

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**LVN PICTURES, INC.,
*Petitioner-Appellant,***

-versus-

**G.R. Nos. L-12582
and L-12598
January 28, 1961**

**PHILIPPINE MUSICIANS GUILD
(FFW) and COURT OF INDUSTRIAL
RELATIONS,
*Respondents-Appellees.***

X-----X

**SAMPAGUITA PICTURES, INC.,
*Petitioner-Appellant,***

-versus-

**PHILIPPINE MUSICIANS GUILD
(FFW) and COURT OF INDUSTRIAL
RELATIONS,
*Respondents-Appellees.***

X-----X

DECISION

CONCEPCION, J.:

Petitioners herein, LVN Pictures, Inc. and Sampaguita Pictures, Inc., seek a review by *certiorari* of an order of the Court of Industrial Relations in Case No. 306-MC thereof, certifying the Philippine Musicians Guild (FFW), petitioner therein and respondent herein, as the sole and exclusive bargaining agency of all musicians working with said companies, as well as with the Premiere Productions, Inc., which has not appealed. The appeal of LVN Pictures, Inc., has been docketed as G.R. No. L-12582, whereas G.R. No. L-12598 is the appeal of Sampaguita Pictures, Inc. Involving as they do the same order, the two cases have been jointly heard in this Court, and will similarly be disposed of.

In its petition in the lower court, the Philippine Musicians Guild (FFW), hereafter referred to as the Guild, averred that it is a duly registered legitimate labor organization; that LVN Pictures, Inc., Sampaguita Pictures, Inc., and Premiere Productions, Inc. are corporations, duly organized under the Philippine laws, engaged in the making of motion pictures and in the processing and distribution thereof; that said companies employ musicians for the purpose of making music recordings for title music, background music, musical numbers, finale music and other incidental music, without which a motion picture is incomplete; that ninety-five (95%) percent of all the musicians playing for the musical recording of said companies are members of the Guild; and that the same has no knowledge of the existence of any other legitimate labor organization representing musicians in said companies. Premised upon these allegations, the Guild prayed that it be certified as the sole and exclusive bargaining agency for all musicians working in the aforementioned companies.

In their respective answers, the latter denied that they have any musicians as employees, and alleged that the musical numbers in the films of the companies are furnished by independent contractors. The lower court, however, rejected this pretense and sustained the theory of the Guild, with the result already adverted to. A reconsideration of the order complained of having been denied by the Court en banc, LVN Pictures, Inc. and Sampaguita Pictures, Inc. filed these petitions for review by *certiorari*.

Apart from impugning the conclusion of the lower court on the status of the Guild members as alleged employees of the film companies, the LVN Pictures, Inc., maintains that a petition for certification cannot be entertained when the existence of employer- employee relationship between the parties is contested. However, this claim is neither borne out by any legal provision nor supported by any authority. So long as, after due hearing, the parties are found to bear said relationship, as in the case at bar, it is proper to pass upon the merits of the petition for certification.

It is next urged that a certification is improper in the present case, because “(a) the petition does not allege and no evidence was presented that the alleged musicians-employees of the respondents constitute a proper bargaining unit, and (b) said alleged musicians-employees represent a majority of the other numerous employees of the film companies constituting a proper bargaining unit under section 12 (a) of Republic Act No. 875.”

The absence of an express allegation that the members of the Guild constitute a proper bargaining unit is not fatal in a certification proceeding, for the same is not a “litigation” in the sense in which this term is commonly understood, but a mere investigation of a non-adversary, fact finding character, in which the investigating agency plays the part of a disinterested investigator seeking merely to ascertain the desires of employees as to the matter of their representation. In connection therewith, the court enjoys a wide discretion in determining the procedure necessary to insure the fair and free choice of bargaining representatives by employees.^[1] Moreover, it is alleged in the petition that the Guild is a duly registered legitimate labor organization and that ninety-five (95%) per cent of the musicians playing for all the musical recordings of the film companies involving in these cases are members of the Guild. Although, in its answer, the LVN Pictures, Inc. denied both allegations, it appears that, at the hearing in the lower court, it was merely the status of the musicians as its employees that the film companies really contested. Besides, the substantial difference between the work performed by said musicians and that of other persons who participate in the production of a film, and the peculiar circumstances under which the services of the former are engaged

and rendered, suffice to show that they constitute a proper bargaining unit.

At this juncture, it should be noted that the action of the lower court in deciding upon an appropriate unit for collective bargaining purposes is discretionary (N.L.R.B. vs. May Dept. Store Co., 66 Sup. Ct. 468, 90 L. ed. 145) and that its judgment in this respect is entitled to almost complete finality, unless its action is arbitrary or capricious (Marshall Field & Co. vs. N.L.R.B. [C.C.A. 1943], 135 F. 2d. 391), which is far from being so in the cases at bar.

Again, the Guild seeks to be, and was, certified as the sole and exclusive bargaining agency for the musicians working in the aforesaid film companies. It does not intend to represent the other employees therein. Hence, it was not necessary for the Guild to allege that its members constitute a majority of all the employees of said film companies, including those who are not musicians.

The real issue in these cases, is whether or not the musicians in question are employees of the film companies. In this connection the lower court had the following to say:

“As a normal and usual course of procedure employed by the companies when a picture is to be made, the producer invariably chooses, from the musical directors, one who will furnish the musical background for a film. A price is agreed upon verbally between the producer and musical director for the cost of furnishing such musical background. Thus, the musical director may compose his own music specially written for or adapted to the picture. He engages his own men and pays the corresponding compensation of the musicians under him.

“When the music is ready for recording, the musicians are summoned through ‘call slips’ in the name of the film company (Exh. ‘D’), which show the name of the musician, his musical instrument, and the date, time and place where he will be picked up by the truck of the film company. The film company provides the studio for the use of the musicians for that particular recording. The musicians are also provided

transportation to and from the studio by the company. Similarly, the company furnishes them meals at dinner time.

“During the recording sessions, the motion picture director, who is an employee of the company, supervises the recording of the musicians and tells what to do in every detail. He solely directs the performance of the musicians before the camera. As director, he supervises the performance of all the actors including the musicians who appear in the scenes so that in the actual performance to be shown on the screen, the musical director’s intervention has stopped.

“And even in the recording sessions and during the actual shooting of a scene the technicians, soundmen and other employees of the company assist in the operation. Hence, the work of the musicians, is an integral part of the entire motion picture since they not only furnish the music but are also called upon to appear in the finished picture.

“The question to be determined next is what legal relationship exist between the musicians and the company in the light of the foregoing facts.

“We are thus called upon to apply R. A. Act No. 875, which is substantially the same as and patterned after the Wagner Act and the Taft-Hartley Law of the United States. Hence, reference to decisions of American Courts on these laws on the point-at-issue is called for.

“Statutes are to be construed in the light of purposes to be achieved and the evils sought to be remedied. (U.S. vs. American Tracking Association, 310 U.S. 534, 84 L. ed. 1345.)

“In the case of National Labor Relations Board vs. Hearst Publications, 322, U.S. 111, the United States Supreme Court said the Wagner Act was designed to avert the ‘substantial obstruction to the free flow of commerce which results from strikes and other forms of industrial unrest by eliminating the causes of the unrest. Strikes and industrial unrest result from the refusal of employers’ to bargain collectively and the inability

of workers to bargain successfully for improvement in their working conditions. Hence, the purposes of the Act are to encourage collective bargaining and to remedy the workers' inability to bargaining power, by protecting the exercise of full freedom, of association and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment.'

"The mischief at which the Act is aimed and the remedies it offers are not confined exclusively to 'employees' within the traditional legal distinctions, separating them from 'independent contractor.' Myriad forms of service relationship, with infinite and subtle variations in the term of employment, blanket the nation's economy. Some are within this Act, others beyond its coverage. Large numbers will fall clearly on one side or on the other, by whatever test may be applied. Inequality of bargaining power in controversies of their wages, hours and working conditions may characterize the status of one group as of the other. The former, when acting alone may be as helpless in dealing with the employer 'as dependent on his daily wage and as unable to resist arbitrary and unfair treatment as the latter.'

"To eliminate the causes of labor dispute and industrial strike, Congress thought it necessary to create a balance of forces in certain types of economic relationship. Congress recognized those economic relationships cannot be fitted neatly into the containers designated as 'employee' and 'employer'. Employers and employees not in proximate relationship may be drawn into common controversies by economic forces and that the very dispute sought to be avoided might involve employees' who are at times brought into an economic relationship with 'employers', who are not their 'employers'. In this light, the language of the Act's definition of 'employee' or 'employer' should be determined broadly in doubtful situations, by underlying economic facts rather than technically and exclusively established legal classifications. (NLRB vs. Blount, 131 F [2d] 585.).

“In other words, the scope of the term ‘employee’ must be understood with reference to the purposes of the Act and the facts involved in the economic relationship. Where all the conditions of relation require protection, protection ought to be given.

“By declaring a worker an employee of the person for whom he works and by recognizing and protecting his rights as such, we eliminate the cause of industrial unrest and consequently we promote industrial peace, because we enable him to negotiate an agreement which will settle disputes regarding conditions of employment, through the process of collective bargaining.

“The statutory definition of the word ‘employee’ is of wide scope. As used in the Act, the term embraces ‘any employee’ that is all employees in the conventional as well as in the legal sense except those excluded by express provision. (Connor Lumber Co. 11 NLRB, 776.)

“It is the purpose and policy of Republic Act 875; (a) To eliminate the causes of industrial unrest by protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining. (b) To promote sound stable industrial peace and the advancement of the general welfare, and the best interests of employers and employees by the settlement of issues respecting terms and conditions of employment through the process of collective bargaining between employers and representatives of their employees.

“The primary consideration is whether the declared policy and purpose of the Act can be effectuated by securing for the individual worker the rights and protection guaranteed by the Act. The matter is not conclusively determined by a contract which purports to establish the status of the worker, not as an employee.

“The work of the musical director and musicians is a functional and integral part of the enterprise performed at the same studio substantially under the direction and control of the company.

“In other words, to determine whether a person who performs work for another is the latter’s employee or an independent contractor, the National Labor Relations Board relies on “the right of control’ test. Under this test an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching the end. (United Insurance Company, 108, NLRB No. 115.)

“Thus, in said similar case of Connor Lumber Company, the Supreme Court said:

‘We find that the independent contractors and persons working under them are ‘employees’ within the meaning of Section 2 (3) of its Act. However, we are of the opinion that the independent contractors have sufficient authority over the persons working under their immediate supervision to warrant their exclusion from the unit. We shall include in the unit the employees working under the supervision of the independent contractors, but exclude the contractors.’

“Notwithstanding that the employees are called independent contractors, the Board will hold them to be employees under the Act where the extent of the employer’s control over them indicates that the relationship is in reality one of employment. (John Hancock Life Insurance Co., 2375–D, 1940, Teller, Labor Dispute Collective Bargaining, Vol.). “The right of control of the film company over the musicians is shown (1) by calling the musicians through ‘call slips’ in the name of the company; (2) by arranging schedules in its studio for recording sessions; (3) by furnishing transportation and meals to musicians; and (4) by supervising and directing in detail, through the motion picture director, the performance of the musicians before the camera, in order to suit the music they are playing to the picture which is being flashed on the screen.

“Thus, in application of Philippine statutes and pertinent decision of the United States courts on the matter to the facts established in this case, we cannot but conclude that to

effectuate the policies of the Act and by virtue of the ‘right of control’ test, the members of the Philippine Musicians Guild are employees of the three film companies and, therefore, entitled to right of collective bargaining under Republic Act No. 875.

“In view of the fact that the three (3) film companies did not question the union’s majority, the Philippine Musicians Guild is hereby declared as the sole collective bargaining representative for all the musicians employed by the film companies.”

We are fully in agreement with the foregoing conclusion and the reasons given in support thereof. Both are substantially in line with the spirit of our decision in *Maligaya Ship Watchmen Agency vs. Associated Watchmen and Security Union*, L-12214-17 (May 28, 1958). In fact, the contention of the employers in the *Maligaya* cases, to the effect that they had dealt with independent contractors, was stronger than that of the film companies in these cases. The third parties with whom the management and workers contracted in the *Maligaya* cases were agencies registered with the Bureau of Commerce and duly licensed by the City of Manila to engage in the business of supplying watchmen to steamship companies, with permits to engage in said business issued by the City Mayor and the Collector of Customs. In the cases at bar, the musical directors with whom the film companies claim to have dealt with had nothing comparable to the business standing of said watchmen agencies. In this respect, the status of said musical directors is analogous to that of the alleged independent contractor in *Caro vs. Rilloraza*, 102 Phil., 61, with the particularity that the *Caro* case involved the enforcement of the liability of an employer under the Workmen’s Compensation Act, whereas the cases before us are merely concerned with the right of the Guild to represent the musicians as a collective bargaining unit. Hence, there is less reason to be legalistic and technical in these cases, than in the *Caro* case.

Herein petitioners-appellants cite, in support of their appeal, the cases of *Sunripe Coconut Product Co., Inc. vs. CIR*, (46 Off. Gaz., 5506, 5509;) *Philippine Manufacturing Co. vs. Santos Vda. de Geronimo*, L-6968 (November 29, 1954), *Viana vs. Al Lagadan*, L-8967 (May 31, 1956), and *Josefa Vda. de Cruz vs. The Manila Hotel Co.*, (53 Off. Gaz., 8540). Instead of favoring the theory of said

petitioners-appellants, the case of the Sunripe Coconut Product Co., Inc. is authority for herein respondents-appellees. It was held that, although engaged as piece-workers, under the “pakiao” system, the “parers” and “shellers” involved in that case were, not independent contractors, but employees of said company, because “the requirement imposed on the ‘parers’ to the effect that ‘the nuts are pared whole or that there is not much meat wasted’, in effect limits or controls the means or details by which said workers are to accomplish their services” — as in the cases before us.

The nature of the relation between the parties was not settled in the Viana case, the same having been remanded to the Workmen’s Compensation Commission for further evidence.

The case of the Philippine Manufacturing Co. involved a contract between said company and Eliano Garcia, who undertook to paint a tank of the former. Garcia, in turn, engaged the services of Arcadio Geronimo, a laborer, who fell while painting the tank and died in consequence of the injuries thus sustained by him. Inasmuch as the company was engaged in the manufacture of soap, vegetable, lard, cooking oil and margarine, it was held that the connection between its business and the painting aforementioned was purely casual; that Eliano Garcia was an independent contractor; that Geronimo was not an employee of the company; and that the latter was not bound, therefore, to pay the compensation provided in the Workmen’s Compensation Act. Unlike the Philippine Manufacturing case, the relation between the business of herein petitioners-appellants and the work of the musicians in question is not casual. As held in the order appealed from — which, in this respect, is not contested by herein petitioners- appellants — “the work of the musicians is an integral part of the entire motion picture.” Indeed, one can hardly find modern films without music therein. Hence, in the Caro case (supra) the owner and operator of buildings for rent was held bound to pay the indemnity prescribed in the Workmen’s Compensation Act for the injury suffered by a carpenter while working as such in one of said buildings even though his services had been allegedly engaged by a third party who had directly contracted with said owner. In other words, the repair work had not merely a casual connection with the business of said owner. It was a necessary incident thereof, just as music is in the production of motion pictures.

The case of Josefa Vda. de Cruz vs. The Manila Hotel Co., L-9110 (April 30, 1957) differs materially from the present cases. It involved the interpretation of Republic Act No. 660, which amends the law creating and establishing the Government Service Insurance System. No labor law was sought to be construed in that case. In fact, the same was originally heard in the Court of First Instance of Manila, the decision of which was, on appeal, affirmed by the Supreme Court. The meaning or scope of the term “employee,” as used in the Industrial Peace Act (Republic Act No. 875) was not touched therein.

Moreover, the subject-matter of said case was a contract between the management of the Manila Hotel, on the one hand, and Tirso Cruz, on the other, whereby the latter agreed to furnish the former the services of his orchestra, consisting of 15 musicians, including Tirso Cruz, “from 7:30 p.m. to closing time daily.” In the language of this Court in that case, “what pieces the orchestra shall play, and how the music shall be arranged or directed, the intervals and other details - such are left to the leader’s discretion.”

This is not the situation obtaining in the cases at bar. The musical directors above referred to have no such control over the musicians involved in the present case. Said musical directors control neither the music to be played, nor the musicians playing it. The film companies summon the musicians to work, through the musical directors. The film companies, through the musical directors, fix the date, the time and the place of work. The film companies, not the musical directors, provide the transportation to and from the studio. The film companies furnish meal at dinner time.

What is more — in the language of the order appealed from — “during the recording sessions, the motion picture director who is an employee of the company” — not the musical director — “supervises the recording of the musicians and tells them what to do in every detail.” The motion picture director — not the musical director — “solely directs the performance of the musicians before the camera”. The motion picture director “supervises the performance of all the actors, including the musicians who appear in the scenes, so that in the actual performance to be shown on the screen, the musical director’s intervention has stopped.” Or, as testified to in the lower

court, “the movie director tells the musical director what to do; tells the music to be cut or tells additional music in this part or he eliminates the entire music he does not (want) or he may want more drums or more violin or piano, as the case may be.” The movie director “directly controls the activities of the musicians.” He “says he wants more drums and the drummer plays more” or “if he wants more violin or he does not like that.”

It is well settled that “an employer-employee relationship exists where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end.” (Alabama Highway Express Co. vs. Local, 612, 108 S. 2d 350.) The decisive nature of said control over the “means to be used,” is illustrated in the case of Gilchrist Timber Co., et al., Local No. 2530 (73 NLRB No. 210, pp. 1197, 1199-1201), in which, by reason of said control, the employer-employee relationship was held to exist between the management and the workers, notwithstanding the intervention of an alleged independent contractor, who had, and exercised, the power to hire and fire said workers. The aforementioned control over “the means to be used” in reaching the desired end is possessed and exercised by the film companies over the musicians in the cases before us.

WHEREFORE, the Order appealed from is hereby affirmed, with costs against petitioners herein. It is so ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, Barrera, Paredes and Dizon, JJ., concur.
Gutierrez David, J., took no part.

[1] N.L.R.B. vs. Botany Worsted Mills, 319 U.S. 751, 87 L. ed. 1705; Southern S.S. Co. vs. N.L.R.B., 316 U.S. 31, 86 L. ed 1246; N.L.R.B. vs. A. J. Tower Co., 66 Sup. Ct. 1011;

“‘certification’ and ‘de-certification’ proceedings under this section of the Act are a non-adversary nature. Such proceedings are not predicated upon an allegation of misconduct requiring relief, but, rather, are merely of an inquisitorial nature. The Board’s functions are not judicial in nature, but are merely of an investigative character. The object of the proceedings is not the decision of an alleged commission of wrongs nor asserted deprivation of rights but merely the determination of proper bargaining units and the

ascertainment of the will and choice of the employees in respect of the selection of a bargaining representative. The determination of the proceedings does not entail the entry of remedial orders to redress rights, but culminates solely in an official designation of bargaining units and an affirmation of the employees' expressed choice of bargaining agent." (Rothenberg on Labor Relations, p. 514.)

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