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SECOND DIVISION

[G.R. No. L-25953. August 27, 1979]

VICENTE FORTICH, *petitioner, vs.* **COURT OF INDUSTRIAL RELATIONS and ARTEX DEVELOPMENT CO., INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COURT OF INDUSTRIAL RELATIONS; FACTUAL CONCLUSIONS REACHED ARE CONCLUSIVE AND WILL NOT BE DISTURBED IN THE ABSENCE OF A SHOWING OF ABUSE OF DISCRETION.— As was pointed out in *Phil. Education Institution v. MLQSEA Faculty Association,* Justice Laurel, "in the first decision, promulgated in 1939, concerning the scope of the power of this Court to alter factual conclusions reached by the Court of Industrial Relations, expressed the view that we should not disturb 'the findings of facts made by the Court of Industrial Relations ***.' A year and two months later on November, 1940, he was much more definite. Such findings 'are conclusive and will not be disturbed in the absence of a showing [of abuse of] discretion.'"

2. ID.; EMPLOYMENT; TENURE; ILLUSTRATED.— The fact that the probationary period of three months was extended for another two months did not change the temporary character of complainant's employment in the respondent company. This is more so because the reason for the extension had been clearly explained by no less than three witnesses for the respondent, including for that matter Mr. Ricardo Perez who, admittedly, was the very same person who introduced and recommended Mr. Vicente Fortich for employment with the respondent company and who, again, interceded for the complainant in having his services extended for another two months. *** Even the complainant himself was not certain whether or not he would be employed permanently or be fired out of job; that he was only told by the management that he could continue working; ** and he knew that there was no definite or fixed term for him to work as such. Under these circumstances, we are constrained to conclude that Mr. Vicente Fortich was employed by the

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respondent company only on a temporary (trial) capacity without any fixed tenure of employment and as such, his employment could be terminated at the pleasure of the employer, the respondent herein. Complainant was employed by the respondent company only on a temporary capacity without any fixed tenure of employment and as such, his employment could be terminated and as such, his employment could be terminated at the pleasure of the employer.

3. ID.; INDUSTRIAL PEACE ACT; LABOR UNION; CANNOT BE ORGANIZED BY INDIVIDUALS EMPLOYED AS SUPERVISORS.— A plant superintendent cannot lawfully organize a labor union composed of the men under his supervision. For being the plant superintendent and Chief Mechanical Engineer, as well as a key man in the respondent company, it cannot be doubted that he (Mr. Vicente Fortich) cannot lawfully organize a labor union [composed] of the men under his supervision. This prohibition is explicitly provided for in Section 3 of the Industrial Peace Act: '*** Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form a separate organization of their own.'

APPEARANCES OF COUNSEL

Mendoza & Hernandez Law Office for petitioner.
Emiliano Morabe for private respondent.

D E C I S I O N

FERNANDO, *C.J.*:

The present Constitution specifically protects security of tenure.[1] It was not so under the former Charter, but the mantle of protection to labor found in the 1935 Charter[2] did cover a

[1] According to the second sentence of Article II, Section 9 of the Constitution: "The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work."

[2] According to Article XIV, Section 6 of the 1935 Constitution: "The State shall afford protection to labor, especially to working women and

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situation where dismissal is arbitrary or improvident. It is in accordance with such a mandate that there is this specific provision in the Civil Code: "Dismissal of laborers shall be subject to the supervision of the Government, under special laws."[3] Even more to the point where this litigation is concerned is the provision of the Industrial Peace Act:[4] "It shall be unfair labor practice for an employer: *** To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."[5]

It is the contention of petitioner Vicente Fortich in this *certiorari* proceeding by way of review of a decision of the Court of Industrial Relations that his employment was terminated after five months of service as chief mechanical engineer and plant superintendent with private respondent, allegedly "no other cause than his active participation in the formation of the Artex Technical Union" as well as his active union membership.[6] Respondent Court, however, in its decision, concluded "that Mr. Vicente Fortich was employed by the respondent company only on a temporary (trial) capacity without any fixed tenure of employment and as such, his employment could be terminated at the pleasure of the employer, the respondent herein."[7] Moreover, it likewise concluded: "Consequently, the charge that his dismissal was due to union membership and activities therein is unfounded."[8] A motion for reconsideration having been denied, the matter was elevated to this Court in this *certiorari* proceeding.

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minors, and shall regulate the relation between land-owner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.".\

[3] Article 1710 of the Civil Code.

[4] Republic Act No. 875 (1953).

[5] *Ibid.* Section 4, par. (4).

[6] Petition, Annex A. 2.

[7] *Ibid.*, Annex C. 6.

[8] *Ibid.*, Annex C. 17.

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Notwithstanding the very able brief for the petitioner filed by the Mendoza and Fernandez law firm, with its exhaustive discussion of the legal issues involved, this Court, in the light of the facts as found, finds no justifiable basis for reversal.

1. On the question of whether or not petitioner Fortich had a fixed tenure of employment, the decision sought to be reviewed appraised the facts as follows: "From the foregoing, we are convinced that the complainant, Mr. Vicente Fortich, was employed in the respondent company as Chief Mechanical Engineer and Plant Superintendent only on a trial basis or in a temporary capacity. The fact that the probationary period of three months was extended for another two months did not change the temporary character of complainant's employment in the respondent company. This is more so because the reason for the extension had been clearly explained by no less than three witnesses for the respondent, including for that matter Mr. Ricardo Perez who, admittedly, was the very same person who introduced and recommended Mr. Vicente Fortich for employment with the respondent company and who, again, interceded for the complainant in having his services extended for another two months. *** Even the complainant himself was not certain whether or not he would be employed permanently or be fired out of job; that he was only told by the management that he could continue working; *** and he knew that there was no definite or fixed term for him to work as such. Complainant's pretense that he was already a permanent employee after the probationary period of three months is hardly acceptable for it does not jibe with the circumstances then obtaining in the respondent company as it was just starting operation with the advent or arrival of new machineries from abroad and everything was then on trial basis including for that matter the choice by the respondent company for a very high and responsible official to occupy the position of Plant Superintendent and Chief Mechanical Engineer. Under these circumstances, we are constrained to conclude that Mr. Vicente Fortich was employed by the respondent company only on a temporary (trial) capacity without any fixed tenure of employment and as such, his employment could be terminated at the pleasure of the employer,

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the respondent herein."[9] Such a finding of fact, supported as it was by substantial evidence, is entitled to full respect. So it has been decided by this Court time and time again. As was pointed out in *Phil. Educational Institution v. MLQSEA Faculty Association*,[10] Justice Laurel, "in the first decision, promulgated in 1939, concerning the scope of the power of this Court to alter factual conclusions reached by the Court of Industrial Relations, expressed the view that we should not disturb the findings of facts made by the Court of Industrial Relations ***.' A year and two months later on November, 1940, he was much more definite. Such findings 'are conclusive and will not be disturbed in the absence of a showing [of abuse of] discretion.'"[11] The 1939 decision is *Pambusco Employees' Union, Inc. v. Court of Industrial Relations*.[12] Then came in 1940 *Manila Electric Co. v. National Labor Union*.[13] The latest case in point, decided less than a year ago, is *National Labor Union v. Court of Industrial Relations*.[14]

2. Nor did respondent Court of Industrial Relations neglect to pass upon the claim of petitioner that his services were terminated for "no other cause than his active participation in the formation of the Artex Technical Union."[15] As noted at the outset, respondent Court reached this conclusion: "Consequently, the charge that his dismissal was due to union

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[9] *Ibid.*, Annex C, 4-6.

[10] L-24019, November 29, 1968, 26 SCRA 272.

[11] *Ibid*, 276.

[12] 68 Phil. 591.

[13] 70 Phil. 617.

[14] L-33725, August 31, 1978, 85 SCRA 62. Cf. *Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association*, L-24676, June 28, 1974, 57 SCRA 489; *Philippine Rock Products v. Phil. Association of Free Labor Unions*, L-32829, Aug. 30, 1974, 58 SCRA 730; *Dairy Queen Products Co. v. Court of Industrial Relations*, L-35009, Aug. 31, 1977, 78 SCRA 439; *NWSA v. NWSA Consolidated Unions*, L-32715, Sept. 30, 1977, 79 SCRA 246.

[15] Petition, Annex A, 2.

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membership and activities is unfounded."[16] It explained why: "Apparently, management came to know of this organization and so expressed its disapproval thereof on the claim that it is against the law. Elucidating on this point, Col. Mariñas, the personnel manager of respondent, on cross examination by counsel for the complainant, [petitioner] said: '[Atty. Mendoza] Q — so you had occasion to inform Mr. Castillo that the AFTO proposed to include both supervisors and workers. Is that right? A — I saw them in the list. Q — So you had occasion to inform Mr. Castillo that you saw in the list members and prospective members of the AFTO both workers and supervisors? A — Yes, sir. Q — That was before Mr. Fortich was separated from the company? A — Yes, sir. Q — Did Mr. Castillo not tell you or instruct you to do anything to stop the organization of the AFTO because it was against the law? A — Well, he just told me it was against the law and he did not want it like that. He feels we might be part of it. Q — That is all he told you? A — That is all he told' (t.s.n., pp. 69-71, October 1, 1962) That the AFTO is of mixed membership among the supervisors and ordinary workers is every explicit from the document evidencing the same. This fact is likewise admitted by no less than the complainant himself when he testified on direct examination as follows: 'Q — Who are those persons whom you approached to sign? A — Well, I approached the heads of the department as technicians. [The Court] The names? A — And then Mr. Soriano, I do not recall his first name — the superintendent of the Preparatory Department; Mr. Passion of the refrigeration department; Mr. Rueda, the spinning department; and then Mr. Ricardo Perez, the boiler superintendent and the electrician and many others. I could not recall all of them but I got in touch with the heads and subheads of the finishing department, a certain Mr. Acosta and Claro Romero, I approached those who are supposed to be technicians and personnel and all that.' (t.s.n., pp. 16-17, Dec. 17, 1960). Thus, the personnel manager of the respondent company further stated on the improper composition of the organization sought to be

[16] *Ibid.*, Annex C. 17.

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established: 'A — Because the title of the organization says it is a technicians organization and the members we found out are not technicians. You cannot expect the office to like it.' (t.s.n., pp. 20, August 25, 1962; also pp. 8 and 61, October 1, 1962). For being the plant superintendent and Chief Mechanical Engineer, as well as a key man in the respondent company, (p. 26, t.s.n., Jan. 27, 1963), it cannot be doubted that he (Mr. Vicente Fortich) cannot lawfully organize a labor union [composed] of the men under his supervision. This prohibition is explicitly provided for in Section 3 of the Industrial Peace Act: '*** Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form a separate organization of their own.' For this, a supervisor, the complainant for that matter, may be dismissed without subjecting the employer to prosecution under the Act. This is also the rule in the United States after whose law our own Industrial Peace Act has been patterned."[17] This is another finding of fact that must remain undisturbed. Consequently, the charge of private respondent having committed an unfair labor practice falls to the ground. So it was held in *Genconsu Free Workers Union v. Inciong*,[18] not only the latest case in point but also a reiteration of the applicability of such principle to a controversy, the proven facts of which display the closest similarity. Thus: "There is no occasion to pass upon the allegation in the petition that certain discriminatory acts, anti-union in character, could be attributed to private respondent. Respondent Deputy Minister of Labor and the National Labor Relations Commission absolved it from such a charge. That norm has invariably been followed by this Court."[19] Under the circumstances, the rather cogent presentation of the Mendoza and Hernandez law firm as to the limits that must be imposed on the power of management to terminate the service of a

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[17] Petition, Annex C, 7-9. The decision cited is *National Labor Relations Board v. Inter-City Ad. Co. of Charlotte*, 190 F. 2d 420 (1951).

[18] L-48687, July 2, 1979.

[19] *Ibid.*

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probationary employee to avoid an infringement on the security of tenure mandate need not be considered.

WHEREFORE, this petition for *certiorari* by way of review is dismissed and the appealed decision of the Court of Industrial Relations is affirmed. No costs.

Barredo, Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.

Santos and *Abad Santos, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. L-44831. August 27, 1979]

IN THE MATTER OF THE PETITION TO BE ADMITTED A CITIZEN OF THE PHILIPPINES, MARCELINO TIU, *petitioner-appellee, vs.* **REPUBLIC OF THE PHILIPPINES,** *oppositor-appellant.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; WHEN MOOT AND ACADEMIC IN NATURALIZATION CASES.— The appeal is dismissed, the case having become moot and academic with appellee Marcelino Tiu having taken his oath of allegiance and having been issued his certificate of naturalization on the dates above stated.

R E S O L U T I O N

FERNANDO, *C.J.*:

This is an appeal by the Republic of the Philippines from a lower court decision dated April 26, 1971, appellee Marcelino Tiu having been allowed by the order of July 11, 1975 to take