SUPREME COURT
EN BANC

NATIONAL BREWERY & ALLIED INDUSTRIES LABOR UNION OF THE PHILIPPINES,
***Plaintiff-Appellant*,**

-versus-

G.R. No. L-18170
August 31, 1963

SAN MIGUEL BREWERY, INC., THE INDEPENDENT SAN MIGUEL BREWERY WORKERS ASSOCIATION and ALL OTHER UNKNOWN NON-UNION WORKERS OF THE SAN MIGUEL BREWERY, INC.,
Defendants-Appellees.
x----------x

D E C I S I O N

REGALA, *J.*:

This is an appeal directly coming from the Court of First Instance of Manila dismissing the complaint upon the petition of the defendant San Miguel Brewery Workers' Association.

This case presents a question of first impression in this jurisdiction, namely, the validity of a union agency fee as a form of union security.

Appellant National Brewery & Allied Industries Labor Union of the Philippines is the bargaining representative of all regular workers paid on the daily basis and of route helpers of San Miguel Brewery, Inc.

On October 2, 1959, it signed a collective bargaining agreement with the company, which provided among other things, that —

> "The COMPANY will deduct the UNION agency fee from the wages of workers who are not members of the UNION, provided the aforesaid workers authorizes the Company to make such deductions in writing or if no such authorization is given, if a competent court direct the COMPANY to make such deduction." (Art. II, Sec. 4)

Alleging that it had obtained benefits for all workers in the company and that "defendant Independent S.M.B. Workers' Association refused and still refuses to pay UNION AGENCY FEE to the plaintiff UNION and defendant COMPANY also refuses and still refuses to deduct the UNION AGENCY FEE from the wages of workers who are not members of the plaintiff UNION and remit the same to the latter," the union brought suit in the Court of First Instance of Manila on November 17, 1960 for the collection of union agency fees under the bargaining contract.

The lower court, in dismissing the complaint, held that there was nothing in the Industrial Peace Act (Republic Act No. 875) which would authorize the collection of agency fees and that neither may such collection be justified under the rules of quasi contract because the workers had not neglected their business so as to warrant the intervention of an officious manager. The trial court also held the rules of agency inapplicable because there was no agreement between the union and the workers belonging to the other union as to the payment of fee nor was there, said the court, any allegation in the complaint that the amount of P4.00, which the union sought to collect from each employee, was the expense incurred by the union in representing him.

Its motion for reconsideration having been denied, the union appealed to this Court.

The right of employees "to self-organization and to form, join or assist labor organization of their own choosing" (Sec. 3, Republic Act No. 875) is a fundamental right that yields only to the proviso that "nothing in this 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." (Section 4[a] [4])

The only question here is whether such an agreement is a permissible form of union security under Section 4(a) (4) as contended by the union.

In the case of General Motors Corp., 130 NLRB 481, the National Labor Relations Board was faced with a similar question. In that case, the union proposed to the company that employees represented by it and new employees hired thereafter be required as a condition of continued employment after 30 days following the date of the supplementary agreement or of their initial employment (whichever was later) to pay to the union a sum equal to the initiation fee and a monthly sum equal to the regular dues required of union members at each location. The company contended that the clause was illegal under Section 7 and Section 8(a) (1) of the National Labor Relations Act, as amended.[1]

In upholding the company's contention, the Board Held:

> "Any union-security agreement, including one providing for an agency shop, necessarily interferes with the Section 7 right of employees to refrain from assisting a labor organization, and encourages membership in a labor organization. Such an agreement is therefore clearly unlawful under Section 8(a) (1) and (3), unless it is saved by the proviso to Section 8(a) (3) of the Act. That proviso permits an employer to make an agreement with a labor organization 'to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective

date of such agreement, whichever is later. [Italic supplied] There is, however, no other provision in the Act which specifically legalizes the interference and encouragement inherent in an agency-shop arrangement, and the only question here is whether such an arrangement can be lawful under the National Labor Relations Act in a State like Indiana, where it is clear that an agreement requiring literal membership is prohibited by State law. To hold the agency shop lawful, one would have to conclude that Congress intended the word 'membership' in Section 7 and 8 (a) (3) to encompass not only literal membership, but also other relationships between employees and the union in the picture, while at the same time intending that the same word in Section 14 (b)[2] encompass only literal membership; or further, that Congress intended the word 'membership' to mean one thing in Indiana and a different thing somewhere else. Such reasoning I am not prepared to accept. Thus, the conclusion is inescapable that an agency shop arrangement, whatever its status under Indiana law, cannot be lawful under National Labor Relations Act in a State like Indiana where employment cannot lawfully be conditioned on literal membership.

"In support of their contention that an agency-shop agreement is lawful, the General Counsel and UAW rely on Public Service Company of Colorado, 89 NLRB 418, and American Seating Company, 98 NLRB 800. Such reliance seems misplaced as, unlike the instant matter, both cases involved a valid agreement, requiring membership as a condition of employment, which was protected under the first proviso to Section 8 (a) (3); and neither case involved a right-to-work jurisdiction. Significantly, in both Public Service and American Seating, no legal impediment existed to preclude the parties from entering into the contract requiring all employees to be union members, and they made such contracts. Thus they were free to waive membership and to require in lieu thereof some lesser form of union security, such as an agency-shop clause.

"The instant case is different in that, as indicated above, GM and UAW were not free under the National Labor Relations Act to require of Indiana employees union membership as a

> condition of employment, and so they were not free to require, as a condition of employment of such employees, any lesser form of union security, such as an agency shop. For one cannot waive a right he does not have."

It may be argued that the Board reached this conclusion in view of the right-to-work law of Indiana and that a different result might have been reached where, as in the Philippines, there is no right-to- work law. But the basic principle underlying the decision in that case equally applies here, namely, that where the parties are not free to require of employees membership in a union as a condition of employment, neither can they require a lesser form of union security. "For one cannot waive a right he does not have." And herein lies the error into which the union has fallen in arguing that the agency shop agreement in this case can be justified under Section 4(a) (4) because "the lesser must of necessity be included in the greater."

For although a closed-shop agreement may validly be entered into under Section 4(a) (4) of the Industrial Peace Act (National Labor Union vs. Aguinaldo's Echague, Inc., 51 O.G. p. 2899), We held that the same cannot be made to apply to employees who, like the employees in this case, are already in the service and are members of another union. (Freeman Shirt Mfg Co. vs. Court of Industrial Relations, G.R. No. L-16561, January 28, 1961.) Hence, if a closed shop agreement cannot be applied to these employees, neither may an agency fee, as a lesser form of union security, be imposed upon them.

It is true, as the union claims, that whatever benefits the majority union obtains from the employer accrue to its members as well as to non-members. But this alone does not justify the collection of agency fee from non-members. For the benefits of a collective bargaining agreement are extended to all employees regardless of their membership in the union because to withhold the same from the non-members would be to discriminate against them. (International Oil Factory Workers Union (FFW) vs. Martinez, et al., G.R. No. L-15560, Dec. 31, 1960).

Moreover, when a union bids to be the bargaining agent, it voluntarily assumes the responsibility of representing all the employees in the

appropriate bargaining unit. That is why Section 12 of the law states that "The labor organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

The union's contention that non-members are "free riders" who should be made to pay for benefits received by them is answered in the concurring opinion of Mr. Jenkin in the General Motors case, supra at 498, thus: "This statement of the limits to permissible encouragement of union membership restricts unions, in contractually guaranteeing their own financial security against 'free riders,' to agreements of the type contemplated by Congress, i.e., 'permitted union shop' or 'maintenance of membership contract,' both being agreements explicitly 'requiring membership.'"

And now We come to the next point raised by the union, namely, that non-members should be made to pay on the principle of quasi contract. The union invokes Article 2142 of the Civil Code which provides that —

> "Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another." (Italics ours)

But the benefits that accrue to non-members by reason of a collective bargaining agreement can hardly be termed "unjust enrichment" because, as already pointed out, the same are extended to them precisely to avoid discrimination among employees. (International Oil Factory Worker's Union (FFW) vs. Martinez, et al., G.R. No. L-15560, Dec. 31, 1960).

Besides, as the trial court held, there is no allegation in the complaint that the amount of P4.00 represents the expense incurred by the union in representing each employee. For the benefits extended to non-members are merely incidental.

Lastly, it is contended that the collection of agency fee may be justified on the principle of agency. In answer to this point, it may be stated that when a union acts as the bargaining agent, it assumes the responsibility imposed upon it by law to represent not only its members but all employees in the appropriate bargaining unit of which it is the agent. The Civil Code states that agency is presumed to be for compensation unless there is proof to the contrary. (Art. 1875). There can be no better proof that the agency created by law between the bargaining representative and the employees in the unit is without compensation than the fact that these employees in the minority voted against the appellant union.

WHEREFORE, the Orders dated December 6, 1960 and December 20, 1960 of the Court of First Instance of Manila are hereby affirmed, without pronouncement as to costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, and Makalintal, *JJ.*, concur.
Reyes, *J.*, reserves his vote.
Bengzon, *C.J.*, and Barrera, *J.*, took no part.

---

[1] Section 7 is similar to Section 3 of our Industrial Peace Act (Republic Act No 875), while Section 8 is similar to Section 4 of our law.

Section 7 provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement as requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3)."

Section 8(a) (1) and (3) provides in part that: "It shall be an unfair labor practice for an employer —

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

x x x

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or any of her statue of the United States, shall preclude an employer from making an agreement with a labor organization (not

established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later."

[2] Section 14 (b) provides that "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State of Territorial Law." The right-to-work law of Indiana provides that "No corporation or labor organization shall solicit, enter into or extend any contract, agreement or understanding written, or oral, to exclude from employment any person by reason of membership or non-membership in a labor organization to discharge or suspend from employment or lay off any person by reason of his refusal to join a labor organization.