SUPREME COURT
EN BANC

LOCAL 7, PRESS & PRINTING FREE WORKERS (FFW), CONCHA SIBAL, DOLORES SISON, OLIMPIA ARCILLA, ET AL.,
***Petitioner*,**

-versus-

G.R. No. L-16093
November 29, 1960

HON. JUDGES EMILIANO TABIGNE, ARSENIO I. MARTINEZ, GUSTAVO VICTORIANO, DEMOCRATIC LABOR UNION, and UNITED CARDBOARD BOX FACTORY,
***Respondents*.**
x----------x

D E C I S I O N

BARRERA, *J.*:

In the Court of Industrial Relations, an unfair labor practice case was instituted by CIR Acting Prosecutor Julio R. Logarta in behalf of petitioners Concha Sibal, Olimpia Arcilla, Maria Dulatre, Magdalena Sigua, Alfonso Lopez, Marieta Cabangal, Remedios Lumabas, and Estela Dublada, members of the Local 7, Press and Printing Free Workers (FFW), alleging that petitioners were dismissed by their

employer respondent United Cardboard Box Factory upon request of the latter's co-respondent, Democratic Labor Union, with which respondent Company has a collective bargaining agreement with a close shop clause; that petitioners, upon hearing of the close shop agreement, applied for membership with the respondent Union but were not accepted, and instead, were dismissed by Tan Tiong So, manager of respondent Company; and that said acts of respondents Union and Company are in violation of Section 4(a) (4) and 4(b) (2) [1] of Republic Act No. 875. It is prayed, among others, that respondents Union and Company be declared guilty of unfair labor practice as charged; that respondent Union be directed to accept said petitioners as its members; and (3) that respondent Company be ordered to reinstate petitioners to their former positions with back wages from the time of their dismissal to the date of their actual reinstatement.

Although both respondent filed their respective answers, neither appeared at the hearing at which petitioner were allowed to present their evidence. The court, on January 29, 1959, rendered, judgment, the pertinent portion of which reads:

> "Issues having been joined, this case was heard on August 15, 1958 with complainants presenting as their first witness Benjamin Umali who testified that complaint union is duly registered and that individual complainants are its members who were formerly employed in respondent company; that individual complainants were dismissed on or about May 27, 1957, because they were discriminated against in regard to their union membership; that despite repeated requests, both respondents refused to furnish complainant union copy of the collective bargaining agreement embodying the closed-shop agreement to verify its existence before joining the respondent union, and that he (Umali) was able to see the same in the Department of Labor only on May 29, 1957; that upon verification, he (Umali) immediately told complaint union members to join respondent union pursuant to said closed-shop provision, that is, as a condition of their continued employment; that on May 30, 1957, complainant union members applied for membership in respondent union which refused them, and that for this sole reason, respondent company likewise did not accept them for work.

"On cross-examination, Umali declared that he was informed of the existence of the closed-shop agreement when he received a letter from one Alegria B. Jose, but he was not shown copy of the collective bargaining contract containing the closed-shop in question; that individual complainants, although informed of the closed-shop agreement, have never seen copy of the same which they have been requested from respondents; and that they (individual complainants) saw the agreement in question only on May 29, 1957 when he (Umali) went to the Labor Department to copy the same upon suggestion of respondent company manager. When asked by the Hearing Examiner, Umali stated that he had been dismissed at the time he saw the collective bargaining contract.

"Another witness for complainants, Mrs. Concha Sibal, was presented, testifying that she has been employed in respondent company since 1946 and that her co-complainants have likewise been working there for a long time; that complainant union was organized in November, 1953, much ahead of respondent union; that individual complainants were refused membership in respondent union and were not allowed to work anymore in respondent company. And in all other respects, Mrs. Sibal practically and substantially corroborated the testimony of witness Umali. She was not cross-examined.

"With the testimony of the above witnesses, the complainant rested their case. After several notices of hearing duly sent to and received by the parties, respondents failed to appear and adduce their evidence. For this reason, this Court, in a hearing conducted on January 21, 1959, considered this case submitted for decision.

"From the evidence on record, it can be readily seen that complaint union members have expressed their willingness to join respondent union verifying the existence of the collective bargaining agreement embodying the closed-shop provision when they proceeded to the Department of Labor on May 29, 1957, to copy said agreement. In fact, the following day, May 30, 1957, said complaints applied for membership in respondent

union, but the latter refused them, for which reason, respondent company justified its stand for not accepting them for re-employment. It is therefore evident that individual complainants have shown their sincere desire to abide by the closed- shop contract entered into by respondent company and respondent union. The fact that they were not able to join respondent union within the period prescribed in the agreement, assuming there is such time limit, should not militate against them for they were not furnished copy of the contract, notwithstanding their persistent requests from both respondents. Vigilant and zealous perhaps as they were, the individual complainants merely exercised the necessary diligence and prudence as union members before entering into the folds of another labor organization by requiring the respondents to prove the existence of the closed-shop provision in question. This, the respondents could have easily done by the simple expediency of showing to the complainants a copy of the collective bargaining contract which the former are supposed to possess.

"Closed-shop contract is the most prized achievement of unionism, as it adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed-shop, it wields group solidarity. In keeping with this doctrine and with the protection to labor policy envisioned in our Constitution, this Court will liberally construe the closed-shop provision in question in favor of the increased membership of the certified union and of the security of tenure of the workers concerned. Respondent company even admitted in its answer that in spite of the length of period of absence of complainants, it will not refuse complainant's employment anytime, if the Court believes it will not violate closed-shop agreement. This Court holds there is no such intended violation.

"WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATION, this Court hereby orders the respondent union to accept as additional members all the above-named individual complainants; namely, Concha Sibal, Dolores Sison, Olimpia Arcilla, Maria Dulatre, Magdalena Sigua, Alfonso Lopez, Marieta Cabangal, Remedios Lumabas and Estela

> Dublada, directs the respondent Company to reinstate the said individual complainants with full back wages from the time of their respective dismissals to their actual reinstatement; and accounts and services of respondent company in order to compute the back wages of the individuals complainants.
>
> "SO ORDERED.
>
> "Manila, Philippines, January 29, 1959.
>
> "*(Sgd.)*
> JOSE S. BAUTISTA
> *Presiding Judge*."

It would seem that respondents Company and Union filed their respective motions for reconsideration of said decision, although these pleadings do not appear in the record. On February 26, 1959, the court en banc issued a resolution denying respondent Company's motion for reconsideration (nothing was said about the Union's motion) for failure to file arguments in support of its motion within the 10-day reglementary period prescribed by the rules of the court. No appeal was taken from this order.

On August 5, 1959, petitioners filed a motion for execution of the judgment, which was granted by the court, in its order of September 24, 1959. However, on September 26, 1959, the court en banc. in considering respondent Union's motion for reconsideration (of the order January 29, 1959) re-opened the entire case in a Resolution[2] the dispositive part of which states:

> "WHEREFORE, the motion for reconsideration is hereby granted; and this case is, therefore, remanded to the Trial Court to reopen this case, allow the respondents to cross-examine the witnesses already presented by the petitioners, and permit them to submit their evidence in support of their respective defenses.
>
> "SO ORDERED."

Against this resolution, petitioners have filed the present petition for certiorari.

The resolution in question can not be sustained, insofar as it directs the reopening of the case as to respondent Company. In the answer filed in behalf of the Company, it admitted that it dismissed the herein petitioners, but alleged that it did so upon demand of the respondent Union on the strength of the closed-shop clause of its collective bargaining agreement. The record shows that it did not appear in any of the dates on which the case was set for trial. The records further show that the Company's motion for reconsideration of the order (dated January 29, 1959) of the lower court directing the Company to reinstate the petitioners to their positions with back wages, was denied by the lower court, in its resolution en banc of February 26, 1959. Respondent Company did not appeal from said order or resolution; and the same, having become final and executory, petitioners, on August 5, 1959, filed a motion for execution of said order (of January 29), which the lower court granted, in its order of September 24, 1959. In the circumstances, the lower court committed a grave error in reopening the case as the respondent Company.

At this juncture, it may be stated that petitioners' dismissal by respondents Company is unjustified, considering that the closed-shop clause contained in the collective bargaining agreement it entered into with respondent Union is inapplicable to petitioners who were already in the Company's service at the time of its execution (I Francisco, Labor Laws [3rd Ed.] 374-375, citing Electric Vacuum Cleaner Co., NLRB No. 75 [1939], cited in II Teller Labor Disputes and Collective Bargaining, 867-868).

Respondent Company's claim that the order of January 29, 1959 is not a final order and, therefore, is unappealable is correct, only insofar as it directs the CIR Examiner to examine its (the Company's) books and records of accounts and services, in order to compute the back wages of petitioners, but not as the portion of said order directing petitioners' reinstatement with full back wages from the time of their respective dismissals to their actual reinstatement. To our mind, an order of reinstatement, unlike an award, becomes final, upon the expiration of the time of appeal, as it finally disposes of the pending action (for reinstatement), so that nothing more can be done with it in the Co. vs. Olsen, 48 Phil., 238; 1 Moran, Comments on the Rules of Court [1952] Ed. 894-895).

The aforementioned resolution should, however, be upheld, insofar as it orders the case reopened with respect to the respondent Union, and allows it to cross-examine petitioners' witnesses and submit evidence for its defense. Respondent Union's motion for reconsideration, it will be noted, was filed in due time, before the resolution became final. The records disclose some justification for the Union's failure to appear at the hearing of the case on January 21, 1959, which would indicate that the lower court committed no grave abuse of discretion as to constitute a reversible error. It appears that the previous hearings of the case were had before the CIR Hearing Examiner. Prior to the last date of hearing of January 21, however, the case was, without due notice to respondent union, withdrawn from the Examiner and assigned to CIR judge Jose S. Bautista. It is claimed for the union that due to the absence of said notice of the transfer of the hearing to the trial judge, respondent union failed to appear before the latter on said date.

Moreover, there is reason to reopen the case as to respondent Union, to afford it the opportunity to present evidence for its refusal or failure to admit petitioners as members thereof, considering that, as a rule, no laborer or employee has an abstract or absolute right to union membership (I Francisco, op. cit., 68-69, citing 31 Am. Jur. 861; 4 Am. Jur. 462; 97 ALR 594).

For all the foregoing, the resolution appealed from is reversed, insofar as it directs the reopening of the case as to respondent Company, but affirmed, insofar as it orders its reopening with respect to respondent Union. As to the latter, we hereby order the case remanded to the court a quo, for further proceedings consistent herewith. Without costs. It is so ordered.

Paras, *C.J.*, Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, Gutierrez David, Paredes and Dizon, *JJ.*, concur.

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[1] "Sec. 4. Unfair Labor Practices.

"a It shall be unfair labor practice for employer:

x x x

"4 To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage in any labor organization: Provided, That nothing in this Act or in any other Act or statute of the Republic of the Philippines shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section twelve;

x x x

"(b) It shall be unfair labor practice for a labor organization or its agents:

x x x

"(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (4) or to discriminate against an employee with respect to when membership in such organization has been denied or terminated on some ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members."

[2] A 3 against 2 resolutions, with Judge Tabigne, Martinez, and Victoriano, concurring, and Judges Bautista and Villanueva, dissenting.