THE FEDERATION OF LABOR UNIONS, by and thru its Secretary General, AMOS N. GRAY, and **ROBERTS INTERNATIONAL AIRPORT WORKERS' UNION,** represented by BEYAN BOKAI, President, Respondents/Appellants, v. **THE ROBERTS INTERNATIONAL AIRPORT MANAGEMENT,** by and thru its General Manager, JOSEPH P. LAWRENCE, Petitioner/Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY.

Heard: November 25, 1987. Decided: February 25, 1988.

1. Employees of public corporations are not government employees as are employees of government ministries or agencies, and as such employees of public corporations are governed by the Labor Laws of Liberia rather than the Civil Service Act.

2. The voluntary acquiescence by an employer in recognizing its employees' representative organization as a labor union negates anything the employer says or does by way of a denial.

The Roberts International Airport Management, appellee herein, petitioned the National Labour Court for a restraining order against the appellants Labor Unions to restrain them from carrying out their threats of withholding the collective services of their members from the appellee. The basis of the petition were three-fold: (a) that the appellee was a government agency under the umbrella of the Ministry of Commerce, Industry and Transportation, and therefore governed by the Civil Service Law rather than the Labor Laws of Liberia; (b) that appellee was unaware of the existence of the appellant being labor unions within its plants; and (c) that the act of the appellants/respondents in organizing a labor union within its plant and attempting to withhold the services of appellee's employees from it through strike actions was in violation of section 4503 of the Labor Practices Law of Liberia.

The Labour Court Judge agreed with the petitioner/appellee, ruling that the employees of the petitioner/appellee were in fact employees of a government agency and that as such had no right to strike. An appeal by the unions to the Supreme Court was granted, but with the proviso that the restraining order imposed by the court would remain in effect pending the disposition of the case by the Supreme Court.

After a hearing, the Supreme Court reversed the ruling of the Labour Court, holding that the management service contract between the appellee and the Government of

Liberia and the personnel policy manual clearly indicated that the appellee was not an agency of the government and was intended to function, with respect to its employees, in the same manner as the average public corporation. Under the former instrument, the Court noted, the appellee had the right to set its own guidelines, the government obligated itself to indemnify and reimburse the appellee for certain losses and expenses, and the employees were to be treated the same as with other public corporations. All of these, the Court *said,* were acts not done with respect to government ministries and clearly indicated that the appellee was not a government agency as with government ministries.

The Court determined further that under the latter instrument, the personnel policy manual, the appellee recognized by the expressed provisions contained therein that its employees were governed by the Labor Laws of Liberia. Moreover, the Court said, the appellee had in communication with the appellants acquiesced in the representations made by the appellants by complying with certain activities of the appellants and the employees such as payroll deductions and transfer of the deductions to the appellants, as was only done with institutions and organizations which were not agencies of the government and as provided by the Labor Laws of Liberia.

The Court observed also that the appropriate government agency, the Ministry of Labour, had acted to certificate and recognize the respondents/appellants as labor unions for the employees of the appellee, clearly showing that they were governed by the Labor Laws of Liberia. The Court opined that in the face of all these evidence, the appellee had the burden of proving that its employees were not governed by the Labor Laws of Liberia. This burden, the Court noted, the appellee had failed to meet.

Accordingly, the Court ruled that the appellee was not a government agency, and that as such it was governed and controlled by the Labor Laws of Liberia, and that its employees were therefore entitled to all the rights and benefits provided for employees under the Labor Laws of Liberia. In respect of the foregoing, the Court reversed the ruling of the Labour Court judge.

M Kron Yangbe appeared for respondents/appellants. *Julius Adighibe* of the Adighibe Law Firm appeared for petitioner/ appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

During the May Term, A. D. 1986, of the National Labour Court for Montserrado County, Liberia, Roberts International Airport (RIA), now petitioner/appellee, filed a petition praying for the issuance in its favour of a restraining order against the Federation of Labor Unions and RIA Workers' Union, now respondents/appellants, to restrain them from carrying out their threat to withhold their collective services from the appellee. The grounds advanced by the petitioner for the request were the following: (a) that the RIA Management, the petitioner/appellee herein, is a government agency operating under the umbrella of the Ministry of Commerce, Industry & Transportation within the Republic of Liberia; (b) that RIA was unaware of the formation and existence of the co-respondent/co-appellant Roberts International Airport Workers' Union as a labor union within its plant; and (c) that the act of the co-respondent in organizing and attempting to withhold the petitioner's employees services from the petitioner through strike actions was in violation of section 4503, subsections "a" and "b" of the Labor Laws of Liberia.

In their returns to the appellee's petition, the appellants denied that RIA is an agency of the Government of Liberia operating and functioning under the Ministry of Commerce, Industry & Transportation, or any other similar agencies of the government. The appellants also contended in their returns that the employees of RIA were not covered or controlled by the Civil Service Law of Liberia; that on the 3rd day of July, 1985, the Ministry of Labour issued a certificate in favour of the RIA Workers' Union, the co-appellant herein, conferring upon it the right to bargain and negotiate with the RIA management on behalf of its members; that the appellee be ordered to reinstate those workers of RIA who had been declared redundant; that the petition for a restraining order be denied; and that the appellee be ordered to comply with the decision of the Ministry of Labour, from which the petitioner did not appeal; and that the appellee be made to recognize the co-appellant Federation of Labor Unions as the sole bargaining agent for the RIA Workers' Union.

After pointing out the positions and contentions of the respective parties as laid down in the petition and the returns, the trial judge recognized the following as the issues or questions for determination:

"1. Whether or not the RIA Workers' Union has the right to strike, and if so, whether or not it will be in the best interest of the Government of Liberia as the sole owner of the RIA management in keeping with the management service contract, *supra?*

2. Whether or not this court has jurisdiction to order the petitioner to comply with

the decision of the Labour Ministry and to recognize the respondents, RIA Workers' Union?

3. Whether or not this court has the right to order the reinstatement of the members of the RIA Workers' Union that were affected by the redundancy scheme?"

Judge Williams raised in his ruling what he referred to as "questions" and in discussing them, he cited the Labor Practices Law, 18-A:4506, under the caption Strikes against the Government, and the management service contract entered into between the RIA and the Government of Liberia. On the issue of strikes by the appellants against the appellee, the judge, without providing any reasons, reached the conclusion that the "RIA workers, being employees of an agency of the Government of Liberia, have no right whatsoever to strike." He reached this conclusion even though a reading of the entire ruling suggests that the appellants were covered by the Labor Laws.

Moreover, although in his unreasoned ruling, the trial judge touched on the issue of what he referred to as the "jurisdiction of this court to order and compel the petitioner to comply with the decision of the Ministry of Labour", yet he left it undetermined, that is, he failed to even attempt to furnish an answer. Judge Williams also refused to pass upon the important and crucial issue regarding the recognition of the right of the appellants to unionize, using as the ground for his inaction that very issue was still pending before the president of Liberia. The judge, in maintaining this position, indeed contradicted himself. For example, while refusing to pass upon the issue as to whether the respondents had the right to form a union, Judge Williams concluded his ruling thus: "Wherefore, and in view of the facts, circumstances and the law in this proceeding, this court is hereby granting the petition filed by the petitioner and the respondents are hereby restrained, prohibited and prevented from holding their collective services in the premises of the petitioner, RIA Management . . ." To this ruling, the appellants excepted and announced an appeal therefrom. Although the appeal was granted, the trial judge emphasized that the restraining order would remain in full force until this court had heard the appeal.

In their eleven-count bill of exceptions filed in the court below, the appellants embedded therein several irregularities committed by the trial judge, relevant among which are the following:

1. That the trial judge erred in denying the motion to vacate the restraining order after it was in force over and above ten days, in violation of the Civil Procedure Law, Rev.

Code 7.64(2).

2.That the request of the appellee for a restraining order against the appellants should have been denied since the said petitioner had contended and argued that it, the appellee, was governed by the Civil Service Law an not the Labor Laws.

3.That the judge erred in granting the petition for a restraining order while at the same time maintaining the position that because the case was before the president of Liberia, he could not pass upon the question as to whether the appellants had the right to organize themselves into a union.

4. That in accordance with the management agreement entered into by the Government of Liberia and RIA, and the handbook of the RIA management, the activities of the parties were governed by the Labor Laws of Liberia.

5. That although the trial judge identified several issues, yet he failed to pass upon any of them.

Recourse to the records in this case show that the above five contentions of appellants are sound and have support in said records.

According to the records in this case, the parties have raised one primary issue, which is: "Whether or not the respondents, employees of the petitioner, are covered by the Labor Laws of Liberia. The trial judge had ruled that they were not covered by the Labor Laws, they being employees of a government agency. This is the contention that was strenuously argued and urged upon this court by the petitioner. We believe that the answer we give to this basic question will determine all of the others questions.

The petitioner and the trial judge relied upon the management service contract entered into by and between the Government of Liberia, represented by the Minister of Commerce, Industry & Transportation and the Minister of Finance, on one hand, and Pan Am World Services, Inc. (PAWS), a Florida corporation, on the other, in holding that the respondents are employees of the government, the same as any of the ministries of government. Therefore, they said, the employees are not covered by the Labor Laws of Liberia.

The respondents, in resisting this contention in both their bill of exceptions and brief argued before this Court and seriously contended that the fact that the respondents

were employees of a company which had a management service agreement with the Government of Liberia did not *ipso facto make them* civil
Servants, and thus did not deprive them of their rights under the Labor Laws. In support of this contention, they relied upon the management service contract itself, herein referred to, and other documentary evidence found in the record. These documents form the basis of our opinion in this case.

A recourse to the management service contract has certainly illuminated the issues raised by the parties. For instance, article 4(1) of said contract provides:

"In the performance of its obligation under this Agreement, PAWS should be permitted to hire, set salary rates, and suspend or dismiss personnel; except in the case of the manager or managers, no dismissal shall be made without a hearing or final approval by the Minister. No person shall be appointed to any management position (i.e. a position at or above the level of a position having the nomenclature 'manager' in its title, but not including any position below manager in level, e.g., 'assistant manager, deputy manager', etc., except in accordance with the following procedure."

The paragraph just quoted indicates that the petitioner was set up and intended to function, with respect to its employees, in the same manner as the average public corporation, whose employees are governed by the Labor Laws of Liberia.

Another provision of the management service contract which addresses the central issue raised by the parties is article VI. The first paragraph of this Article provides, and we quote:

"In consideration for PAWS management and operation of the airport the Government hereby releases PAWS and its officers, agents, and employees from all liabilities to the Government, except injury, loss or damage occasioned by gross negligence, wilful misconduct or criminal act by PAWS or its employees, and agrees to indemnify PAWS for and hold it harmless from all claims, suits, judgments, damages, liabilities and losses, including but not limited to all causes and reasonable attorney's fees." (Emphasis supplied) .

This paragraph from the contract relied upon by both parties and the lower court lends support, in our opinion, to the contention by the respondents that they are covered by the Labor Laws and should be accorded all the rights and privileges provided therein. The word "indemnify", to which we have supplied emphases in the

paragraph quoted means, in this context, that the petitioner will be reimbursed by the Government for the kind of claim or claims which the respondents have asserted against the petitioner. As a matter of fact, it is common knowledge that claims of this kind are usually included in the budget of the corporation.

The Court says that the contention of the petitioner to the effect that its employees are government employees to the same extent as employees of the Finance Ministry, the Foreign Ministry, or other similar ministries, is a misrepresentation of the facts; for, there is no ministry or agency of government which has entered into a contract such as the one herein involved under which the government obligates itself to indemnify the ministry or its head, as in the instant case, except in cases of public corporations.

Still, another provision of the management service contract which has convinced us that the employees of the petitioner are not to be treated differently from those of public corporations, as far as the claims herein are involved, is article VIII(1), which provides that "PAWS shall prepare a budget in accordance with guidelines established for public corporations encompassing the operations, management and development of the airport on an annual basis. The budget when completed will be submitted to the government for approval." As far as the Court is aware, and no evidence was produced in the records to the contrary, no ministry or agency of government is given the right of establishing guidelines similar to those governing public corporations.

Another provision which distinguishes the petitioner from the standard government ministries is article IX. In this article, the petitioner is guaranteed reimbursement by the government for all operating costs incurred in the course of its operation. The article also guarantees to the petitioner a management fee. Therefore, as can be seen clearly, the reliance on the part of the petitioner and the trial court on the management service contract in concluding that the respondents are governed by the Civil Service Laws and not by the Labor Law is, in our view, without any support.

The records certified to this Court also show that the respondents/unions herein had earlier been certificated by the appropriate agency of government, the Ministry of Labour. On July 3, 1985, a letter of recognition was addressed to Mr. Beyan M. Bokai, president, Roberts International Airport Workers' Union, Harbel, Margibi County, by Mr. M. Carrington Samuels, Assistant Minister for Trade Union Affairs, Ministry of Labour.

In 1984, Mr. Beyan M. Bokai, as chairman of RIA Workers' Association, Robertsfield, Liberia, addressed a letter to Mr. J. D. Pollock, general manager of RIA, reminding him of the fact that their association had met and agreed that the management should authorize the finance department of the company to deduct the amount of $1.00 from each of the employees monthly salary as monthly dues to be used by the association. As a recognition of the co-respondent union as an association, contrary to the contention raised by petitioner and the trial judge that respondents are not covered by the Labor Laws and therefore could not organize themselves into a union, and that even if they did, petitioner would be justified in refusing to extend them legal recognition, Mr. J. D. Pollock, on September 26, 1984, wrote to Chairman Bokai acknowledging receipt of his letter regarding the deductions and promising him that the said deductions would be made as requested. The relevant paragraphs of the aforesaid letter read:

"Our comptroller assures us that the earliest such a scheme can be introduced is in November 1984. This is due in a large measure to the change over from the old computer to the *new* one, and the necessary pre-planning involved. Management also wishes to inform you that no advance payment is permissible at this time, and the association will therefore only have access to those funds already collected from the employees.

As the deduction is a monthly occurrence, a check will be made in the association's name, as you have requested, and made available whenever the month-end pay is issued.

The letter continues:

"It should also be clearly understood that accountability of the conies of those employees who have elected to authorize the deduction will be the sole responsibility of the officers of the association. RIA Management involvement in the voluntary deduction process will cease when the monthly checks are relinquished to the association."

The voluntary acquiescence by the appellee in recognizing the co-appellant as a union negates anything it says or does by way of a denial. Hence, we see "action" speaking louder than "words".

The above letter and others found in the records have clearly convinced us that the petitioner did, as early as 1984, recognize the co-respondent as a union.

Again, a recourse to the records also shows that on February 28, 1986, the then Minister of Labour, Honourable John C.L. Mayson, addressed a letter to the general manager of RIA, Robertsfield, Harbel, Margibi County, effectively indicating the ministry's recognition of the co-respondent as a legitimate labor union. We hereby quote the said letter:

"IMF-ADM-37/'86 February 28, 1986 Mr. Manager;

The President-General and Secretary-General of the Liberian Federation of Labor Union, Messrs. Esmael A. Sheriff and Amos N. Gray, Sr. respectively, have filed a complaint against your management for declaring the entire executive board members of their affiliated union redundant without any reference to either the federation or the Ministry of Labour.

The Ministry has a policy that any management who wishes to declare its employees redundant should submit their names, tenure of service, and salaries to the Ministry of Labour who in turn will even ask for the balance sheet of that establishment to substantiate the fact that they have the right to declare their workers redundant.

We note with grave concern that you have taken a unilateral decision without any reference to either the union or the Ministry of Labor and this we class as a gross violation of the Labour Laws of this country.

In view of the above we want to inform you that your action is hereby considered null and void without any effect and that you should recall those employees that you have taken this unilateral decision against and instal them to their respective positions without delay.

Kind regards,
Very truly yours, /s/ John C. L. Mayson /t/ John C. L. Mayson
MINISTER OF LABOUR

The General Manager
Roberts International Airport,
Robertsfield, Harbel
Margibi County, LIBERIA"

We had said earlier in this opinion that we would rely primarily on the records

certified to us by the trial court. From the said records, it is crystal clear that the Ministries of Labour and Commerce, Industry & Transportation have not viewed the issues raised by the parties from one common perspective, and therefore have not spoken with one voice. For instance, on May 2, 1986, Honourable McLeod I. Darpoh, then Minister of Commerce, Industry & Transportation, addressed a lengthy letter on the subject to her counterpart at the Ministry of Labour. For the benefit of this opinion, we herewith quote some excepts from it:

"The Honourable
The Minister of Labour
Ministry of Labour
Monrovia, Liberia

Mr. Minister:

Reference is made to your findings and decisions of April 25, 1986 in the matter of the workers of Roberts International Airport versus R.I.A. Management. We are rather taken aback by the 'findings and decisions', for our impression had been that we would seek, at the ministerial level, to gain the positive sanction by your Ministry of our position which is to the effect that the RIA is an agency of the government of Liberia, supervised and controlled by the Ministry of Commerce, Industry and Transportation....

In any event, we herewith note that as supervising and controlling managers of the RIA, the Ministry of Commerce, Industry and Transportation registers for and on behalf of the RIA, its serious exceptions to the findings and decision referred to herein above, and request, in the premises, that the matter be forwarded to the appropriate personnel for judicial adjudication and disposition, the object being that evidence will be taken and records made to provide our courts with the opportunity of resolving the issue as to whether RIA can or cannot be unionized and whether the recent government scheme of redundancy applies to it.

We note several reasons for the appeal. The first is that you have completely ignored the fact that the RIA is 100% owned, operated and controlled by the government of Liberia, through the Ministry of Commerce, Industry and Transportation. That RIA being thereby an agency of the Government, and lacking accordingly a board of directors, all policy decisions are taken by the government, through its supervising agency, the Ministry of Commerce, Industry and Transportation. As far back as 1981, this was brought to public notice, copy of which is hereto attached The Labor Laws

of Liberia clearly sets forth that employees of Government are not subject to application of that law.

The failure by the RIA to conform to the civil service regulations is a matter to be handled between the Ministry of Commerce, Industry and Transportation and the Civil Service Bureau. It is not a matter that can be used by the Ministry of Labour to support the decision under review. We hereby give notice that the redundancy exercise will remain in force until a final judicial determination is made of the dispute.

Kind regards,
Sincerely yours,
/s/ McLeod E.I. Darpoh
/t/ McLeod E.I. Darpoh
MINISTER
cc: Ministry of Justice".

Despite the materials we have quoted above, which form a cogent portion of the records in this case, the petitioner still averred in count two of its petition for a restraining order, that there was no organized union within the plant of the petitioner, RIA.

Finally, we come to the core of the documentary evidence, the Roberts International Airport Personnel Policy Manual, dated November 1, 1985, and approved by the former Minister of Commerce, McLeod E. I. Darpoh. The document was proferted by the appellee.

The appellee contended in the court below and tried to prevail upon us that because "RIA was 100% owned by the Government of Liberia", it enjoys the same rights and treatment not as a public corporation, but as a ministry of the Government. In that connection, RIA maintained that its employees' activities and operations are governed and controlled by the Civil Service Law of Liberia, instead of the Labor Laws of Liberia. The appellants attacked this argument of RIA as being fallacious. If you are not governed by the Labor Laws, then why did you come to the Labour Court for redress, a restraining order?", they queried. Of course, His Honour Judge Arthur K. Williams did not address or pass upon this issue and many others in his ruling.

Section 6.01 of the personnel policy manual of RIA, under "policy", at page 1, provides: "It is the policy of Roberts International Airport to treat employees in accordance with Labor Practices Law of Liberia and the Regulations of Labor of the

Republic of Liberia. All department heads should be familiar with the provisions of the Liberian Labor Laws" (Emphasis supplied).

The Liberian Civil Procedure Law provides that: "All admissions made by a party himself or by his agent acting within the scope of his authority are admissible." Rev. Code 1:25.8(1). The provision of the personnel policy manual of RIA does support our holding that RIA has not only failed to carry the burden of proof. *Ibid,* at 25.1, but that by its own admission, it is governed and controlled by the Labor Practices Law of Liberia and not by the Civil Service Law of Liberia. The appellants are therefore entitled to enjoy all the rights and benefits provided for employees under the Labor Laws of Liberia.

Therefore, in view of the foregoing, and the authorities cited herein, the ruling of the trial judge is hereby reversed. The appellants may, if they so desire, *commence de novo* within the Ministry of Labour any action which they may have against the appellee within the Ministry of Labour. Costs in these proceedings are disallowed. And it is hereby so ordered.

Ruling reversed.