ChanRobles Publishing Company

SUPREME COURT
SECOND DIVISION

HERALD DELIVERY CARRIERS UNION (PAFLU) and PHILIPPINE ASSOCIATION OF FREE LABOR UNIONS (PAFLU),
***Petitioners*,**

-versus-

G.R. No. L-29966
February 28, 1974

HERALD PUBLICATION, INC.,
***Respondent*.**
x---x

D E C I S I O N

FERNANDO, *J*.:

The merit of this Appeal from a Decision of respondent Court of Industrial Relations is rather apparent when appraised in the light of the statutory command that the negotiation leading to a collective contract be carried on in the utmost good faith by both labor and management. For respondent Court, as will be shown, was quite lax in its duty to assure its observance by respondent Herald Publications. What is worse, it sanctioned the separation from the service of the employees involved, ignoring that they were the victims of an unfair labor practice, the employer having disregarded its duty to bargain. Such an approach if given approval is fraught with adverse

consequences for the regime of collective bargaining which is one of the prized goals of the Industrial Peace Act. This Court cannot be expected then to countenance such an attitude, an unfair labor practice having been committed.

On the question of failure of respondent Herald Publications to comply with its statutory duty to bargain in good faith, the facts, as alleged in the petition for review before us by petitioners Herald Delivery Carriers Union and Philippine Association of Free Labor Unions in behalf of the thirty-three members who were separated or laid off from the service, follow: "1. Respondent employer, after it was served with written bargaining proposals by petitioner union in behalf of 90 of respondent's delivery and carrier workers, undertook to act unilaterally and without notice to petitioner union on a subject of mandatory bargaining by contracting out with 12 so-called independent contractors the work done by said delivery and carrier workers, thereby affecting their separation and undercutting the bargaining relationship with petitioner union. 2. Respondent employer never did submit an answer or reply tendering an issue respecting the written bargaining proposals submitted by petitioner union, thereby violating its statutory duty to 'make a reply thereto not later than ten (10) days from receipt of such proposals' (Sec. 14[a], of R.A. No. 875). 3. Respondent employer evaded its duty to bargain collectively through unfulfilled promises of submitting an answer or counter-proposals, or of taking up the demands submitted by petitioner Union in meetings or conferences."[1] All that was mentioned in the answer of respondent Herald Publications on the above points were to the effect that: "When petitioners presented their bargaining proposals to respondent company, the latter sent a reply asserting that the carriers are independent contractors and not employees. This reply placed in issue the right of the carriers and their representatives to bargain collectively with respondent company. Until that issue was settled and the carriers considered as employees, the company was under no legal obligation to make a point by point answer to the bargaining proposals. In truth, therefore, respondent company did not violate any statutory duty imposed by Republic Act No. 875. Neither respondent company nor its counsel promised to submit an answer or counterproposal to the individual proposals submitted by petitioners. Likewise, neither respondent company nor its counsel promised to take up the bargaining

proposals during the conferences. On the other hand, there was a tacit agreement between respondent company and petitioner union to postpone discussion on the question as to the employee status of the carriers and their right to bargain collectively until after completion of the negotiations then going on between respondent company and a sister union of petitioners with respect to the blue collar and white collar rank-and-file employees of the company."[2] Such an issue was resolved in the resolution now on appeal by respondent Court in this wise: "There were some charges of indifference of the respondent to discuss with the complainant its proposals, as there were equally strong denials of indifference. But by and large, it could not be said that respondent displayed a strong aversion to meet with complainant and resolve whatever differences there were. If no actual across-the-table talk between the parties materialized, the same did happen because they themselves were not keen in doing so. This, presumably, is due to the fact that the panel of negotiators of both parties are the same negotiators actually locked in a series of conferences between the sister union and respondent."[3] This particular paragraph of the resolution concluded with this sentence: "In view of the foregoing, respondent should be absolved of the charge of refusal to bargain."[4] The assumption then was that the duty to bargain existed, the claim of lack of employment relationship not being sustained, but there was no such refusal to comply with the statutory duty. Actually the thirty-three individual members were separated or laid off from the service because of a new system of distribution adopted by private respondent by contracting outside work to twelve distributors, a step which according to it was under serious consideration before the strike of September 27, 1962, which was the precursor of the complaint for unfair labor practice filed by petitioners with respondent Court precisely on the very ground of a failure or refusal to comply with its statutory duty to bargain in good faith. Respondent Court, as noted, ruled against petitioners.

From the tenor of the appealed resolution, it is unmistakable that there was a valid cause for petitioners to complain against the course of conduct pursued by private respondent, indicative as it was of a disregard to live up to what is enjoined by the Industrial Peace Act as to bargaining in good faith. No doubt, it was misled by its assumption that it could affect a change in the distribution system. That did not

suffice, however, to free it from a statutory duty. As noted at the outset, we reverse.

1. The Industrial Peace Act specifically provides: "In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of an employer and the representative of his employees to bargain collectively in accordance with the provisions of this Act. Such duty to bargain collectively means the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith, for the purpose of negotiating an agreement with respect to wages, hours, and/or other terms and conditions of employment, and of executing a written contract incorporating such agreement if requested by either party, or for the purpose of adjusting any grievances or question arising under such agreement, but such duty does not compel any party to agree to a proposal or to make concession. Where there is in effect a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate or modify such agreement, unless it has served a written notice upon the other party of the proposed termination or modification at least thirty days prior to the expiration date of the agreement, or in the absence of an express provision concerning the period of validity of such agreement prior to the time it is intended to have such termination or modification take effect. It shall be the duty of both parties, without resorting to a strike or lockout, to continue in full force and effect all the terms and conditions of the existing agreement during the said period of thirty days."[5] In the first case dealing with the above statutory provision, Buklod ng Saulog Transit vs. Casalla,[6] Justice Padilla or the Court made clear that the literal language of the above section should be adhered to. Nor is it to be lost sight of that implicit in BCI Employees and Workers Union vs. Mountain Province Workers Union,[7] is the notion that the labor organization designated as the collective bargaining representative should have a reasonable time within which it could negotiate with the employer to conclude a collective bargaining agreement. In

Citizens Labor Union vs. Court of Industrial Relations,[8] this Court spoke of the "sound and unassailable labor practice for labor and management to conclude a new contract before the expiry date of any collective bargaining agreement to avoid a hiatus in management-labor relations."[9] That certainly was more than just a hint to both parties to act in good faith in the bargaining process. For as was there stressed: "The Industrial Peace Act was designed primarily to promote industrial peace through encouragement of collective bargaining."[10] It is worthy of note that this duty to bargain in good faith was given added dimension in Republic Savings Bank vs. Court of Industrial Relations,[11] where Justice Castro, as ponente stated: "For collective bargaining does not end with the execution of an agreement. It is a continuous process. The duty to bargain imposes on the parties during the term of their agreement the mutual obligation 'to meet and confer promptly and expeditiously and in good faith for the purpose of adjusting any grievances or question arising under such agreement' and a violation of this obligation is, by section 4(a) (6) and (b) (13) an unfair labor practice.[12]

That the same hospitable scope to the statutory command should be apparent in American law should occasion no surprise. The regime of collective bargaining would be a wreck if it were otherwise. Professor Archibald Cox, one of the most eminent authorities in the field, did note that even before the Wagner Act, the major source of our Industrial Peace Act, it was the prevailing view that a true collective bargaining agreement "involves more than the holding of conferences and the exchange of pleasantries. While the law does not compel the parties to reach agreement, it does contemplate that both parties will approach the negotiations with an open mind and will make a reasonable effort to reach a common ground of agreement."[13] The same thought found expression in a later decision, with its stress on "the incontestably sound principle" that the employer "had a duty to negotiate in good faith with his employees' representatives, to match their proposals, if unacceptable, with counterproposals; and to make every reasonable effort to reach an agreement."[14] The Wagner Act called for a more

explicit declaration. There must be, according to National Labor Relations Board vs. Pilling and Son Co.,[15] "common willingness among the parties to discuss freely and fully their respective claims and demands and, when these are opposed, to justify them on reason."[16] Professor Cox added: "Although the law cannot open a man's mind, it can at least compel him to conduct himself as if he were trying to persuade and were willing to be persuaded. To offer the union a contract saying, 'Take it or leave it,' is not bargaining collectively within the meaning of the act."[17] These are among the indicia referred to by him to indicate lack of good faith: "Stalling the negotiations by unexplained delays in answering correspondence and unnecessary postponement of meetings."[18] In the latest work on the subject,[19] Professor Smith, also an authoritative voice, wrote on the present state of American law thus: "As a minimum it would seem that the Act prescribes a superficial pretense at bargaining — fictitious negotiation which essentially denies recognition of a union. However, manifestations of such activity may be subtle and hard to detect. Even when it is not, the manner in which 'sham bargaining' can be prevented presents problems. Statutory antinomy arises because as a matter of legislative history, meaningful bargaining was to be accomplished by 'leading the parties to the bargaining table' without intrusions into the negotiations, and, in any event, without compelling either party to agree to a proposal or make a concession.'[20]

Nothing can be clearer therefore than that on the undisputed facts there was a failure on the part of private respondent to yield obedience to the law's command that it should bargain in good faith.

2. Nor did the adoption of a new method of distribution, even on the assumption that it was prompted solely "by economy, efficiency and simplicity of operations,"[21] justify its refusal to abide by a clear statutory duty. Precisely, the fact that thereby a number of workers would as a result stand to lose their job unless absorbed by the new distributors ought to have led private respondent to take the matter up with the

petitioner-labor unions. As was set forth in Shell Oil Workers' Union vs. Shell Company of the Philippines, Ltd.:[22] "More specifically, [management] cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. To it belongs the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. It is the opinion of the Court, that while management has the final say on such matter, the labor union is not to be completely left out. What was done by Shell Company in informing the Union as to the step it was intending to take on the proposed dissolution of the security guard section to be replaced by an outside agency is praiseworthy. There should be mutual consultation even if eventually deference is to be paid to what management decides. Thereby, in the words of Chief Justice Warren, there is likely to be achieved 'peaceful accommodation of conflicting interests.'[23] Nor is it to be lost sight of that what is involved here was of the essence of the employment relationship, the implementation of the scheme of private respondent resulting in the termination of the employment of the individual petitioners. In a resolution in the above Shell Oil Workers' Union decision denying a motion for reconsideration, it was indicated in the two separate concurring opinions of Justices Teehankee and Barredo, that respect for the protection to labor provision of the 1935 Constitution[24] would call for an assurance that the plan adopted by respondent Shell Company of the Philippines not be seized upon as a basis for the dismissal of the security guards involved, who were not found to have committed illegal acts. The present Constitution is much more explicit.[25] With the express reference to security of tenure, a novel feature in the present Charter, it can hardly be denied that at the very least, labor is to be informed of any projected move on the part of management even if included within its prerogative, the effect of which is to render nugatory what the Constitution seeks to guarantee.

3. An unfair labor practice having been committed, the separation of the members of petitioner labor unions from

the service by private respondent is contrary to law. They would have been entitled then to reinstatement. Judicial notice can be taken of the fact, however, that private respondent, Herald Publications, had ceased operations as of September 23, 1972, after the declaration of martial law. That would bar reinstatement. There is still its responsibility though for back wages. As under the circumstances, it hardly had any choice except to stop publication, the ruling in Sta. Cecilia Sawmills, Inc. vs. Court of Industrial Relations,[26] as affirmed in Philippine Engineering Corporation vs. Court of Industrial Relations,[27] with its recognition of the equitable aspects of the matter, calls for application. Accordingly, we hold that it is liable for three months backpay for such workers laid off or separated from the service on whose behalf this petition was filed.

WHEREFORE, the Order of respondent Court of August 12, 1966 as affirmed by its Resolution of December 10, 1966 is set aside. Respondent Herald Publications, Inc. is found guilty of unfair labor practice for not bargaining in good faith and ordered to pay three months back wages to members of petitioners-unions who were laid off or separated from the service as a result of such unfair labor practice. Costs against private respondent.

Zaldivar, Barredo, Antonio, Fernandez and Aquino, *JJ.*, concur.

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[1] Petition, 3.
[2] Answer, 3-4.
[3] Order dated August 12, 1966, 11-12.
[4] Ibid, 12.
[5] Section 13 of Republic Act 875 (1953).
[6] 99 Phil. 16 (1956).
[7] L-23813, December 29, 1965, 15 SCRA 650.
[8] L-24320, November 12, 1966, 18 SCRA 624.
[9] Ibid, 633.
[10] Ibid.
[11] L-20303, September 27, 1967, 21 SCRA 226.
[12] Ibid, 234-235.

[13] Cox, The Duty to Bargain in Good Faith, 71 Harv. Law Rev. 1405, 1405 (1958) referring to the National Industrial Recovery Act of 1933 as interpreted in Connecticut Coke Co., N.L.B., 88, 89, (1934).
[14] Ibid, citing Honde Engineering Corp., 1 N.L.R.B. (old) 35 (1934).
[15] 119 F2d 32 (1941).
[16] Ibid, 37.
[17] Cox, op. cit., 1411.
[18] Ibid, 1418. Professor Cox here cited NLRB vs. National Shoes Inc., 208 F2d 688 (1953) and Stanislaus Implement and Hardware Co., 226 F2d 377 (1955).
[19] Smith, Merrifield and Rothschild, Collective Bargaining and Labor Arbitration (1970).
[20] Ibid 67-68.
[21] Answer of Respondent Herald Publications Inc., par. 5.
[22] L-28607, May 31, 1971, 39 SCRA 276.
[23] Ibid, 284-285. The statement from Chief Justice Warren came from Fibreboard Corp. vs. National Labor Relations Board 379 US 203 (1964).
[24] According to Article XIV, Sec. 6 of the 1935 Constitution: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture."
[25] The present provision needs: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration." Article II, Sec. 9.
[26] L-19273, May 25, 1964, 11 SCRA 46.
[27] L-27880, September 30, 1971, 41 SCRA 89.

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