstances obtaining at the time. However, inasmuch as there has been a renewal of the bargaining agreement for another two years and because it seems that the present agreement is but a renewal of the one entered into way back in 1955, so that until the expiration of the present agreement, about six years shall have passed, it is advisable that a new certification election be held. For this purpose, this case is hereby remanded to the CIR, so that the petition for certification can be entertained, admitted and given due course, and that a certification election be held, with the understanding that if a bargaining agent other than the one that negotiated and executed the present bargaining contract, is elected, said new agent would have to respect the present bargaining agreement, but without prejudice to its negotiating with the company for a shortening of the period of the life of the contract, refuse to renew it when it expires, if it so desires, and otherwise represent and protect the interest of the members of the bargaining unit, all of course, within the terms and purview of the bargaining contract. No costs.

Paras, *C.J.*, Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, and Barrera, *JJ.*, concur.