

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BOHOL UNITED WORKERS, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 299

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - -x

August 29, 1957

D E C I S I O N

This is an appeal from a decision of respondent Collector of Internal Revenue, assessing and demanding from petitioner the amount of ₱60,221.39 as stevedore's fixed tax, percentage tax, basic and additional residence taxes and surcharges on its gross receipts for the period from January 1, 1948 to June 30, 1954, plus penalty in the sum of ₱500.00, pursuant to sections 182, 183 and 191 and penalized under sections 208 and 209 of the National Internal Revenue Code and sections 1, 2 and 5 of Commonwealth Act No. 465 and penalized under section 12 in relation to sections 5 and 7 of the same Act.

It appears that petitioner, Bohol United Workers, Inc. (hereinafter referred to as BUWI for brevity), is a labor union duly registered with the Bureau of Labor in accordance with Commonwealth Act No. 213 and Republic Act No. 875, with principal office at Tagbilaran, Bohol. The purposes for which it was organized are to alleviate the conditions of

the workers, to promote mutual help and cooperation among the members thereof, to help any member in distress, to help the members get a vision of a more abundant life, to help the government carry out its Social Justice Program, to help the government promote strong and sound nationalism. Although the term "Inc." is appended to petitioner's name, it was not organized nor registered as a corporation with the Securities & Exchange Commission. One of the chapters of the BUWI is known as the Tagbilaran Chapter. This chapter derives its income from membership fees of ₱3.00 from each member, death aids received and contributions pertaining to the chapter which is equivalent to 2-1/2% of the gross wages of each member obtained from loading and unloading cargoes on vessels docking in the Tagbilaran Port and the loading and unloading of the same cargo on trucks for delivery to the warehouses of the cargo owners or shippers. The members of the Tagbilaran Chapter consisting of laborers are divided into two groups who work in shifts and each group is "supervised" by a "cabo-cabo" or "capataz" who is elected by the laborers from among themselves. In addition, each group elects from among themselves a group collector, a group treasurer and a group paymaster. The group collector collects from the shippers or cargo owners the amount due the laborers for their work, after which he delivers the said amount to the group treasurer who computes the share cor-

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responding to each laborer on the basis of share and share alike. In turn the money is transferred to the group paymaster who pays the laborers accordingly. The laborer-members return to the group treasurer 5% of their gross wages as their contribution to BUWI which amount is transmitted to the treasurer of the Tagbilaran Chapter who serves concurrently as Treasurer of BUWI. One half of said contribution (equivalent of 2-1/2%) is credited to account of the Tagbilaran Chapter and the other half (2-1/2%) is credited to and entered in the books of BUWI.

Upon examination of the books of the said Tagbilaran Chapter, the examiner of the Bureau of Internal Revenue, determined that BUWI failed to declare its said gross receipts for tax purposes and recommended accordingly an assessment of taxes in relation thereto. On the basis of the examiner's findings and recommendations, respondent Collector of Internal Revenue, in a letter dated December 27, 1954, and received by BUWI on January 11, 1955, assessed and demanded from the latter as stevedore's fixed tax, percentage tax, basic and additional residence taxes and surcharges on its gross receipts for the period from January 1, 1948 to June 30, 1954 the total amount of ₱60,221.39, computed as follows:

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2% tax on ₱1,072,684.80	
gross receipts from Jan.	
1, 1948 to Sept. 21,	
1950	₱21,453.70
3% tax on ₱878,980.26	
gross receipts from	
Sept. 22, 1950 to June	
30, 1954	26,369.41
Total percentage tax	₱47,823.11
25% surcharge thereon	11,955.78
Fixed tax, 1948-1954	70.00
	<u>₱59,848.89</u>

Add: Corp. Residence Tax:	
C- (Regular) ₱ 35.00	
C-1	263.00
	<u>₱298.00</u>
25% Surcharge	74.50
	<u>372.50</u>
Amount Due and Collectible	<u>₱60,221.39</u>

Upon receipt of the above assessment petitioner appealed the same to the Conference Staff of the Bureau of Internal Revenue for review. In compliance with the condition to the grant of a rehearing before the Conference Staff, BUWI through its President, Mr. Luis T. Clarin, executed a waiver of the statutes of limitations provided for in sections 331 and 332 of the National Internal Revenue Code. After due hearing, where petitioner herein presented evidence in support of its case, the members of the Conference Staff recommended that the assessment of December 27, 1954 be reiterated. This recommendation was approved by respondent and in a letter dated June 1, 1956 which was actually received by petitioner on June 20, 1956, the former demanded the payment of ₱60,721.39 as percentage tax, surcharge and penalty. Hence, petitioner filed its petition for review before this Court on July 18, 1956.

The principal issues involved in this case may be stated as follows:

1. Is the petitioner Bohol United Workers, Inc., liable to the stevedores fixed, percentage and residence taxes, including surcharge and penalty, imposed under the National Internal Revenue Code and Commonwealth Act No. 465, respectively? and if in the affirmative

2. Is the tax due for the period from January 1, 1948 to September 30, 1949 still collectible?

Proceeding to the first issue, in denying liability for such taxes, petitioner (maintains that it) did not act as stevedore-contractor as provided in section 191 (a) of the Tax Code on the ground that there never was any contractual relation between it and the shippers or shipowners, and that all its acts were confined within the legitimate functions of a labor union in accordance with Republic Act No. 875, otherwise known as the Magna Carta of Labor.]

Respondent on the other hand maintains that petitioner through its Tagbilaran Chapter, has actually engaged in the stevedoring business at the Tagbilaran Port because as a condition precedent for the employment of a laborer at the Tagbilaran Port, membership or affiliation with the BUWI is indispensable and it is petitioner which finds employment for its members and recommends to the shippers or shipowners, who should or should not be allowed to work at the Tagbilaran Port. Respondent further cites the following facts to be considered in support of its con-

tentions:- no laborer can be dismissed without the approval of petitioner; in case of failure of shippers to pay the laborer-members for the handling charges, collection thereof is made with the aid of petitioner's legal counsel; petitioner supplies laborers to casual shippers, such as government shippers.

We find no merit to the contention of respondent. The aforementioned acts of petitioner are legitimate functions of a labor union sanctioned by section 24 of Republic Act No. 875 and are within its powers as the sole and exclusive collective bargaining representative of all its laborers handling cargoes at the Tagbilaran Port. In fact, petitioner's character as a labor union with sole and exclusive right as collective bargaining representative has been established in Case No. 117-MC entitled "Bohol United Workers, Inc. vs. Lim Poh & Sons (Sweet Lines and Pablo Lim), et al.", of the Court of Industrial Relations. We quote hereunder the pertinent portions of its Order (Exhibit D, petitioner) dated July 2, 1956:-

"This is a petition filed by the Bohol United Workers, Inc., a legitimate labor organization, hereafter referred to as BUWI, seeking that it be certified as the sole collective bargaining agent of all laborers handling the cargoes of the respondents at the wharf in Tagbilaran, Bohol.

"x x x x

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"All the respondents, with the exception of Caltex (Phil.) Inc., do not dispute petitioner's allegation that its members are in their employ as handlers of respondent's goods or cargoes and have manifested that they will abide by whatever decision the Court may render. The Court finds, therefore, that the members of the BUWI are employees of these respondents.

"x x x x

"Lim Poh & Sons admits that the affiliates of petitioning union have been handling the cargoes of its vessels but, nevertheless, opposes the petition mainly on the grounds that the relation between them is not only temporary because their services have been merely tolerated but marked with discord as well and that the relief sought by petitioner, if granted, would permit monopoly of the loading and unloading work by only one labor group and unduly restrict 'free enterprise for capital and labor'. It is contended by the partnership that it has the absolute right to terminate at will its relation with the BUWI and determine for itself the person or persons it desires to employ.

"The stand of respondent carrier is untenable. From its own admission and as further established by the evidence, the workers affiliated with the petitioner are employees of Lim Poh & Sons and for this reason, it is immaterial whether or not their relations is temporary or harmonious. Moreover, while certification results in monopoly of representation by one labor organization for purposes of collective bargaining for some period of time, it does not necessarily forbid or prevent the formation or continued existence of other labor groups within the same bargaining unit. Finally, the fact that an employer has the right to hire and fire employees does not preclude a union of employees from applying for certification.

"There is only one kind of work involved in this case; loading and unloading of cargoes on and from vessels operated by respondent Lim Poh & Sons and hauling them from the dock to the warehouses of their owners or consignees or vice-versa. The Court finds, and so holds, that the unit appropriate for collective bargaining is that composed of all the laborers doing this work for the benefit of all the respondents [except Caltex (Phil.) Inc.].

"The petitioner was organized shortly after liberation. It is composed of not less than 400 laborers, most of whom have for many years been continuously working for the respondents as stevedores.

"x x x x

"Under these facts, and considering the entire record of the case, the Court is convinced and, therefore, finds that the petitioner has been designated or selected for the purpose of collective bargaining by the majority of the laborers in the unit described above.

"IN VIEW OF THE FOREGOING, the Bohol United Workers, Inc. is hereby certified in respondent Lim Poh & Sons as the sole and exclusive collective bargaining representative of all the workers engaged by it for the loading and unloading of its vessels in the port of Tagbilaran, Bohol. The same labor organization is likewise certified as the sole and exclusive collective bargaining agent of all the laborers handling cargoes in said port, in respondents (names omitted)."

The foregoing determination made by the Court of Industrial Relations is controlling in the matter of petitioner's status. In there, the members of BUWI have been found to be employees or laborers of the shipowners or the owners of

cargoes handled at the Tagbilaran Port. While the members individually perform the work of handling the loading and unloading of cargoes at the Tagbilaran Port and are the stevedores themselves, BUWI merely serves as a labor union or organization to protect its members and cannot be said to be engaged in the stevedoring business itself.

Although BUWI also supplies laborers to casual shippers in the Tagbilaran Port, we are inclined to agree with petitioner that on this matter the latter merely acted as an information center to such casual shippers who are not well versed with the procedures followed at the Tagbilaran Port. As a matter of fact, there is no showing that a contract for handling was entered into by petitioner and the casual shippers.

In further support of the theory that petitioner acts as a stevedoring contractor, respondent cites the fact that claims for damages to cargo loaded and unloaded by union members are presented to the union and the latter advanced the payment for damages. However, we find this to be but a matter for the convenience of the cargo owners and for the protection of the union. It appears that the claim for damages is presented to petitioner in order that it may investigate the same and pinpoint the person or persons responsible for damage.

In most instances the union member concerned has no ready cash to answer for the damage, hence BUWI advances the same, but the amount so paid is collected from the laborer or laborers found responsible therefor. Liability for such damage is borne personally by the laborer-member at fault and not by petitioner.

Respondent presented and capitalizes upon a copy of an alleged receipt (Exhibit 6, p. 51 BIR records) purportedly issued by petitioner to a merchant-shipper for the payment of handling service. This alleged copy of receipt bears a certification by the revenue examiner that it was copied from petitioner's record. However, respondent did not call upon Uy Kee, the merchant-payee to testify as to the party with whom he had entered into a contract for the handling of his cargo. The receipt in question at most shows only that payment was made by the cargo owner and received by BUWI which collection is in accordance with the procedure of the union as outlined earlier above.

Respondent cites in support of its contention three (3) cases involving stevedoring. The first case cited is that of Cebu Arastre Service v. Collector of Internal Revenue, G.R. No. L-7444, May 30, 1956. We believe this case is not applicable to the instant case because the Cebu Arastre Service directly contracted with cargo owners for

the handling of cargoes, collected payment from the cargo owners, and paid the laborer-members on its own account as an employer. In the case at bar the members were employees of the cargo owners and the laborers themselves collect from the cargo owners for their services. The petitioner has further no intervention in the distribution of the payment for the handling service to the laborers-members, except to insure the collection of the contribution due from each member, which it is entitled as a labor union. Neither is the case of Agusan Stevedoring Union v. Collector of Internal Revenue (C.T.A. Case No. 18, November 18, 1945) applicable because, in that case, the Agusan Stevedoring Union designated the "foreman", "tallyman", "checkers", etc., who managed the loading and unloading. In the instant case, the "capataz" and other officers of each group of laborers are elected by the members of the group and are only confirmed afterwards by BUWI. Hence, the responsibility of the group officers is directly towards the members of each group and not to BUWI. The last case cited is Union Obrera Makabayan vs. Collector of Internal Revenue (B.T.A. Case No. 177, September 22, 1954). We also find this case inapplicable to the present case because in the former case it was the petitioner organization itself that entered into a contract of handling

cargoes with the shippers, while in the instant case, as aforesaid, the contract of handling was directly entered into with the shippers or by the laborers themselves or through their chosen "capataz" and not by petitioner. And as a final but common distinction from the three aforesaid cases, the laborers in these cases were employees of the stevedoring contractor and the latter transacted on its own with the shipowners and cargo owners whereas in the case at bar, the laborers are employees of the shipowners or cargo owners.

Finding as we do hold that petitioner BUWI is a legitimate labor union and not engaged in stevedoring business, it follows that it is not liable for the payment of fixed and percentage taxes imposed by Sections 182 and 191 of the Tax Code on stevedores nor of the residence tax under Section 2 of Republic Act No. 465.

In view of the finding that BUWI is not a stevedoring contractor under Section 191 (a) of the National Internal Revenue Code and therefore not liable for fixed, percentage and residence taxes, the other issue in this case - whether or not the tax due for the period from January 1, 1948 to September 30, 1949, may still be collected - becomes moot and academic.

IN VIEW OF THE FOREGOING, the decision of

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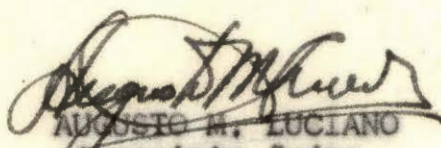
the respondent appealed from should be, as it
is hereby reversed, without pronouncement as to
costs.

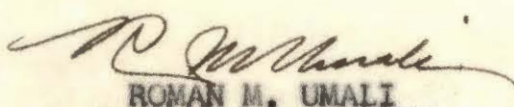
SO ORDERED.

Manila, Philippines, August 29, 1957.


MARIANO NABLE
Presiding Judge

WE CONCUR:


AUGUSTO M. LUCIANO
Associate Judge


ROMAN M. UMALI
Associate Judge