# ANNUAL REVIEW OF 1989 SUPREME COURT LABOR DECISIONS

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## Appeal

In *SM Agri and General Merchandise v. National Labor Relations Commission*,[1] the Supreme Court reiterated the ruling that the 10-day period provided in Article 223 of the Labor Code for perfecting an appeal refers to 10 calendar days and not 10 working days. This means that Saturdays, Sundays and legal holidays should not be excluded but included in counting the 10-day period. This is in line with the objective of the law to expedite the disposition of labor cases to protect the interest of the working man. The Court said, however, that when the last day for filing an appeal falls on a legal holiday it can be filed the next business day following said legal holiday. This ruling was reiterated in Leoncito Pacaña v. National Labor Relations Commission.[2]

*Chong Guan Trading v. National Labor Relations Commission, et al.*,[3] interpreted the 10-day rule more liberally. In this case, while the appeal was not filed within the 10 working days from receipt of the decision, it was still given due course because the counsel of private respondent relied on the footnote on the notice of the decision of the Labor Arbiter stating that the aggrieved party may appeal within 10 working days as per NLRC Resolution No. 1, Series of 1977.

## Attorney's Fees

Under the Labor Code, no attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations, or conclusion of the collective agreement shall be imposed on any individual member of the contracting union. However, attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the

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[1]G.R. No. 74806, 169 SCRA 20 (1989).

[2]G.R. No. 83513, 172 SCRA 473 (1989).

[3]G.R. No. 81471, 172 SCRA 831 (1989).

contrary shall be null and void.[4] It should also be noted that the Labor Code considers it an unfair labor practice for the employer to pay negotiation or attorney's fees to the union or its officers or agent as part of the settlement of any issue in collective bargaining or any other dispute.[5]

Thus, the Supreme Court has held that where the union was represented by its president and lawyer in its collective bargaining negotiations with the bank which eventually resulted in a compulsory arbitration award on the terms of the new collective bargaining agreement, the professional fees of the lawyer should not be assessed against and deducted from the retroactive benefits of the individual employees but should be paid out of union funds.[6]

The prohibition against the assessment of attorney's fees and negotiation fees of any kind arising from any collective bargaining negotiations or conclusion of the collective bargaining agreement from the individual members of the contracting union apparently does not apply to settlement of other labor cases. This is illustrated by the decision in *Radio Communication of the Philippines. vs. Secretary of Labor and Employment.*[7]

In this case, the URC-PICLA, the bargaining agent of the Company's employees oppposed the Company's application for exemption from the provisions of Wage Order No. 1 and won on behalf of the employees an award for their wage differentials. The bargaining agent was subsequently awarded a union's service fee equivalent to 10% of the awarded amounts and petitioner was held solely liable for the payment of such fee. The Company subsequently concluded a compromise settlement of the wage differentials with the new bargaining agent of its employees under which the employees were to be paid 30% of the award with the remaining 70% to be renegotiated by the parties. Despite the favorable terms of the compromise agreement, the Company subsequently paid the amount of the award to the employees in full but refused to deduct the union service fee from the award or payment to the employees. The company was subsequently held liable directly for the payment of the union's service fee over its claim that it could not have validly deducted the union service fee from the amount due the employees without their individual written authorizations. The Court said:

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[4]LABOR CODE,as amended by REP. ACT. 6715, Art. 222 (2)(b) unless otherwise stated, provisions cited in this survey refers to the same Code.

[5]Art. 248 (h).

[6]Pacific Banking Corporation v. Clave, 128 SCRA 112 (1984).

[7]G.R. No. 77959, 169 SCRA 38 (1989).

> Finally, petitioner cannot invoke the lack of an individual written authorization from the employees as a shield for its fraudulent refusal to pay the service fee of private respondent. Prior to the payment made to its employees, petitioner was ordered by the Regional Director to deduct the 15% attorney's fee from the total amount due its employees and to deposit the same with the Regional Labor Office. Petitioner failed to do so allegedly because of the absence of individual written authorizations. Be that as it may, the lack thereof was remedied and supplied by the execution of the compromise agreement whereby the employees expressly approved the 10% deduction and held petitioner RCPI free from any claim, suit or complaint arising from the deduction thereof. When petitioner was thereafter again ordered to pay the 10% fees to respondent union it no longer had any legal basis or subterfuge for refusing to pay the latter.
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> We agree that Article 222 of the Labor Code requiring an individual written authorization seeks to protect the employee against unwarranted practices that would diminish his compensation without his knowledge and consent [*National Power Corporation Supervisors Union vs. National Power Corp., 106 SCRA 556 (1981)*.] However, for all intents and purposes, the deductions required of the petitioner and the employees do not run counter to the express mandate of the law since the same are not unwarranted or without their knowledge and consent. Also, the deductions for the union's service fee in question are authorized by law and do not require individual check- off authorizations. (Section II in relation to Sec. 13, Rule 8 Book III Omnibus Rules Implementing the Labor Code).

Bargaining Unit

Under the Labor Code, the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining.[8] For the purpose of defining the appropriate bargaining unit, the labor organization which asks for the conduct of a certification election is required to include in its petition a description of the bargaining unit it seeks to represent which shall be the employer unit unless circumstances require otherwise. The appropriate bargaining unit of the rank-and-file employees shall not include security guards.[9]

Likewise, managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organization of their own.[10]

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[8]Art. 255.
[9]Sec. 2(c), Rule V, Book V, Labor Code Rules.
[10]Art. 245.

It has pertinently been held that the consolidation into one bargaining unit of the Pasay and Paranaque plants of the Company which used to be separate bargaining units represented by different bargaining unions may be considered appropriate for purposes of a certification election where the unions agreed to said consolidation in the interest of an expeditious election and the workers in the Pasay plant are shortly to be relocated to the Parañaque plant.[11] In contrast, where about 236 employees of Lianga Bay Logging Co. Inc. were later transferred to Georgia Pacific International Corp. and thus became employees of the latter, it was held improper to consider the two companies as a single bargaining unit for purposes of a certification election because the two companies are indubitably distinct companies with separate juridical personalities. The fact that their businesses are related and that the 236 employees of Georgia Pacific International Corporation were originally employees of Lianga Bay Logging Co. is not a justification for disregarding their separate personalities. Hence, the 236 employees should not be allowed to vote in the certification election at Lianga Bay Co. but they may vote at a separate election to determine the collective bargaining representative of employees at Georgia Pacific International Corporation.[12]

Apart from the considerations mentioned in the above cases pertinent to the composition of a bargaining unit, other factors should be taken into account in determining whether the employees should be allowed to organize for purposes of collective bargaining, or permitted to be integrated into the existing unit, or allowed to exist as a separate bargaining unit. These factors include the statutory intention to favor the formation of employer-wide bargaining units, the legal qualification of the employees themselves, the nature of their functions, substantial distinctions in terms and conditions of employment of the affected workers, the provisions of the collective bargaining agreement which may expressly exclude certain categories of employees from its coverage, and the capacity of the union to represent them as it may in some cases have agreed not to represent certain categories of employees. In *Philtranco Service Enterprises v. Bureau of Labor Relations, et. al.*,[13] the Court held that professional, technical, administrative and confidential personnel performing managerial functions are not qualified to join, much less form, a labor organization. The ruling also held that rank-and-file employees who consented to the certification election may join the existing unit instead of organizing another bargaining unit and

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[11]Philippine Labor Alliance Council v. California Employees Labor Union, 71 SCRA 214 (1976).

[12]Diatogon Labor Federation Local 110 of the ULGWP v. Ople, 101 SCRA 534 (1980).

[13]G.R. No. 85343, 174 SCRA 388 (1989).

compelling their employer to deal with them separately. The facts showed that there is an existing bargaining unit composed of rank-and-file workers consisting of drivers, conductors, coach drivers, stewards and mechanics who were represented by the NAMAWU-MIF as their bargaining representative. The collective bargaining agreement expressly excluded the professional, technical, administrative, confidential employees from the existing bargaining unit. These employees subsequently asked for the conduct of a certification election among themselves for the purpose of choosing their exclusive bargaining representative. The NAMAWU-MIF intervened, alleging that it is the bargaining agent of the workers and that it has a substantial interest in the outcome of the petition. The Med-Arbiter dismissed the petition and directed that the individual members of the petitioner union who were eligible to join the labor organization should be included in the existing bargaining unit.

The Supreme Court affirmed the exclusion of professional, technical, administrative and confidential personnel of the Company performing managerial functions who are not qualified to join, much less form a labor union. In reaching this conclusion, the Supreme Court quoted with approval the ruling of the Med-Arbiter whose exclusion of these employees was based on their statutory and contractual disqualification:

> Managerial and confidential employees were expressly excluded within the operational ambit of the bargaining unit for the simple reason that under the law, managers are disqualified to be members of a labor organization.
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> On the other hand, confidential workers were not included because either they were performing managerial functions and/or the duties and responsibilities were considered or may be categorized as part and parcel of management as the primary reason for their exclusion in the bargaining unit. The other categorized employees were likewise not included because parties have agreed on the fact that the aforementioned group of workers are not qualified to join a labor organization at the time the agreements were executed and that they were classified outside the parameter of the bargaining unit.

The Supreme Court also ruled out the formation of another bargaining unit in the absence of compelling circumstances and said:

> We are constrained to disallow the formation of another union. There is no dispute that there exists a labor union in the Company, herein intervenor, the NAMAWU-MIF, which is the collective bargaining agent of the rank-and-file employees in Philtranco. . . .
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> We see no need for the formation of another labor union in Philtranco. The qualified members of the KASAMA KO may join the NAMAWU-MIF

> if they want to be union members and to be consistent with the one-union, one-company policy of the Department of Labor and Employment and the law it enforces. As held in the case of *General Rubber and Footwear Corp. vs. Bureau of Labor Relations* (155 SCRA 283 [1987]):
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> > It has been the policy of the Bureau to encourage the formation of an employer unit unless circumstances otherwise require. The proliferation of unions in an employer unit is discouraged as a matter of policy unless there are compelling reasons which would deny a certain class of employees the right to self-organization for purposes of collective bargaining. This case does not fall squarely within the exception.

The Supreme Court found that there are no compelling reasons in this case such as the denial to the qualified KASAMA KO members of the right to join the certified bargaining unit or substantial distinctions in terms and conditions of employment which may warrant the formation of a separate bargaining unit of rank-and-file workers. The Supreme Court emphasized that NAMAWU-MIF intervened to make it clear that it had no objection to qualified rank-and-file workers joining its membership.

A labor organization formed by qualified employees for purposes of collective bargaining has the right to be certified as the exclusive representative of all employees in an appropriate bargaining unit for collective bargaining purposes[14] if it is designated or selected by the majority of the employees in an appropriate bargaining unit.[15] A labor organization may validly waive the right to represent certain groups of employees through a so-called non-representation clause in a collective bargaining agreement.

The decision in *Golden Farms, Inc. v. Hon. Director of the Bureau of Labor Relations*[16] involved a situation where the labor organization was declared ineligible to represent the employees on account of a non-representation clause in its collective bargaining agreement with the Company and where certain employees were declared unqualified to join the bargaining unit. In this case, the NFL was the bargaining agent in the existing bargaining unit composed of rank-and-file employees of the Company. The respondent union's collective bargaining agreement with the Company provided that all managerial personnel like superintendents, supervisors, foremen, administrative, professional and confidential employees and temporary, casual, contractual and seasonal workers were excluded from the bargaining unit represented by the

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[14]Art. 242 (b).
[15]Art. 255.
[16]G.R. No. 78755, 175 SCRA 471 (1989).

respondent union. Subsequently, the NFL filed a petition for the conduct of a certification election among the office personnel which petitioner opposed on the ground -- among others -- that the signatories to the petition include employees performing managerial functions or occupying confidential positions. The Med-Arbiter and the Director of the Bureau of Labor Relations dismissed the petition but directed that the union and petitioner Company should negotiate a supplementary collective bargaining agreement covering the petitioning employees or agree on the inclusion of the monthly-paid rank-and-file employees in the existing collective bargaining contract, whichever the parties considered just and appropriate under the circumstances.

The Supreme Court reversed and upheld the validity of the non-representation clause in the collective bargaining agreement and the disqualification of the petitioning employees:

> It is also a fact that respondent union is the exclusive bargaining unit (agent) of the rank-and-file employees of petitioner corporation and that an existing CBA between petitioner corporation and the union representing these rank-and-file employees was still in force at the time the union filed a petition for certification election in behalf of its aforementioned signatories. Under the terms of said CBA (Annex E, p. 40), it is expressly provided that:
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> > Section 1. The Company and the Union hereby agree that the recognized bargaining unit for purposes of this Agreement shall consist of regular rank-and-file workers employed by the Company at its plantation presently situated at Alejal, Carmen, Davao. Consequently, all managerial personnel like superintendents, supervisors, foremen, administrative, professional and confidential employees or those temporary, contractual and seasonal workers are excluded from the bargaining unit and, therefore, not covered by this Agreement. (p. 41, Rollo)
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> Respondents do not dispute the existence of said collective bargaining agreement. We must therefore respect this CBA which was freely and voluntarily entered into as the law between the parties for the duration agreed upon. Until then, no one can be compelled to accept changes in the terms of the collective bargaining agreement.
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> Furthermore, the signatories to the petition for certification election are the very type of employees who by the nature of their positions and functions we have decreed as disqualified from bargaining with management in the case of *Bulletin Publishing Company, Inc. vs. Hon. Augusto Sanchez* (144 SCRA 628) reiterating herein the rationale for such ruling as follows:
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> > If these managerial employees would belong or be affiliated with a union, the latter might not be assured of their loyalty to the union in view of evident conflict of interest or that the

> union can be company-dominated with the presence of managerial employees in union membership.

Although there is no statutory disqualification of confidential employees, the Supreme Court upheld their exclusion on the basis of the non-representation clause in the collective bargaining agreement:

> This rationale holds true also for confidential employees such as accounting personnel, and radio telegraph operators who, having access to confidential information, may become the source of undue advantage. Such employees may act as spy or spies of either party to a collective bargaining agreement. This is especially true in the present case where the petitioning union is already the bargaining agent of the rank-and-file employees in the establishment. To allow confidential employees to join the existing union of the rank-and-file would be in violation of the terms of the collective bargaining agreement wherein this kind of employees by the nature of their functions/positions are expressly excluded.

### CBA Benefits

In *Plastic Town Center Corporation v. National Labor Relations Commission, et al.*,[17] the Supreme Court said that a gratuity pay to daily paid employees under a collective bargaining agreement computed on the basis of length of service should not be calculated on the basis merely of 26 working days but on the basis of thirty calendar days a month. The Supreme Court said that the basis should not be the actual work days in the month since a gratuity pay is not intended to pay a worker for actual services rendered rather it is a money benefit given to the worker whose purpose is to reward employees or laborers who have rendered satisfactory and efficient service to the company.

### Certification Election

Under the Labor Code, as amended by R.A. 6715, in organized establishments, where a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the 60-day period before the expiration of a collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot where the verified petition is supported by the written consent of at least 25% of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit.[18] On the other hand, in any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-

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[17]G.R. No. 81176, 172 SCRA 580 (1989).
[18]Art. 256.

Arbiter upon the filing of a petition by a legitimate labor organization.[19] The amendment under R.A. 6715 reimposed the requirement that the petition for certification election in organized establishments must be supported by the written consent of at least 25% of all the employees in the bargaining unit but deleted the requirement that petitions in unorganized establishment shall be supported by the written consent of at least 20% of the employees within the bargaining unit.[20]

In earlier cases, it was held that, once the required consent is complied with, it became a ministerial duty for the Bureau of Labor Relations to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive bargaining representative of all the employees in the unit.[21] On the other hand, it has been held that the consent requirement need not be established with absolute certainty. A prima-facie showing of compliance with the consent requirement should suffice. As long as there is reasonable ground to believe that a substantial section of the workers involved seeks an election, the certification election should be ordered.[22] It has further been held that a certification election may be conducted even after the lapse of the 60-day freedom period provided that the petition was seasonably filed within 60 days prior to the expiration of the collective bargaining agreement.[23]

The decision in *Philippine Association of Free Labor Unions (September Convention) v. Pura Ferrer Calleja*[24] illustrates another liberal interpretation of the rules on certification election in order to give the employees free and unhampered choice of their bargaining representative. In this case, a petition for certification election among the rank-and-file workers of the Company was filed by the Samahan. A motion to intervene, accompanied by the written consent of 20% of the rank-and-file employees of the said corporation, was filed by PAFLU. Likewise, the KAMAPI filed a motion to intervene but without the written consent of the workers. On the basis of the absence of such a written consent, PAFLU moved to strike out KAMAPI's motion for intervention. The Med-Arbiter denied the motion for intervention but the BLR Director directed that the KAMAPI be included among the

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[19]Art. 257.

[20]*See* art. 257 before the amendment of the LABOR CODE.

[21]National Organization of Trade Unions v. Secretary of Labor, 90 SCRA 463 (1979).

[22]Atlas Free Workers Union (AFWU)-PSSLU v. Noriel, 104 SCRA 565 (1981).

[23]Kapisanan ng Mga Manggagawa sa La Suerte-FOITAF v. Noriel, 77 SCRA 414 (1977).

[24]G.R. No. 79347, 169 SCRA 491 (1989).

contending unions. Affirming the decision of the BLR Director, the Supreme Court said:

> It is crystal clear from the said provisions that the requisite written consent of at least twenty percent of the employees in the bargaining unit applies to petitions for certification election only, and not to motions for intervention. Nowhere in the aforesaid legal provisions does it appear that a motion for intervention in a certification election must be accompanied by a similar written consent. Not even in the implementing rules of the Labor Code (*see* Rule V, Rules Implementing the Labor Code). Obviously, the percentage requirement pertains only to the petition for certification election, and nothing else.
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> This leads us to the question of purpose. The reason behind the twenty percent requirement is to ensure that the petitioning union has a substantial interest in the representation proceeding and, as correctly pointed out by the Solicitor General, that a considerable number of voters desire their representation by the said petitioning union for collective bargaining purposes. Hence, the mere fact that twenty percent of the workers in the bargaining unit signify their support to the petition by their written consent, it becomes mandatory on part of the Med-Arbiter to order the holding of a certification election in an unorganized establishment (*Samahang Manggagawa ng Pacific Mills, Inc. vs.Noriel*, 134 SCRA 152). The twenty percent requirement, therefore, is peculiar to petitions for certification election.

It is submitted that the above decision is applicable even under the amendment introduced by R.A. 6715, which has further relaxed the requirements for petitions for certification elections in unorganized establishments by deleting the requirement of consent of 20% of all the employees in the bargaining unit. The consent requirement of at least 25% of the employees in the bargaining unit is now required to support a petition for certification election in organized establishments but, even in such a case, it is submitted that the above decision is applicable and that an intervenor union need not comply with the consent requirement.

### Chargeability/Creditability

In *Cebu Oxygen and Acetylene Company, Inc. v. Secretary Franklin M. Drilon*,[25] petitioner and the COAEA entered into a collective bargaining agreement covering the years 1986-1988. The CBA provided that the 3-year wage increases granted would be credited as payment for any government mandated wage adjustment or allowance increases counted from the date of the wage increase up to the next increase. On December 14, 1987, R.A. No. 6640 was passed increasing the minimum wage. The implementing rules of the law provided that creditable increases shall not include anniversary wage increases

[25]G.R. No. 82849, 176 SCRA 24 (1989).

provided in collective agreements although the law itself contains no such prohibition. At issue was the validity of petitioner's crediting the increases under the CBA as part of its compliance with the wage increase under the law. In this case, petitioner credited not only the 1987 wage increase when the law took effect but also the 1986 wage increase as part of its compliance with the mandated increases. The Secretary of Labor declared petitioner guilty of underpayment and ordered it to pay wage differentials. The Supreme Court reversed and said:

> As to the issue of the validity of Section 8 of the Rules implementing Republic Act 6640, which prohibits the employer from crediting the anniversary increases provided in collective bargaining agreements, it is a fundamental rule that implementing rules cannot add or detract from the provisions of law it is designed to implement. The provisions of Republic Act 6640 do not prohibit the crediting of CBA anniversary wage increases for purposes of compliance with Republic Act No. 6640. The implementing rules cannot provide for such a prohibition not contemplated by law.

The Supreme Court added, however, that the amount that should be credited to petitioner is the wage increase for 1987 under the CBA when the law took effect. The increase for 1986 had already accrued in favor of the employees even before the said law was enacted.

The Supreme Court also upheld the creditability of wage increases in *Pilipinas Golf and Country Club, Inc. v. National Labor Relations Commission.*[26] On January 30, 1981, Executive Labor Arbiter Crescencio Ramos rendered a decision resolving a collective bargaining deadlock between Pilipinas Golf and its employees' union. The decision granted a 3-stage wage increase totalling P5.00 a day from 1980 to 1982. In the implementation of this decision, the Labor Arbiter did not take into account the wage increase given by petitioner under P.D. 1678 and Wage Order No. 1. These decrees increased the cost-of-living allowance by P2.00 a day effective February 21, 1980 and another P2.00 a day effective March 22, 1981, respectively. Petitioner contended that the increases it had given under P.D. 1678 and Wage Order No. 1 should be taken into account in the light of the provisions of these decrees that employers who have given increases in wages or allowances during the covered period, whether granted unilaterally or by collective agreement, shall be deemed to have complied with their provisions. In rejecting this contention, the Labor Arbiter relied upon recent Supreme Court decisions which had set the rule that benefits under a collective bargaining agreement are entirely separate and distinct from that which the law grants. The Supreme Court reversed and said:

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[26]G.R. No. 62918, 176 SCRA 625 (1989).

> The cited provisions of P.D. 1678 and Wage Order No. 1 upon which the petition is anchored are clear and unambiguous. In prescribing that increases granted during the periods therein specified, whether unilaterally or by collective agreement, are creditable to the increases mandated thereby, they create an equivalence between those legal and contractual obligations to grant increases, rendering both susceptible of performance by compliance with either, subject only to the condition that where the increases given under agreement fall short in amount of those fixed by law, the difference must be made up by the employer.
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> Said provisions, it is further noted, refer to collective bargaining agreements without qualification. They made no distinction between an arbitrated agreement and those brought about through and only after compulsory arbitration. The decision of the Labor Arbiter, if it does not exclude all collective bargaining agreements from the ambit of the creditability provisions in question as much as implies that agreements concluded through compulsory arbitration do not come within their purview. This is, of course, unacceptable for it presumes to find distinctions not in fact expressed in said provisions or clearly to be inferred from their language

In *Vassar Industries, Inc. v. Vassar Industries Employees Union*,[27] the Supreme Court reiterated its ruling in *Cebu Oxygen and Acetelyne Company, Inc. vs. Secretary of Labor* that a double burden may not be imposed an employer for the payment of allowances except by clear provision of law.

In *Plastic Town Center Corporation v. National Labor Relations Commission, et al.*,[28] it was held that a chargeability clause in the parties' collective bargaining agreement providing that the increases therein granted shall be credited against future allowances or wage orders hereinafter implemented or enforced cannot be invoked to defeat compliance with Wage Order No. 4. The Court said that the CBA increase effected on July 1, 1984 cannot be retroactively applied to feign compliance with Wage Order No. 4 which took effect on May 1, 1984.

In *Blue Bar Coconut Philippnes, Inc. v. The Minister of Labor*,[29] petitioner and the respondent union started negotiations on the collective bargaining agreement in November, 1973 and concluded a collective bargaining agreement on December 14, 1973. On January 4, 1974, the President of the Philippines appealed to private employers to grant emergency cost of living allowances (ECOLA) to their employees. On June 10, 1974, petitioner granted its employees a P1.00 per day ECOLA. This amount was increased by increments to P1.37 first; by

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[27]G.R. No. 76883, 177 SCRA 323 (1989).
[28]G.R. No. 81176, *supra* note 17.
[29]G.R. No. 54427, 174 SCRA 25 (1989).

P0.18; and, second, by P0.19, which increases simultaneously took effect on August 1, 1974, which was the effective date of P.D. No. 525, the law that provided for mandatory payment to employees or workers of P2.00 ECOLA per day.

Sometime in April 1975, petitioner and respondent union entered into an agreement in which they acknowledged that the principal motivation of petitioner in granting P0.80 a day wage increase to its workers was to countervail the jump in the cost of living as a result of the energy crisis which started in November 1973. In the same April 1975 agreement, respondent union acknowledged that by paying the P0.80 a day wage increase and the daily ECOLA of P1.37, the company shall have fully complied with all the laws and agreements involving wages and allowances. One of the issues raised was the validity of the chargeability of the wage increases given under the collective bargaining agreement concluded on December 14, 1973 against the COLA under P.D. No. 525 which took effect on August 1, 1974. Upholding the decision of the Regional Director which rejected the validity of the chargeability, the Court said that the wage increase was granted as a result of the CBA negotiations concluded in December 1973, 66 days before the effectivity of LOI 174 or 20 days before the appeal of the President. According to the Court, there was nothing in the record to show that the daily wage increase of P0.80 was granted specifically in response to the appeal of the President.

Compromise Agreement

Under the Labor Code, any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the Regional Office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission (NLRC) or any court shall not assume jurisdiction over the issues involved therein except in case of non-compliance or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation or coercion.[30]

Where a labor organization initiates a complaint and obtains a favorable judgment on behalf of its members, the consent of the individual members benefited by the judgment to the terms of compromise agreement must be obtained as a condition for its validity. Thus, where certain dismissed laborers were ordered reinstated with backwages, and their union acting through the officers and counsel, signed a compromise agreement with the employer on the manner of computation and schedule of payment of backwages, the said

[30]Art. 227.

compromise agreement was declared without binding effect upon those laborers who did not consent to it.[31] However, the workers benefited by a favorable judgement who did not expressly give their consent to the compromise settlement concluded by their union may subsequently ratify its terms through their acceptance of the benefits granted. Thus, where the unions have pending cases against the Company involving adjustments in basic salary and claims for the inclusion of certain fringe benefits in the computation of overtime pay, which cases the unions eventually settled through a supplemental agreement with the Company under which certain fringe benefits became part of the basic pay, the compromise settlement and the withdrawal of the pending cases were declared valid over the opposition of 18 union members. The Court found that the unions executed the supplemental agreement with the authority and approval of the unions' executive board, that the local chapter presidents accepted the terms of the settlement and that the members of the union and other employees of the company numbering around 200 have accepted and are enjoying the benefits of the settlement.[32]

Nonetheless, the acceptance by the union members of the benefits under a compromise agreement will not amount to a valid ratification of said agreement where its terms appear unjust and inequitable. Thus, where the Supreme Court has rendered a final judgement directing the Company to pay its employees the negotiated wage increases under the collective bargaining agreement in addition to the COLA under P.D. 1123 and the award could not be immediately implemented but was estimated to amount to P1,248 per worker for the first year alone, an amicable settlement under which the employees were paid from P300 to P400 each with individual quitclaims which settlement was executed by a union other than that which negotiated the collective bargaining agreement and won the award for the employees, was declared null and void in an action filed by the negotiating union.[33]

The decision of the Supreme Court in *Radio Communications of the Phil, Inc. v. Secretary of Labor*[34] involves a situation where a compromise settlement of labor standard cases initiated and won by the bargaining agent was declared not novated by a subsequent compromise agrement executed with the new bargaining agent. In this case, the

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[31]Danao Development Corporation v. The National Labor Relations Commission, 81 SCRA 487 (1978).

[32]National Power Corp. v. National Power Corp. Employees and Workers Union, 89 SCRA 1 (1979).

[33]Philippine Apparel Workers Union v. NLRC, 125 SCRA 391 (1983).

[34]G.R. No. 77959, *supra* note 7.

Company applied for exemption from the provisions of Wage Order No. 1 which the bargaining agent of the Company's employees, the URC PICLA opposed. In a subsequent order, the URC PICLA was granted a union service bonus fee over the opposition of the Company. Subsequently, the Company concluded a compromise settlement of the labor standards case with the new bargaining agent of its employees. Under the terms of the compromise agrement, the union members were to be paid 30% of their claims with the remaining 70% to be renegotiated by the parties. Despite these favorable terms, the Company subsequently paid the claims of the employes in full but refused to pay the union service fee granted to the previous bargaining agent. The Supreme Court rejected the contention of the Company that the terms of the original judgment were novated by the compromise agreement. The Court said that there could have been no valid novation of the prior judgment for the simple reason that the pre-existing obligation and the new one sought to be created are not absolutely incompatible. Hence, the Company was still liable to the old bargaining agent for the union service fee granted to the latter under the original judgement.

The decision of the Supreme Court in *Alfredo S. Marquez v. Hon. Secretary of Labor*[35] involves a situation where a compromise settlement of the individual claims of certain workers was declared null and void because it was concluded only by the union without the consent of the affected laborers. The bargaining agent filed a complaint for underpayment of wages and other benefits against petitioner on behalf of its members. Subsequently, the representative of the employees filed a motion to dismiss the proceedings before the hearing officer claiming that the Samahan Ng Mga Manggagawa sa Little Folks Snack Mobile, a local chapter of respondent KAMPIL-KATIPUNAN to which the 79 employees allegedly belonged, and the petitioner were able to forge a compromise agreement. The employees opposed the motion since the supposed representative was not authorized to enter into the compromise agreement or move for the dismisal of the complaint. The Supreme Court voided the agreement and said:

> The ruling in this jurisdiction is that money claims due the laborers cannot be the subject of settlement or compromise effected by the union, union officers or counsel without the specific individual consent of each laborer concerned (*Danao Development Corporation vs. NLRC*, G.R. No. L40706-7 Feb. 16, 1978, 81 SCRA 487.) This is because the aggrieved parties are the individual complainants themselves. Their representative can only assist but not decide for them (*Kaisahan Ng Mga Manggagawa sa La Campana vs. Sarmiento*, G.R. No. L-47853, November 16, 1984, 133 SCRA 220.) In the light of the categorical denial by the employes that Feran was authorized to enter into an

[35]G.R. No. 80685, 171 SCRA 337 (1989).

amicable settlement as regards their claims, the court holds that public respondent Secretary of Labor ruled correctly in upholding the Regional Director's rejection of the agreement.

**Contract-Bar Rule**

Under the recent amendment introduced by R.A. 6715, within 30 days from the execution of the collective bargaining agreement, the parties shall submit copies of the contract directly to the Bureau of Labor Relations or the Regional Offices of the Department of Labor and Employment for registration accompanied by verified proof of its posting in two conspicuous places in the place of work, and ratification by the majority of all the workers in the bargaining unit. The law also provides that the Bureau of Labor Relations shall not entertain any petition for certification election or any other action which may disturb the administration of duly registered existing collective bargaining agreement affecting the parties except under the conditions mentioned in Articles 253, 253-A and 256 of the Labor Code.[36]

The above provisions embody the so-called contract-bar rule which arises in the context of a petition for certification election filed by a labor organization other than that which negotiated an existing collective bargaining agreement. It has been held that the Labor Code provides for only two instances where a petition for certification may be barred, *i.e.*, (i) where an election was held within the last 12 months and (ii) where there is an existing collective bargaining agreement.[37]

Pertinently, it has been held that a petition for certification election cannot be barred by the premature conclusion of a new collective bargaining agreeement within the 60-day freedom period before the expiration of the old agreement.

The decision of the Supreme Court in *Philippine Association of Free Labor Unions (PAFLU Lozano) v. Honorable Francisco Estrella*[38] involves a rejection of the claim of petitioner union that a petition for certification election is barred by the existence of a collective bargaining agreement. On March 26, 1968, the PAFLU filed with the CIR a petition for certification election at Visayan Glass Factory, Inc. The ALU moved to dismiss on the ground that it then had a collective bargaining agreement with the Company which would expire on May 31, 1968. The motion to dismiss was denied. On May 20, 1968, ALU renewed the contract, this time expiring on May 31, 1971. ALU again moved to

[36]Art. 232, as amended by R.A. 6715.

[37]National Organization of Trade Unions v. Secretary of Labor, 90 SCRA 463 (1979).

[38]G.R. No. 45323, 170 SCRA 378 (1989).

dismiss the petition. Even then, the case remained unresolved and on November 25, 1971, a new contract expiring on May 31, 1974 was again concluded. On March 3, 1975, the Med-Arbiter finally called for a certification election. ALU appealed to the Bureau of Labor Relations, contending that its collective bargaining agreement still subsisted because of its automatic-renewal clause. On April 26, 1975, ALU filed a motion to dismiss, alleging that it had negotiated a new contract on April 5, 1975 which the NLRC approved on April 11, 1974 and which would expire on April 4, 1979. ALU claimed the subsequent certification election which led to the selection of another bargaining agent was null and void because its contract was ratified by the employees and approved by the NLRC and, therefore, barred the election already conducted. The BLR Director sustained this contention on appeal. The Supreme Court reversed and said:

> Private respondent would, however, invoke the contract-bar rule and argue that the renegotiation on 5 April 1975 of a collective bargaining agreement between private respondent ALU and the Company management rendered the certification election held at the Visayan Glass Inc. on 30 June 1976 a nullity. The argument is not persuasive. First of all, it is the rule in this jurisdiction that only a certified collective bargaining agreement - *i.e.*, an agreement duly certified by the BLR may serve as a bar to a certification election. It is noteworthy that the BLR did not certify the April 5, 1975 collective bargaining agreement here in question. Second, even assuming, though merely *arguendo*, that approval of said agreement by the NLRC on April 11, 1975 had the same effect as certification by the BLR, nevertheless, such approval did not quash, as it were, petitioner PAFLU's petition for certification election which had then remained pending with the BLR for more than seven years, such petition having been filed as early as March of 1968. To hold otherwise would be to create an incentive for labor unions or employers to block the expeditious dispositions of petitions for certification election which are, after all, the mechanism through which the choice of the workers of their own representatives is ascertained.

The Supreme Court added, however, that the selection of another bargaining representative does not amount to a nullification of the collective bargaining agreement concluded between the Company and PAFLU:

> It does not follow as a matter of course that reversal of the BLR's resolution of December 16, 1976 necessarily results in the nullification of an official act of the NLRC: the collective bargaining agreement executed between private respondent ALU and the company management in April of 1975 need not not be disturbed, specially considering that the substantive terms and conditions thereof had not once been assailed whether by labor or management, and that the employees of the company had in fact availed of the benefits offered thereunder.

The Supreme Court reached a somewhat different result in *Associated Labor Unions (ALU-TUCP) v. Hon. Cresenciano Trajano.*[39]

The facts of the case disclosed that petitioner ALU is the recognized collective bargaining representative of all the rank-and-file employees of respondent Company with which it had a collective bargaining agreement effective from January 1, 1984 to December 31, 1986. On October 22, 1986, a majority of the covered employees of the Company petitioned for the renewal of the agreement. The parties, however, failed to arrive at an acceptable agreement and a bargaining deadlock was declared. Meanwhile, on November 4, 1986, respondent union ADLO filed a verified petition for certification election among the regular rank-and-file employees of the Company. On December 4, 1986, petitioner and the Company came to an agreement which was ratified by a big majority of the covered employees. Petitioner registered the new collective bargaining agreement with the Regional Director of the Ministry of Labor on December 4, 1986 as required by the Labor Code. The sole issue presented to the Court was whether or not the DOLE Regional Director committed grave abuse of discretion in ordering the conduct of a certification election when there was a pending bargaining deadlock between petitioner and the Company as a result of which petitioner filed a notice of strike. The Court held:

> Undoubtedly, the petition for certification election was filed during the sixty-day freedom period. The fact that petitioner was able to negotiate a new CBA with respondent Company on December 4, 1986 within the freedom period of the existing CBA, does not foreclose the right of a rival union which in this case is the respondent union, to challenge petitioner's claim to majority status, by filing earlier on November 4, 1986 a timely petition for certification election before the old CBA expired on December 31, 1986 and before petitioner signed a new CBA with respondent Company (*Kapatiran sa Meat and Canning Division (TUPAS Local Chapter No. 1027) vs. Calleja*, G.R. No. 82914, June 20, 1988). There should be no obstacle to the right of the employees to petition for a certification election at the proper time, that is, within sixty days prior to the expiration of the life of a certified collective bargaining agreement (*General Textile Allied Workers Association (ETAWA) vs. Director of the Bureau of Labor Relations*, 84 SCRA 430) not even by a collective agreement submitted during the peadency of a representation case.

Disregarding the fact that the CBA was ratified by a big majority of the covered employees, 584 out of the 742 covered employees, and was registered with the Regional Director, the Supreme Court said that it should be given only an interim effect and explained:

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[39] G.R. No. 77539, 172 SCRA 49 (1989).

> The new CBA negotiated by petitioners, whether or not submitted to the MOLE in accordance with Article 231 of the Labor Code, cannot be deemed permanent, precluding the commencement of negotiations by another union with management, considering that it was entered into at a time when the petition for certification election had already been filed by respondent union (*Associated Trade Unions (ATU) vs. Trajano*) Meanwhile, this interim agreement must be recognized and given effect on a temporary basis so as not to deprive the workers of the favorable terms of the agreement (*Vassar Industries Employees Union vs. Estrella*, 82 SCRA 280; *National Mines and Allied Workers Union vs. Estrella*, 87 SCRA 84 cited in *Association Trade Unions v. Trajano*)
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> If, as a result of the certification election, respondent union or a union other than petitioner union which executed the interim agreement is certified as the exclusive bargaining representative of the rank and file employees of respondent company, then, such union may adopt the interim collective bargaining agreement or negotiate with management for a new collective bargaining agreement (*Associated Trade Unions v. Trajano*).

It is submitted that the validity of a collective bargaining agreement negotiated and concluded by a bargainng agent is an issue separate and distinct from the conduct of a certification election which subsequently results in the selection of a new bargaining agent. Where the collective bargaining agreement entered into and concluded by the subsequently certified bargaining agent has been validly ratified by the employees within the bargaining unit, it is clearly unwarranted to allow them to repudiate its terms through the simple expedient of choosing another bargaining rerpresentative. In such a case, the more equitable disposition should have been for the Court to affirm the validity of the collective bargaining agreement and allow its administration by the newly chosen collective bargaining representative, which may only bargain to shorten the duration of the collective bargaining agreement. This is in accordance with the principle of substitution which the Supreme Court had occasion to explain in *Benguet Consolidated Inc. v. BCI Employees and Workers Union*.[40]

> This principle, formulated by the NLRB, as an initial compromise solution to the problem facing it when there occurs a shift in employees' uion allegiance after the execution of a bargaining contract with their employer, merely states that even during the effectivity of a collective bargaining agreement executed between employer and employees thru their agent, the employees can change said agent but the contract

[40]G. R. No. 24711, 23 SCRA 465 (1968).

> continues to bind them up to its expiration date. They may bargain however for the shortening of said expiration date.
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> In formulating the "substitutionary" doctrine, the only consideration involved was the employees' interest in the existing bargaining agreement. The agent's interest never entered the picture. In fact, the justification for said doctrine was:
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> > . . . that the majority of the employees, as an entity under the statute, is the true party in interest to the contract, holding rights through the agency of the union representative. Thus, any exclusive interest claimed by the agent is defeasible at the will of the principal.

The decision in *Associated Labor Union v. Hon. Pura Ferrer-Calleja*[41] illustrates the rule that the contract-rule may not be invoked in a situation where the contract pleaded as a bar to the conduct of a certification election was concluded with a bargaining agent with doubtful majority status, not submitted to the employees for ratification, and not registered with the Department of Labor and Employment. In this case, ALU sent a demand for recognition and collective bargaining to Gaw Trading, Inc. on May 7, 1986, and subsequently furnished the company with ten final copies of the collective bargaining agreement for comment or for signing. On May 15, 1986, ALU in behalf of employees of Gao Trading Inc, signed and executed the collective bargaining agreement. Meanwhile, on May 19, 1986, the GALLU-PSSLU filed a petition for certification election which was subsequently ordered conducted over the protest of ALU that its conclusion of a collective bargaining agreement with Gaw Trading, Inc. barred the conduct of a certification election. Affirming the order for the conduct of a certification election, the Supreme Court said:

> Public respondent ordered the holding of a certification election, ruling that the "contract-rule" relied upon by her predecessor does not apply in the present controversy. According to the decision of said respondent, the collective bargaining agreement involved herein is defective because it was not duly submitted in accordance with Section 1, Rule 9, Book V of the Implementing Rules of Batas Pambansa Blg. 130.
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> It was further observed that there is no proof tending to show that the CBA has been posted in at least two conspicuous places in the establishment at least five days before its ratification and that it has been ratified by the majority of the employees in the bargaining unit.
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> We find no reversible error in the challenged decision of respondent Director. A careful consideration of the facts culled from the records of the case, especially the allegations of petitioner itself as hereinabove quoted, yields the conclusion that the collective bargaining agreement

[41] G. R. No. 77282, 173 SCRA 178 (1989).

> in question is indeed defective, hence unproductive of the legal effects attributed to it by the former Director in his decision which was subsequently and properly reversed.

The Supreme Court also took into account the fact that the collective bargaining agreement was concluded with a bargaining agent whose standing as an exclusive bargaining representative was dubious. The Court said that the only express recognition of petitioner as employees' bargaining representative is in the collective bargaining agreement entered into two days after the proposals were sent. It held that the unusual haste in the recognition of petitioner union by respondent company as the exclusive bargaining representative of the workers in Gaw Trading, Inc. under the fluid and amorphous circumstances then obtaining was decidedly unwarranted and improvident.

Applying its earlier ruling in *Firestone Tire and Rubber Company Employees Union v. Estrella,*[42] the Supreme Court said:

> Basic to the contract-rule is the proposition that the delay of the right to select representative can be justified only where stability is deemed paramount. Excepted from the contract-rule are certain types of contract which do not foster industrial stability, such as contracts where the identity of the representative is in doubt. Any stability derived from such contracts must be subordinated to the employees' freedom of choice because it does not establish the type of industrial peace contemplated by the law.

As additional ground for its rejection of the contract-rule in this case, the Supreme Court took into account the fact that 181 out of the 281 workers who "ratified" the agreement have strongly and vehemently denied and repudiated the alleged negotiation and ratification of the CBA. Hence, the Supreme Court not only disregarded the collective bargaining agreement as a bar to the conduct of a certification election but also declared it unproductive of legal effects.

## Collective Bargaining

Under the Labor Code, the duty to bargain collectively means the performance of mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising from the said agreement and executing a contract if

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[42] 81 SCRA 49 (1978).

requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.[44]

The above provisions suggest that there are always two parties to a bargaining relationship, the employer and the employee. In its decision in *San Jose City Electric Service Cooperative, Inc. v. Ministry of Labor and Employment, et al.*,[45] the Supreme Court upheld the proposition that the member-consumers of a cooperative cannot demand collective bargaining rights in relation to the cooperative since it will be inconsistent for the union members to bargain with themselves. In this case, private respondent filed a petition for certification election with the Labor Regional Office on July 29, 1986, which the cooperative opposed on the ground that the employees who sought to be represented by private respondent are member-consumers of the cooperative itself. The Med-Arbiter granted the petition for a certification election declaring that while some of the members of petitioner union are also members of the cooperative, it cannot be denied that they are also employees within the contemplation of the Labor Code and are, therefore, entitled to enjoy all benefits of employees, including the rights to self-organization. The Supreme Court said "the only issue presented for resolution in this petition is whether or not the employees/members of an electric cooperative can organize themselves for purposes of collective bargaining." On this issue, the Supreme Court held:

> This Court had occasion to rule on this issue in the consolidated cases of *Batangas I-Electric Cooperative Labor Union vs. Romeo Young, et al.*, G.R. No. 62386, *Bulacan II-Electric Cooperative, Inc. vs. Hon. Eliseo A. Penaflor, et al.*, G.R. No. 70880 and *Albay Electric Cooperative vs. Cresenciano B. Trajano, et al.*, G.R. No. 74560 (November 9, 1988) citing the case of *Cooperative Rural Bank of Davao City, Inc. vs. Pura Ferrer-Calleja*, G.R. No. 77951, September 26, 1988 where it was held:
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> > A cooperative, therefore, is by its nature different from an ordinary business concern being run either by persons, partnerships or corporations. Its owners and or members are the ones who run and operate the business while the others are its employees. As above stated, irrespective of the nature of shares owned by each members they are entitled to cast one vote each in deciding upon the affairs of the cooperative. Their share capital earned limited interests. They enjoy special privileges as exemption from income tax and sales taxes, preferential right to supply their products to state agencies and even exemption from minimum wage laws.

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[43]Art. 252.

[44]G.R. No. 77231, 173 SCRA 697(1989).

> An employee therefore of such cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners. In the opinion of August 14, 1981 of the Solicitor General he correctly opined that the employees of cooperative who are themselves members of the cooperative have no right to form or join labor organizations for purposes of collective bargaining for being themselves co-owners of their cooperative.
>
> However, insofar as it involves cooperatives with employes who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.

The Supreme Court merely modified the decision of the Bureau of Labor Relations by directing that only the rank-and-file employees of petitioners who are not its members-consumers are entitled to self-organization, collective bargaining and negotiations.

Contractor's Liability

In *Eagle Security Agency, Inc. v. National Labor Relations Commission and Philippine Tuberculosis Society, Inc. v. National Labor Relations Commission,*[45] the Court upheld the joint and several liability of the contractor and the principal for the unpaid wages and benefits of security guards assigned to the principal over the claim of the principal that said liability should be borne exclusively by the contractor pursuant to the provisions of the contract for security services. Under this contract, the security agency bound itself to pay its employees in accordance with the provision of the Labor Code as amended, Eight-Hour Labor Law, the Minimum Wage Law and other laws and or decrees governing security agency. The agency further agreed that it shall be solely responsible for the payment of all indemnities to its employees which may arise under P.D. No. 442, as amended. The Supreme Court said that petitioner's solidary liability for the amount due the security guards finds support in Articles 106, 107 and 109 of the Labor Code the rationale for which it explains as follows:

> This joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance of the provisions therein including the statutory minimum wage (Article 99, Labor Code). The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees for purposes of paying the employees their

[45]G.R. Nos. 81314, 81447, 173 SCRA 479 (1989).

> wages should the contractor be unable to pay them. This joint and several liability facilitates, if not guarantees, payment of the workers performance of any work, task, job or project, thus giving the workers ample protection as mandated by the 1987 Constitution (*See* Article 2, Section 18 and Article 13, Section 3).

The Supreme Court said that the contractual stipulation and wage order provision may be given effect to the extent that the petitioner company is not precluded from exercising the right of reimbursement from his co-debtor, the contractor. It is with respect to this right of reimbursement that petitioners can find support in the aforesaid contractual stipulation and wage order provision. The Supreme Court rejected the contention that its ruling would be violative of the constitutional prohibition against impairment of the obligation of contracts declaring that it has rejected this line of reasoning in sustaining the validity and constitutionality of labor and social legislations.

### Dismissal

The Labor Code enumerates the just causes[46] and authorized causes[47] for the dismissal of employees and specifically provides that an employee unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was witheld from him up to the time of his actual reinstatement.[48]

### Act of Dismissal

Before even determining whether an employee's dismissal is for a just or authorized cause, it must first be shown that the employer has committed a positive and overt act of dismissal without which the complaint for illegal dismissal must be dismissed outright. The decision in *Veterans Philippine Scout Security Agency v. National Labor Relations Commission, et. al.,* and *Roberto de los Santos v. National Labor Relations Commission, et. al.,*[49] illustrates a situation where the Supreme Court found that the employer did not commit any positive act of dismissal. The facts showed that the employee was instructed to report to the home office of the security agency for an investigation prompted by complaints against him by a client firm. Instead of doing so, he disappeared for more than three months without even informing

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[46]Art. 282.
[47]Arts. 283, 284 and 287.
[48]Art. 279, as amended by R.A. 6715.
[49] G.R. Nos. 70862 and 83927, 174 SCRA 347 (1989).

the security agency of his whereabouts. When he finally showed up at the home office, he explained that financial problems prevented him from reporting earlier. The security agency favorably considered the request that he be given another assignment but told him to wait for a few days for a new assignment and told him that he would be paid a monthly cash allowance of P500 with free board and lodging. These circumstances, according to the Court, belie the subsequent allegation of the security guard that he was illegally dimissed.

In *Concrete Agregates Corp. v. National Labor Relations Commission*,[50] the Court reversed the NLRC order declaring the dismissal of private respondent illegal where it appeared that the employer had committed no act of dismissal. The circumstances of the case showed that private respondent voluntarily resigned from employment and signed the quitclaim and waiver after receiving all separation benefits. While it may true that her superior appeared to be hostile towards her, he did not show by his acts any desire to dismiss her from employment. At the time, the Company was suffering business losses and it had to lay-off 54 of its employees. Private respondent could have been included in the retrenchment but she was not. Under these circumstances, the Supreme Court said that this is a case of voluntary resignation and not of a constructive dismissal.

In *Chong Guan Trading v. National Labor Relations Commission*,[51] it was held that in an action for illegal dismissal, the employer must be shown to have committed a positive act indicating termination of the employee's services. In this case, private respondent claims that Mariano Lim dismissed him when the latter said: "*Lumayas ka rito*". This is disputed by the petitioner who claims that it was private respondent who voluntarily left petitioner's premises. On this point, the Supreme Court said:

> After a careful examination of the events that gave rise to the present controversy as shown by the records, the Court is convinced that private respondent was never dismissed by the petitioner. Even if it were true that Mariano Lim ordered private respondent to go and that at the time he intended to dismiss private respondent, the record is bereft of evidence to show that he carried out this intention. Private respondent was not even notified that he had been dismissed. Nor was he prevented from returning to his work after the October 28 incident. The only thing that is established from the record and which is not disputed by the parties is that private respondent Chua did not return to his work after his heated argument with the Lim brothers.

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[50]G.R. Nos. 82823-24, 175 SCRA 337 (1989).
[51]G.R. 81471, 172 SCRA 831 (1989).

The Supreme Court also took into account the fact that petitioners have consistently manifested their willingness to reinstate private respondent to his former position. In the light of these circumstances, the Supreme Court said that the award of three years backwages was not proper. The Supreme Court explained:

> Therefore, considering the Court's finding that private respondent was never dismissed by the petitioner, the award of three years backwages was not proper. Backwages, in general, are granted on ground of equity for earnings which a worker or employee has lost due to his illegal dismissal from work (*New Manila Henry Workers Union (NACONWA-PAFLU) v. Court of Industrial Relations*, G.R. No. L-29728, October 30, 1978, 86 SCRA 37; *Durabuilt Recapping Plant Company vs. National Labor Relations Commission*, G.R. No. 76746, July 27, 1987, 152 SCRA 328). Where the employee was not dismissed and his failure to work was not due to the employer's fault, the burden of economic loss suffered by the employee should not be shifted to the employer (*SSS v. SSS Supervisors Union-CUGCO*, G.R. No. L-31832, October 23, 1982, 117 SCRA 746; *Durabuilt Recapping Plant and Company v. National Labor Relations Commission*). In this case, private respondent's failure to work was due to the misunderstanding between petitioner's management and private respondent

In *Pacific Cement Company, Inc. v. The National Labor Relations Commission*,[52] it was held that although the petitioner company properly placed private respondents on preventive suspension pending investigation of the alleged irregularities committed by them, and that the case for illegal dismissal was filed while they were still under said preventive suspension, the petitioner company commited positive acts of dismissal evidenced by (i) its advertisements for applicants to the position of port manager (ii) up to the time that the Labor Arbiter handed down his decision in 1984, the petitioner had not been able to take any official action concerning the cases of private respondents.

### Constructive Dismissal

An exception to the requirement that the employer must commit a positive act of dismissal is the so-called "constructive dismissal" which occurs where the employer, without actually committing an overt act of termination, has actually made it so unreasonable or unlikely for the employee to continue his employment, as by making an offer involving a demotion in rank and diminution in pay, that he may be deemed to have been actually dismissed.

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[52]G.R. Nos. 78871-72, 173 SCRA 192 (1989).

The decision in *Philippine Japan Active Carbon Corporation v. NLRC*[53] involves a situation where there was not even a contructive dismissal to warrant the award of backwages to the employee. In this case, the private respondent who had been employed in petitioner corporation since January 19, 1982 as assistant secretary/export coordinator was promoted on May 20, 1983 to the position of executive secretary to the Executive Vice President and General Manager. On May 31, 1986, for no apparent reason at all and without prior advise to her, she was transferred to the production department as production secretary, swapping positions with one Ester Tamayo. Although the transfer did not amount to a demotion because her salary and workload remained the same, she rejected the assignment and filed a complaint for illegal dismissal. The Labor Arbiter found that the transfer amounted to a constructive dismissal hence her refusal to obey the transfer order was justified.

On petition for certiorari, the Supreme Court declared that there is no basis for the award of backwages, moral damages and attorney's fees in the absence of an act of dismissal on the part of the Company although it affirmed the order for the reinstatement of private respondent. The Supreme Court said that there was no constructive dismissal:

> A constructive discharge is defined as quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and a diminution in pay. (Moreno's Philippine Law Dictionary, 2nd Ed., p. 129, *citing* the case of *Alia v. Salani Una Transportation Co.*, 39527-R, January 29, 1971.)
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> In this case, the private respondent's assignment as Production Secretary of the Production Department was not unreasonable as it did not involve a demotion in rank (her rank was still that of a department secretary) nor a change in her place of work (the office is in the same building), nor a diminution in pay, benefits and privileges. It did not constitute a constructive dismissal.

The theory of constructive dismissal has been applied to situations where the employer fails to provide employment after an employee's prolonged lay-off or period of inactivity. Under the Labor Code, the bona-fide suspension of operations of a business or undertaking for a period not exceeding six months or the fulfillment by the employee of military or civic duty shall not terminate employment.[54] The Supreme Court has applied this rule by analogy to security guards on indefinite rotation in *Agro Commercial Security Agency, Inc. v. The*

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[53]G.R. No. 82339, 171 SCRA 164 (1989).
[54]Art. 286.

*National Labor Relations Commission*[55] where it held that if the security guards remain without work or assignment, that is, in "floating status" for a period exceeding six months, then they have been in effect constructively dismissed. The "floating status" of these employees should last only for a reasonable time. In this case, the Supreme Court said that respondent Labor Arbiter correctly held that since the "floating status" of said employees lasted for more than six months, they may be considered to have been illegally dismissed from the service. Thus, they are entitled to separation benefits.

In *International Hardware, Inc. v. National Labor Relations Commission,*[56] the Supreme Court said that private respondent who had been rotated by petitioner for over six months due to the serious losses in the operations of the business had been effectively deprived of gainful occupation and may be considered to have been constructively dismissed from employment. Hence, the Supreme Court awarded separation benefits to the employee.

Specific Grounds for Dismissal

*Dishonesty*

In *San Miguel Corporation v. The National Labor Relations Commission, et. al.,*[57] the Supreme Court upheld the dismissal of certain employees for their falsification of their time cards. This act of dishonesty and serious misconduct is a lawful ground for their dismissal under the Labor Code.

In *Philippine Associated Smelting and Refining Corporation v. National Labor Relations Commission, et. al.,*[58] the Court found that the theft which was the basis for the employee's dismissal was not established in a manner consistent with due process and was based merely on accusation which cannot take the place of proof. A suspicion or belief no matter how sincerely felt cannot substitute for factual findings carefully established through an orderly procedure. Nonetheless, the Supreme Court said that reinstatement was inappropriate. The petitioner may have failed to establish with adequate evidence the charges of theft of core metals but it does not follow that the losses from stealing are imaginary or totally unfounded. The fact that the investigation was not thorough does not mean that the suspicions of dishonesty are actually without basis. The Supreme Court

[55]G.R. Nos. 82823-24, 175 SCRA 790 (1989).
[56]G.R. No. 80770, 176 SCRA 256 (1989).
[57]G.R. No. 82467, 174 SCRA 510 (1989).
[58]G.R. Nos. 82866-67, 174 SCRA 550 (1989).

accordingly said that the strained relations between the employer and employees stand in the way of reinstatement and that termination benefits should instead be awarded.

In *Jose del Castillo v. National Labor Relations Commission*,[59] the dismissal of petitioner for dishonesty was upheld. It appeared that among his duties as Credit and Collection Manager was the filing of collection suits against defaulting dealers. One such dealer was the Anchor Fishing owned by Henry Samar of Legaspi City. A judgment by compromise was entered against Samar. Upon said debtor's failure to comply with the judgement, a writ of execution was issued by the Court. In the implementation of the writ, a levy was made by the sheriff on 12 parcels of land owned by Samar. However, the sale of the levied properties at public auction was aborted because, at the petitioner's behest, Samar signed a deed of sale of 10, out of 12, of his parcels of land in favor of Mariwasa and another sale of the remaining two parcels to petitioner.

In *Angelito Hernandez v. National Labor Relations Commission*,[60] the dismissal of petitioner was declared illegal where the investigation conducted by private respondent did not establish or help in any manner in the determination of the supposed involvement of petitioner in the alleged theft. Private respondent did not even present evidence on the nature and extent of the investigation supposedly conducted. The Supreme Court reiterated its earlier ruling that for loss of confidence to be a valid ground for dismissal, there must be some positive basis therefor. Considering, however, that the relationship between petitioner and private respondent had been severely strained by reason of their respective imputations of bad faith against each other, the Supreme Court said that reinstatement will no longer serve any purpose and that the petitioner was only entitled to backwages and separation pay.

In *Gelmart Industries Phils., Inc. v. National Labor Relations Commission*,[61] the dismissal was deemed too drastic a penalty for an employee who was caught by the security guard taking out of petitioner's premises one plastic container filled with about 16 ounces of used motor oil without the necessary gate pass as required by the Company's rules and regulations. The Supreme Court took into account the fact that the employee had no previous derogatory record in his 15 years of service with the petitioner; the small if not minimal value of the property pilfered; and failure of petitioner to reasonably establish

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[59] G.R. No. 754413, 176 SCRA 229 (1989).
[60] G.R. No. 84602, 176 SCRA 269 (1989).
[61] G.R. No. 85668, 176 SCRA 295 (1989).

that non-dismissal of private respondent would work undue prejudice to the viability of its operations or is patently inimical to its interests. In affirming the order of reinstatement with backwages, the Court distinguished this case from other cases where it upheld the dismissal of employees for dishonesty.

> As stated earlier, petitioner assails the NLRC decision on the ground that the same is contrary to existing jurisprudence, particularly citing in support thereof *Firestone Tire and Rubber Company of the Philippines. vs. Lariosa* (148 SCRA 187). Petitioner contends that by virtue of this ruling they have the right to dismiss private respondent from employment on the ground of breach of trust or loss of confidence resulting from theft of Company property. We believe otherwise.
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> There is nothing in Firestone which categorically gives management an unhampered right in terminating an employee's services. The decision in Firestone specifically focuses on the legality of a dismissal by reason of acts of dishonesty in the handling of Company property for what was involved in that case is theft of sixteen flannel swabs which were supposed to be used to clean certain machinery in the Company. (*Firestone Tire and Rubber Company vs. Lariosa, supra,* at 192) In fact, a careful review of the cases cited in *Firestone* (*Metro Drug Corp. v. NLRC*, 143 SCRA 132 (1982); *Dole Phils. Inc. v. NLRC*, 123 SCRA 673 (1983); *Phil. Geothermal Inc. v. NLRC*, 117 SCRA 692 (1982); *Reynolds Phils. Corp. v. Eslava*, 137 SCRA 259 (1985) will readily reveal that the underlying reason behind sustaining the penalty of dismissal or outright termination is that, under the circumstances obtaining in those cases, there exists actual reason to distrust the employee concerned.
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> Thus, in upholding the dismissal of a cashier, found guilty of misappropriating corporate funds, this Court, in *Metrodrug,* made a distinction between managerial personnel and other employees occupying positions of trust and confidence from other employees. On the other hand, in *Dole Phils.*, this Court spoke of the nature of participation which renders one absolutely unworthy of the trust and confidence demanded by the position, upholding the dismissal of employees found guilty of illegally selling for their own benefit two drums of crude oil belonging to the Company.

In *Philippine National Construction Corporation Tollways Division, et al. v. The National Labor Relations Commission, et al.,*[62] the dismissal of an employee for dishonesty was declared unjustified where it appeared that there were some doubts on the alleged misconduct of complainant and there was no showing that he misappropriated the funds in his possession. The fault of the employee was simple negligence which would not justify the harsh penalty of dismissal.

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[62]G.R. No. 86595, 172 SCRA 887 (1989).

*Gross Negligence*

In *Pepsico Inc. v. National Labor Relations Commission,*[63] the Supreme Court upheld the dismissal of a Director of Leasing of petitioner company for incompetence and negligence where he had bought machinery which he represented to his employer as brand new but which turned out to be second hand; he had foisted a fictitious supplier upon the Company; he had purchased equipment at prices higher than those of the same type quoted to him by other sellers; and he had caused enormous losses to his employer. According to the Court, these facts suffice by any standard to cause his employer to lose trust and confidence in his ability and his trustworthiness, justifying his dismissal from employment.

In *Rubberworld Phils. Inc. v. The National Labor Relations Commission,*[64] the dismissal of private respondent was held illegal for alleged gross negligence when he caused the posting of incorrect entries in the stock card without counter-checking the actual status of the items at the warehouse, thereby resulting in unmanageable inaccuracies in the data posted in the stock cards. The Supreme Court said that the said offense, if indeed committed, was private respondent's first infraction with regard to his duties. It would thus be cruel and unjust to mete out the drastic penalty of dismissal for it is not proportionate to the gravity of the alleged offense.

In *A.M. Oreta Company, Inc. v. National Labor Relations Commission,*[65] the Supreme Court said that the alleged ground of unsatisfactory performance is not one of the just causes for dismissal provided in the Labor Code. Neither is it included among the grounds for termination of employment under Article VI of the contract of employment between petitioner and respondent. Moreover, petitioner failed to show proof of the particular acts or omissions constituting the unsatisfactory performance by respondent of his duties, which was allegedly due to his poor physical state after an accident.

It is submitted that this decision is based on a very literal reading of the grounds for dismissal mentioned in the Labor Code. Unsatisfactory performance has always been considered subsumed under

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[63]G.R. No. 51632, 177 SCRA 308 (1989).
[64]G.R. No. 75704, 175 SCRA 450 (1989).
[65]G. R. No. 74004, 176 SCRA 218 (1989).

the general ground of "gross and habitual neglect by the employee of his duties.[66]

In *Roche Philippines v. National Labor Relations Commission,*[67] the dismissal of a sales representative was voided. The salesman was accused of "kiting" or leaving his assigned sales territory earlier than the scheduled date as the witnesses against him were not credible. The case was differentiated from similar cases where the dismissal was upheld, since in those cases the employee under investigation admitted guilt which admissions were corroborated by documentary evidence.

*Retrenchment*

In *International Hardware Inc. v. National Labor Relations Commission,*[68] it was held that when an employee agrees to his retrenchment or voluntarily applies for retrenchment with the employer due to the installation of labor-saving devices, redundancy, closure or cessation of operations, or to prevent financial losses to the business of the employer, the required notice to the DOLE is not necessary as the employee thereby acknowledges the existence of a valid cause for the termination of his employment.

In *Virgilio Raposon v. National Labor Relations Commission,*[69] the dismissal of an employee on the ground of retrenchment was declared illegal where the employer failed to prove that it was suffering from business losses at the time of the termination. The employee's acceptance of his termination pay is not a bar to his contesting the validity of his dismissal from employment.

In *Benjamin Indino v. National Labor Relations Commission,*[70] the dismissal of petitioner in line with a purported retrenchment was voided where respondent employer failed to prove its actual or imminent losses that could justify the drastic cuts in personnel and costs.

In *Rural Bank of Cotabato Inc. v. National Labor Relations Commission, et. al.,*[71] the retrenchment cited by the Company as the basis for its dismissal of employees was not established by the evidence as the company realized profits from 1981 up to the time

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[66]*See* Buiser v. Leogardo, Jr., 131 SCRA 151 (1984), where the Court said that failure to observe prescribed standards of work or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal.

[67]G.R. No. 83334, 178 SCRA 386 (1989).

[68]G.R. No. 80770, 176 SCRA 256 (1989).

[69]G.R. No. 769936, 176 SCRA 549 (1989).

[70]G.R. No. 80352, 178 SCRA 168 (1989).

[71]G.R. No. 80975, 174 SCRA 231 (1989).

the workers were terminated in November, 1984. The said company also had sufficient credits and other receivables which the Court found to be an amount greater than the alleged payables, otherwise, the company should have gone out of business a long time ago.

In *Camara Shoes v. Kapisanan Ng Mga Manggagawa sa Camara Shoes*,[72] the petitioner's applications for clearance for the dismissal of its employees were properly denied since petitioner failed to substantiate its allegations that the business was indeed in a state of bankruptcy to justify retrenchment. The Supreme Court explained:

> We held in the case of *Garcia vs. National Labor Relations Commission* (153 SCRA 639, 1987) that:
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> > Business reverses or losses are recognized by law is a just cause for terminating employment (*Columbia Development Corporation v. Minister of Labor and Employment*, 146 SCRA 421 (1986); *LVN Pictures and Workers Association v. LVN Pictures, Inc.*, 35 SCRA 147). Under Article 284 of the Labor Code, as amended, retrenchment of personnel to prevent losses can only be availed of by management if the company is losing or meeting financial reverses. But it is essentially required that the alleged losses in business operations must be proved (*National Federation of Labor Unions v. Ople*, 140 SCRA 124 1986] Otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures in order to ease out employees.

Notice and Hearing

The Labor Code provides that the employer must furnish the worker whose employment is sought to be terminated, with a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Secretary of Labor and Employment.[73]

In *Mercury Drug Corporation v. National Labor Relations Commission*,[74] the respondent's claims of summary suspension was rejected. The Court noted that he was merely preventively suspended while awaiting DOLE approval of the clearance for his dismissal. The respondent was also given the chance to defend himself on several instances: at the police precinct when he was brought for questioning

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[72]G.R. Nos. 63208-09, 173 SCRA 127 (1989).
[73]Art. 277(b).
[74]G.R. No. 75662, 177 SCRA 580 (1989).

immediately after the occurrence of the alleged pilferage of medicines and where he was given the opportunity to state his defenses, and thereafter, before the DOLE where he was required to submit, as he did submit, his position paper. Here, the criminal case filed against respondent eventually led to his conviction and became the basis for his dismissal from employment.

*Metro Port Services, Inc. v. The Hon. National Labor Relations Commission*[75] reiterated the rule that the supposed errant worker may be dismissed from employment only after notice and formal investigation. In this case, it was found that private respondent's dismissal was not preceded by any formal investigation. The interrogation conducted by the petitioner's security personnel did not satisfy the requirements of the law. Private respondents were not allowed to explain or air their side. The Court accordingly affirmed the award of reinstatement with three years backwages.

In *Seahorse Maritime Corporation v. National Labor Relations Commission,*[76] the dismissal of an employee was upheld for serious misconduct in the form of drunkenness and disorderly and violent behavior. Since he was dismissed for cause, the employee is not entitled to separation pay or the salaries for the unexpired portion of his contract. He is entitled only to his unpaid salary for September 1 to 15, 1984. Nonetheless, since his dismissal was effected without due process, *i.e.*, without written notice to him of the charges against him and without a formal investigation where he could have defended himself personally or through a representative, he was accordingly awarded the sum of P1,000.00 as damages conformably with the decision in *Wenfil Corporation vs. NLRC.*[77]

**Reinstatement/Backwages/Separation Pay**

In *Juanito de Asis v. National Labor Relations Commission,*[78] the Court ruled that reinstatement and separation benefits are not proper where the employees were dismissed for loss of confidence as they were charged with theft, although these charges were later withdrawn out of compassion. However, the petitioners were awarded P1000.00 as the employer failed to comply with the clearance requirement for dismissal.

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[75]G.R. Nos. 71632-33, 171 SCRA 190 (1989).
[76]G.R. No. 84712, 173 SCRA 390 (1989).
[77]G.R. No. 80587, 170 SCRA 69 (1989).
[78]G.R. No. 82478, 171 SCRA 237 (1989).

In *Felix Esmalin v. National Labor Relations Commission,*[79] the Company did not conduct its own investigation of the petitioner but relied only on the CIS investigation and this was held to violate the notice and hearing requirement. The reinstatement of the employee was barred, however, due to the strained relations between the parties. Instead, separation pay was awarded.

In *Bagong Bayan Corp. v. National Labor Relations Commission,*[80] Court said that although in certain cases, good faith excused the employers involved from the payment of backwages, the same can hardly be invoked in this case since it appeared that petitioner relied on the statement of a witness which was discredited by the investigating fiscal when the latter recommended the dismissal of the criminal complaint against private respondent.

Under the Labor Code as amended by Republic Act No. 6715, only an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his backwages inclusive of allowances, and his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[81]

The decision in *Eduardo Reyes v. Minister of Labor*[82] involves a situation where the Labor Arbiter sustained the dismissal of an assistant sales manager for loss of trust and confidence but gave him the affirmative relief of separation pay. Ruling on the propriety of this award where loss of confidence by the employer is not disputed, the Supreme Court said:

> This issue has already been laid to rest by this Court. In *Baby Bus, Inc. v. Minister of Labor*, 158 SCRA, 221 (1988), it was held that it does not necessarily follow that if there is no illegal dismissal then no award of separation pay may be made. In the case of *San Miguel Corporation v. Deputy Minister of Labor and Employment*, 126 SCRA, 221 [1988], this Court ruled that the trust and confidence in the private respondent having been lost, the respondent Regional Director acted correctly in allowing termination of employment but with retirement for separation benefits.
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> In the case at bar, petitioner seeks the award of reinstatement as granted by the NLRC, but as a general rule he is entitled to such relief only where his dismissal is due to the unlawful act of the employer or to the latter's bad faith. *Callenta v. Carnation Philippines, Inc.*, 145 SCRA, 276-277

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[79] G.R. No. 67880, 177 SCRA 537 (1989).
[80] G.R. No. 61272, 178 SCRA 107 (1989).
[81] Art. 248(a).
[82] G.R. No. 75704, 170 SCRA 134 (1989).

> (1988). Thus, in the case of *City Trust Finance Corporation v. NLRC*, 157 SCRA, 94-95 (1988), where the ground of loss of confidence has not been established nor sufficient basis thereof presented, the finding that respondent was illegally dismissed was well taken and said employee although not reinstated was awarded three years backwages, separation pay and moral damages.

It was held, however, that no justification exists for the award of separation benefits since the records show that petitioner himself admitted in a letter to respondent company that he antagonized the purchasing officer of the company's biggest customer thereby creating a prejudicial situation beyond his ability to control.

This ruling was further amplified in *Osias Academy v. the Department of Labor and Employment, et al.*[83] The appropriateness of the award of separation benefits was disputed since the two employees were dismissed for loss of confidence for embezzlement of company funds and serious misconduct. The Court said:

> A similar issue was involved in a case recently decided by this Court en banc: *Philippine Long Distance Telephone Company v. NLRC, et al.*, G.R. No. 80609, August 23, 1988. In that case, this Court undertook a review of present precedents, sanctioning the grant of separation pay to employees dismissed for some cause namely *Firestone Tire and Rubber Company of the Philippines v. Larioza*, 148 SCRA, 198; *Soco v. Merchants Corporation of Davao*, 148 SCRA, 525; *Filipro, Inc. v. NLRC*, 145 SCRA 123; *Metro Drug Corporation v. NLRC*, 143 SCRA 132; *Engineering Equipment, Inc. v. NLRC*, 133 SCRA, 752; *New Frontier Mines, Inc. v. NLRC*, 129 SCRA, 502; and *San Miguel Corporation v. Deputy Miniter of Labor and Employment, et al.*, 145 SCRA 196. It was noted that these cases constituted an exception to the rule in the Labor Code that a person dismissed for cause is not entitled to separation pay, the exception being based on considerations of equity. The Court observed however that the cited decisions had not been consistent as to the justification for the grant of separation pay in the amount and rate of such award and pointed out the need for a re-examination of the policy therein initiated in order to rationalize the exception, "to make it fair to both labor and management, specifically to labor."

The Court then proceeded to lay down the following principles:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for cause other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relation with fellow worker, the employer may not be required to give the dismissed employee separation pay or

[83]G.R. No. 83234, 172 SCRA 468 (1989).

financial assistance, or whatever other name it is called on the ground of social justice.

The Supreme Court reiterated this ruling in *Philippine National Construction Corporation v. National Labor Relations Commission*,[84] where the dismissal of the employee on the charge of dishonesty was declared unjustified due to some doubts on his alleged misconduct but separation pay of one month for every year of service was granted in lieu of reinstatement plus backwages from the time of dismissal up to the date of the decision.

The cases of *Samuel Casas Lim v. National Labor Relations Commission and Sweet Lines, Inc. v. National Labor Relations Commission*,[85] ruled that separation pay and backwages are not inconsistent with each other. Separation pay is granted where reinstatement is no longer advisable for the compensation that should have been earned were it not for the unjust dismissal. The basis for computing the two are different, the first being usually the length of the employee's service and the second, the actual period when he was unlawfully prevented from working.

Damages

The said decisions provided anchor for the rule that apart from the affirmative reliefs of reinstatement with backwages, an employee who is unjustly dismissed from employment may be entitlted to moral and exemplary damages. In Sweet Lines, Inc., a senior branch officer of its international accounts department was hired for a fixed salary and a stipulated 5% commission on sales production. She was subsequently promoted to manager of the department with corresponding increase in compensation. Her relations with her employer began to sour however, when she repeatedly asked for payment of her commissions which had accumulated and were overdue. On July 16, 1985, she received a letter from Samuel Casas Lim, terminating her employment with Sweet Lines on August 5, 1985. A complaint was filed against Sweet Lines for illegal dismissal, illegal deduction, unpaid wages and commissionns plus moral and exemplary damages among other claims. The Labor Arbiter declared the dismissal illegal and held the petitioners jointly and severally liable to private respondent for the payment of her separation pay, backwages and moral and exemplary damages, among others. One of the issues raised by petitioner Lim was that he could not be held jointly and severally liable with Sweet Lines, Inc for the payment of the awarded claims. The Supreme Court sustained this contention and said:

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[84]G.R. No. 83320, 170 SCRA 270 (1989).
[85]G.R. Nos. 79975 and 79907, 171 SCRA 328 (1989).

> On the fourth issue, we agree with petitioner Lim that he cannot be held personally liable with Sweet Lines for merely having signed the letter informing Calsado of her separation. There is no evidence that he acted with malice or bad faith. The letter in fact, informed her not only of her separation but also of the benefits due her as a result of the termination of her services.
>
> It is true that Lim has raised this matter rather tardily and also that he belongs to a close corporation controlled by the members of one family only. But these circumstances should not be allowed to operate against him if he is to be accorded substantial justice in the resolution of the private respondent's claim. As we said in *Ortigas v. Lufthansa German Airlines* (64 SCRA 610) the Court is clothed with ample authority to review matters even if they are not assigned as errors in the appeal, if it finds that its consideration is necessary in arriving at a just decision of the case. As for the second charge, the mere fact that Lim is part of the family corporation does not mean that all its acts are imputable to him directly and personally. His acts were official acts, done in his capacity as vice president and on its behalf. There is no showing that he acted without or in excess of his authority or was motivated by personal ill will toward *Calsado*.

**Due Process**

In *Blue Bar Coconut Philippines, Inc. v. The Minister of Labor*,[86] the Supreme Court reiterated its earlier ruling that there is no violation of due process where the Regional Director merely required submission of position papers and resolved the case summarily thereafter against the employer without submitting the case for arbitration. Summary investigation and decision on the merits are proper where the issues raised by the parties do not involve intricate questions of law. What the law prohibits is the absolute lack of opportunity to be heard. In this case, the records show that following the practice and procedure before the Regional Office, the union complaint was set for hearing where the parties were given opportunities to conciliate their differences after which they were required to submit position papers.

**Exhaustion of Administrative Remedies**

In *Gelmart Industries, Inc. v. National Labor Relations Commission*,[87] it was held that the petitioner need not file a motion for reconsideration of an NLRC decision directing respondent's reinstatement with backwages before resorting to a petition for certiorari with the Supreme Court. The Court took into account the fact that an NLRC decision is immediately executory even pending appeal. Thus, the filing of a motion for reconsideration may not prove to be an

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[86]G.R. No. 54427, *supra* note 21.
[87]G.R. Nos. 85668, 176 SCRA 295 (1989).

adequate remedy. For one, assuming that a motion for reconsideration is filed, nowhere does the law state that the filing thereof would automatically suspend the execution of the decision. Second, although a motion for reconsideration has often been considered a condition precedent for granting the writ of certiorari, this rule, however, finds exception in cases where execution had been ordered and the need for relief is extremely urgent.

Jurisdiction

*Visitorial and Enforcement Power*

The decision in *Maternity Children's Hospital v. The Hon. Secretary of Labor, et. al.,*[88] involves the exercise of the visitorial power of the Secretary of Labor and Employment to enforce and administer labor standards laws. Upon an inspection of the records of petitioner at the instance of certain complaining employees, the DOLE Regional Director found that there was an underpayment of wages of all the employees and accordingly directed the payment of appropriate wage and allowance differentials. Petitioner did not contest the inspection result and instead manifested that it was raising the necessary funds to effect the repayment. On appeal with the Supreme Court, petitioner, for the first time, alleged that original and exclusive jurisdiction over money claims is properly lodged with the Labor Arbiters under Article 217 paragraph (3) of the Labor Code and that the DOLE Regional Director erred. The petitioner also raised an issue why the award should extend as well to employees who were not signatories to the complaint and those no longer in the service of the hospital at the time the complaint was filed.

After thoroughly analyzing the statutory history of the pertinent provision, the exercise of the DOLE Regional Director's visitorial and enforcement powers under Article 128 (b) was uphold:

> As seen from the foregoing, E.O 111 authorizes a Regional Director to order compliance by an employer with labor standards provisions of the Labor Code and other legislations. It is our considered opinion, however, that the inclusion of the phrase 'the provisions of Article 217 of this Code to the contrary notwithstanding, and in cases where the relationship of an employer and employee still exists' . . . in Article 128 (b), as amended, above cited merely confirms/reiterates the enforcement/ adjudication authority of the Regional Director over uncontested money claims in cases where an employer-employer relationship still exists.

[88]G.R. No. 78909, 174 SCRA 632 (1989).

Accordingly, the results of the labor inspection was affirmed and the employer was directed to pay the wage and allowance differentials to the employees who were still employed at the time of the inspection the results of which the employer did not contest.

The Court distinguished this ruling from the *Ong*[89] and *Zambales*[90] cases where the workers involved were also still connected with the Company. In the *Ong* case, the employer disputed the adequacy of the evidentiary foundation of the findings of the labor standards inspectors while in the *Zambales* case, the money claims which arose from the alleged violations of labor standards provisions were not discovered in the normal course of inspection.

The award to the other employees who did not sign the complaint but were still connected with the hospital at the time the complaint was filed was similarly upheld. The decisions, however, declared that the enforcement power of the Regional Director cannot be legally upheld in cases of separated employees. In this situation, Article 128 is not applicable as said article is in aid of enforcement power of the Regional Director; hence, not applicable where the employees seeking to recover wage differentials are already separated from the service. These claims are pure money claims which have to be the subject of arbitration proceedings and, therefore, within the original and exclusive jurisdiction of the Labor Arbiters.

The Supreme Court reached a different conclusion in *Makati Medical Center v. Secretary of Labor and Employment*[91] and consolidated cases where the orders of the Regional Director and the Secretary of Labor were nullified. The officials directed the petitioner hospital to adjust their payrolls to comply with the requirement of seven days pay for every forty hours of work rendered by hospital personnel. In this case, the respondent *Alliance of Filipino Workers* filed notices of strike on July 4, 7 and 11, 1988, against thirteen hospitals for alleged violation of Policy Instruction No. 54, Article 83 of the Labor Code and R. A. 5901. The National Mediation and Conciliation Board (NMCB) conducted conciliation conferences on the labor dispute, but subsequently dropped them and referred to the inspecting arm of the DOLE. The Acting Regional Director issued inspection authorities against petitioner hospitals which disclosed alleged violations of R.A. 5901. The hospitals disputed the findings of the labor inspection officers and questioned the constitutionality of R.A. 5901. Meanwhile, the AFW filed a consolidated notice of strike against the hospitals

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[89] G.R. No. 76710, 156 SCRA 768 (1987).
[90] G.R. Nos. 73184-73188, 146 SCRA 50 (1986).
[91] G.R. No. 84869, July 26, 1989.

alleging violations of the collective bargaining agreements and unfair labor practices. The Secretary of Labor later certified the issues in this notice of strike to the NLRC pursuant to Article 263 (g) of the Labor Code. The hospitals also claimed that the certification of the labor dispute deprived the Regional Director of jurisdiction over the labor standards case. The Regional Director proceeded to decide the labor standards case on the basis of the disputed labor inspection results, the Secretary of Labor affirmed his decision on appeal. The Court reversed and said:

> There is no dispute in these petitions over public respondent's submission that if there exists an employer-employee relationship, the Regional Director acting in behalf of the Secretary of Labor has the power to order and administer compliance with the labor standards provisions of the Labor Code and other labor legislation. Compliance will be based on the findings of labor regulation officers made in the course of inspection.
>
> There is an exception, however, and the respondents themselves admit this exception to the above procedure. *Where the employer contests the findings of the labor regulations officers and raises issues which cannot be resolved without considering evidentiary matters not verifiable in the normal course of inspection, the visitorial and enforcement powers of the Secretary of Labor are not applicable.* The handling of evidentiary matters, the determination of controversial and contested issues, and the resolution of intricate questions of law must be done by Labor Arbiters and the National Labor Relations Commission. This significant exception to the Secretary's visitorial powers is necessary because the quasi-judicial process before a Labor Arbiter requires faithful observance of administrative due process in adversarial proceedings. It calls for scrupulous adherence to complicated principles of administrative law. These are difficult desiderata not ordinarily expected to be handled by labor inspectors and for which they are not especially equipped.
>
> The Court agrees with the petitioners' stand that a more thorough procedure buttressed by the introduction of evidence and the application of relevant statutory provisions and jurisprudence is essential in the instant cases.

It was also noted that petitioner hospitals disputed the findings of the labor regulation officers and legal, contractual and constitutional issues were raised which could not be resolved through summary inspection. The case was accordingly remanded to the NLRC for hearing and inclusion in the certified case.

**Estoppel**

Jurisdiction by estoppel was applied in *Alfredo Marquez v. Hon. Secretary of Labor, et al.*[92] Even if money claims are solely under the jurisdiction of Labor Arbiters, where the parties actively participated in the proceedings, coupled with failure to timely object to the jurisdiction of the court or quasi-judicial body where the action is pending is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case.

**Lupong Tagapayapa**

In *Teresita Montoya v. Teresita Escayno, et al.*,[93] it was settled that conciliation and mediation proceedings on labor controversies need not be undertaken by the Barangay Lupong Tagapayapa before the cases are filed with the appropriate labor agency.

**Jurisdiction of Labor Arbiters**

Prior to its amendment, the Labor Code provided that Labor Arbiters shall have the original and exclusive jurisdiction to hear and decide cases that workers may file involving wages, hours of work and other terms and conditions of employment and all money claims of workers including those based on non-payment or underpayment of wages, overtime compensation, separation pay and other benefits provided by law or appropriate agreement.[94] As recently amended by R.A. 6715, the Labor Code now provides that the Labors Arbiters and the Commission shall have original and exclusive jurisdiction to hear and decide those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment, if accompanied with a claim for reinstatement.[95] Where the laborers do not claim reinstatement, the DOLE Regional Director or any of the duly authorized hearing officers of the department is empowered, through summary proceedings and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits including legal interests owing to an employee or person employed in domestic or household service or househelper under the Code arising from employer-employee relations provided that the aggregate money claims of each employee or househelper does not exceed P5,000.00.

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[92]G.R. No. 80685, 171 SCRA 337 (1989).

[93]G.R. Nos. 82211-12, 171 SCRA 442 (1989).

[94]Art. 217, as amended by sec. 2, Batas Blg. 130 and sec. 2, Batas Blg. 227 (1982).

[95]Art. 217(e).

In the light of this amendment the decision in *Planters Product Inc. v. National Labor Relations Commission* and *Renato Abejar v. Planters Products Inc.*[96] to the effect that an employee need not seek reinstatement in order to file a complaint before a Labor Arbiter for certain money claims is no longer applicable. If the case had been decided under the recent amendment, the labor arbiter would have been declared without jurisdiction since the complainants in the case were only claiming additional termination benefits without reinstatement.

Government Workers

Under the Labor Code, employees of government corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. All other employees in the Civil Service shall have the right to form associations for purposes not contrary to law.[97]

The Supreme Court held in *Luz Lumanta v. National Labor Relations Commission and Food Terminal, Inc.*[98] that the Labor Code provision should be understood in correlation with the pertinent provisions of the 1987 Constitution which took effect on February 2, 1987. Article 9-B, Section 2 (1) thereof provides that the civil service embraces all branches, subdivisions, instrumentalities and agencies of the government including government-owned or controlled corporations with original charter. The facts showed that petitioner joined by 54 other retrenched employees of Food Terminal Inc. (FTI), filed a complaint for unpaid retrenchment or separation pay against it with the DOLE. Private respondent moved to dismiss the complaint for lack of jurisdiction. It argued that being a government-owned or controlled corporation, its employees are governed by the Civil Service Law, not by the Labor Code, therefore claims arising from employment fall within the jurisdiction of the Civil Service Commission and not the DOLE. The Labor Arbiter dismissed the complaint for lack of jurisdiction. The NLRC affirmed said decision. On petition for *certiorari*, the Court reversed and said:

> The Court, in *National Service Corporation (NASECO) v. National Labor Relations Commission*, G.R. No. 69870, promulgated on November 29, 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the phrase 'with original charter', in effect held that government-owned or controlled corporations with original charter refer to corporations chartered by special law as distinguished from

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[96]G.R. Nos. 78524 and 78739, 169 SCRA 328 (1989).
[97]Art. 224.
[98]G.R. No. 82819, 170 SCRA 79 (1989).

> corporations organized under our general incorporation statute -- the Corporation Code. In NASECO, the Company involved had been organized under the general incorporation statute and was a subsidiary of the National Investment Development Corporation which in turn was a subsidiary of the Philippine National Bank, a bank chartered by special statute. Thus, government-owned or controlled corporation like NASECO are effectively excluded from the scope of the Civil Service.
>
> It is the 1987 Constitution, and not the case law embodied in Juco, which applies in the case at bar, under the principle that jurisdiction is determined as of the time of the filing of the complaint. At the time the complaint against private respondent FTI was filed (*i.e.*, 20 March 1987) and at the time of the decisions of the respondent Labor Arbiter and National Labor Relations Commission were rendered (*i.e.*, 31 August 1987 and 18 March 1988, respectively), the 1987 Constitution had already come into effect.

Hence, the Supreme Court concluded that because respondent FTI is a government-owned corporation without original charter, it is the DOLE and not the Civil Service which has jurisdiction over the dispute arising from the employment of petitioners with respondent FTI.

Labor-Only Contractor

Under the Labor Code, labor-only contracting exists where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of the employer. In such cases, the persons or intermediary shall be considered merely an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.[99] Thus, the law states that in the event that the contractor or sub-contractor fails to pay the wages of his employees in accordance with the Code, the employer will be jointly and severally liable with his contractor or sub-contractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

In contrast, job-contracting is permissible under the Code if the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his manner and method, free from the control and direction

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[99] Art. 106.

of his employer or principal in all matters connected with the performance of the work except as to the results thereof.[100]

Interpreting the statutory provision, the Supreme Court has held that a messengerial agency which is not a parcel delivery company, as its name implies, but is a recruitment and placement corporation placing bodies in different client companies for longer or shorter periods of time, is considered a labor only contractor considering that the employees assigned to the client companies utilize the office premises and equipment of the client companies and not those of the messengerial agency and the delivery of documents to designated persons whether within or without the clients' premises, in this case a bank, is related to its day-to-day operations.[101]

In *Industrial Timber Corporation vs. National Labor Relations Commission*,[102] the Supreme Court said that a finding that a contractor is a labor-only contractor is equivalent to a finding that there is an employer-employee relationship between that owner of the project and the employees of the contractor since that relationship is defined and prescribed by the law itself. In this case, the Court found that the supposed contractor had no substantial capital and investment in the form of tools, equipment and machineries, work premises and other materials since the plywood plant and panels were all supplied by petitioner. Likewise, the activities undertaken by the contractor were related to petitioner's business. Similarly, it was declared in *Danilo Tabas vs. California Manufacturing Company, Inc.*[103] that a manpower service agency which assigned promotional merchandisers to respondent firm is considered a labor-only contractor. The petitioners were tasked with the merchandising, promotion or sale of the products of respondent in the different sales outlets in Metro Manila which were integral parts of its manufacturing business. The mere fact that petitioners were hired on a temporary or seasonal basis cannot alter the Court's conclusion since merchandising cannot be considered a specific project as it is an activity related to the day-to-day operations of respondent. However, it would have been different if the manpower service agency had been a promotions firm and that respondent had hired it to perform the latter's merchandising activities. In such a case, the manpower agency would have been truly the employer of its employees and not of respondent. In the light of these facts, the respondent company was declared as the true employer of the contractor's employees obliged to reinstate them to

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[100]Sec. 8, Rule VIII, Book III, Labor Code Rules.

[101]Philippine Bank of Communications v. NLRC, G.R. No. 66598, 146 SCRA 347 (1986).

[102]G.R. No. 83616, 169 SCRA 341 (1989).

[103]G.R. No. 80680, 169 SCRA 497 (1989.

their former positions and to pay their backwages jointly and severally with the manpower agency.

In *Leopoldo Guarin vs. National Labor Relations Commission*,[104] respondent Lipercon Services, Inc. was held to be a mere labor-only contractor because (i) it failed to present proof that it has substantial capital and investments in the form of tools, equipment, machines and work premises and (ii) the jobs assigned to the petitioners as janitors, mechanics, gardeners, firemen and grass cutters were directly related to the business of the Company as a garment manufacturer. Since Lipercon was a labor-only contractor, the workers which it supplies to Novelty became regular employees of the latter.

Prescription

Under the Labor Code, all money claims arising from employer-employee relations accruing during the effectivity of the Code shall be filed within three years from the time the cause of action accrued; otherwise, they shall be forever barred.[105] In contrast, the Civil Code provides that an action upon an injury to the right of plaintiff must be instituted within four years.[106] The Court in *Baliwag Transit, Inc. v. Honorable Blas Ople, et al.*[107] had occasion to determine which prescriptive period should be applicable to a complaint for illegal dismissal. Private respondent, who was employed by petitioner as a bus driver figured in an accident which occured on August 10, 1974 when the bus he was then driving was hit at its rear by an on-rushing train at the Philippine National Railways (PNR) that dragged it several meters and flung it on its side at a nearby ditch resulting in the death of 18 passengers and serious physical injuries to 56 others. At the time of the accident, the bus was stalled at the railroad crossing because the vehicle ahead of it had stopped owing to a jeep that was making its way into a garage. The petitioner filed a complaint for damages against the PNR which was held liable for its negligence in a court decision rendered on April 6, 1977. The private respondent was absolved of any contributory negligence. Private respondent then asked for his reinstatement but was advised to wait until the termination of the criminal case against him. He again demanded his reinstatement on May 2, 1980 in a letter signed by his counsel. On May 10, 1980, the petiitioner said that he could not be reinstated because his driver's license had been revoked and his driving was extremely dangerous to the riding public. Private respondent filed a complaint for illegal

[104]G.R. No. 86010, 178 SCRA 267 (1989).
[105]Art. 291.
[106]CIVIL CODE, art. 1146.
[107]G.R. No. 57642, 171 SCRA 250 (1989).

dismissal with the MOLE (later on, DOLE) on July 29, 1980. The complaint was dismissed by the DOLE Regional Director because it was filed late under Article 291 of the Labor Code which provides that all claims accruing before the effectivity of the Labor Code on November 1, 1974 should be filed within one year thereafter. The Regional Director said that even assuming that indefinite suspension developed into a dismissal only in 1975, after the effectivity of the Code, the action should still be deemed prescribed and also forever barred because it was not filed within three years from such dismissal conformably to the same article.

Resolving this issue, the Court initially noted that although Article 291 provides for a prescriptive period of one year, Article 1146 of the Civil Code provides for a longer period of four years within which to institute an action based upon an injury to the rights of the plaintiff. The Court quoted the following rationale for the application of this longer period under the Civil Code:

> One's employment or profession is a 'property right' and the wrongful interference therewith is an actionable wrong. The right is considered to be property within the protection of the constitutional guaranty of due process of law. Clearly then, when one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essense, an action predicated upon an injury to the rights of plaintiff as contemplated under Article 1146 of the New Civil Code which must be brought within four years (*Callanta v. Carnation Philippines, Inc.* 145 SCRA 268. *See also Santos v. Court of Appeals*, 96 SCRA 448).

The Supreme Court proceeded to determine when the cause of action for illegal dismissal accrued, whether on August 10, 1974, when the collision occured or on May 10, 1980, when private respondent's demand for his reinstatement was rejected by the petitioner. After defining the elements of a cause of action, the Supreme Court said:

> We agree with the private respondent that May 10, 1980 is the date when his cause of action accrued, for it was then that the petitioner denied his demand for reinstatement and so committed an act or omission 'constituting a breach of the obligation of the defendant to the plaintiff'. The earlier request made by him having been warded off with indefinite promises, and the private respondent not yet having decided to assert his right, his cause of action could not be said to have then already accrued. The issues had not yet been joined, so to speak. This happened only when the private respondent finally demanded his reinstatement on May 2, 1980 and his demand was categorically rejected by the petitioner on May 10, 1980.

**Project Employment**

Under the Labor Code, an employment shall be considered regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the engagement has been fixed for a specific project or undertaking the completion or termination of which had been determined at the time of the engagement of the employee or where the services or the work to be performed is seasonal in nature and the employment is for the duration of the season.[108]

A project employment validly terminates by its own terms upon the completion of the project or of the phase thereof to which the employee is assigned without any liability on the part of the employer which will otherwise attach in case of an illegal dismissal. Thus, the employees of a firm engaged in the building and repair of vessels were declared to be project employees who were lawfully dismissed upon completion of the project where it appeared that the firm does not construct vessels for sale which will demand continuous production of ships with regular employees.[109] However, members of a work pool from which a construction company draws its project employees, if considered employees of the construction company while in the work pool, are non-project employees or are employees for an indefinite period. If they are employed in a particular project, the completion of the project or of any phase thereof will not mean severance of employer-employee relationship.[110]

In *Mario Cartagenas v. Romago Electric Company, Inc.*,[111] petitioner was upheld where it was shown that respondent is a general contractor engaged in contracting and sub-contracting of specific building construction projects such as electrical, mechanical and civil aspects in the repair of buildings and other kindred activities. The Supreme Court explained:

> As an electrical contractor, the private respondent depends for its business on the contracts it is able to obtain from real estate developers and builders of buildings. Since its work depends on the availability of such contracts or projects, necessarily the duration of the employment of its workforce is not permanent but coterminous with the projects to which they are assigned and from whose payrolls they are paid. It would be exteremely burdensome for their employer who, like them, depends

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[108]Art. 280.

[109]Sandoval Shipyards, Inc. v. NLRC, G.R. Nos. 65689 & 66119, 136 SCRA 674 (1989).

[110]Policy Instructions No. 20 Stabilizing Employer-Employee Relations in the Construction Industry.

[111]G.R. No. 82973, 177 SCRA 637 (1989).

> on the availability of projects, if it would have to carry them as permanent employees and pay them wages even if there is no project for them to work on.

A project employment is not created by simple paper renewals of the term of employment. In *Philippine National Construction Corp. v. National Labor Relations Commission, et. al.*,[112] the Supreme Court declared illegal the termination of the services of a supposed project employee on the ground of completion of the project to which he was assigned where the facts indicated that it was petitioner's practice to rehire the employee after the completion of every project and this rehiring continued throughout the employee's thirteen years of employment in the Company. The Supreme Court accordingly ordered the reinstatement of the employee since he was not a project employee who may be dismissed upon completion of the project or the phase thereof to which he was assigned but a member of a work pool of the employer.

Probationary Employment

Under the Labor Code, probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee, engaged on a probationary basis, may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.[113]

*Purpose of Probation Period*

Pertinently, it has been held that the right to select employees includes the employer's right to set or fix a probationary period within which the employer may test and observe the conduct of the employee before hiring him permanently.[114] Generally, the probationary period of employment is limited to 6 months. The exception to this general rule is when the parties to an employment contract agree on a longer period, as when it is established by company policy or when the same is required by the nature of work to be performed by the employee. Thus, a probationary period of 18 months is justified where the employer, which is engaged in the advertisement and publication in the yellow

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[112]G.R. No. 5323, 174 SCRA 191 (1989).

[113]Art. 281.

[114]Grand Motor Parts Corp. v. Minister of Labor, G.R. No. 58958, 130 SCRA 436 (1989).

pages of the PLDT telephone directories, needs this period to determine the character and selling capability of its sales representatives. Publication of solicited ads are only made a year after the sale has been made and only then will the employer be able to evaluate the efficiency, conduct and selling ability of the sales representatives, the evaluation being based on the published ads.[115]

In *Espiritu Santo Parochial School vs. National Labor Relations Commission;*[116] the validity of a probationary period of three years for teachers under the policy enunciated by the Bureau of Private Schools was upheld but declared that the dismissal of the petitioners for alleged failure to pass probationary standards was unjustified since it appeared that they earned performance ratings ranging from 80% to 90%. Also rejected was the argument that the contracts of the teachers were for a definite period which were validly terminated at the end thereof since it appeared that the teachers appointment papers stipulated no period. In that eventuality, the Supreme Court said that the three-year probationary period provided in the manual of private schools must apply. Under said manual, no teacher may be removed unless for just and valid causes.

*Dismissal of Probationary Employees*

In *International Catholic Migration Commission vs. National Labor Relations Commission,*[117] it was held that a probationary employee who was dismissed during the probation period for failure to qualify as a regular member of petitioner's teaching staff in accordance with its reasonable standards is not entitled to her salary for the unexpired portion of her six-month probationary employment.

In *Manila Electric Company vs. National Labor Relations Commission,*[118] the validity of private respondent's dismissal for failure to pass probationary standards was affirmed since the very findings of facts of the Labor Arbiter and the NLRC revealed that the private respondents' superiors in the petitioner's legal department where he was employed as a messenger were dissatisfied with his performance. He was neglectful of his duties. He frequently took the rest of the day off and did not return to the office after performing his errands. The Supreme Court also declared that the NLRC abused its discretion in declaring that the dismissal of private respondent after only five months of his probationary period of six months provided in Article 280

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[115]Buiser v. Leogardo, Jr., G.R. No. 63316, 131 SCRA 151 (1984).
[116]G.R. No. 82225, 177 SCRA 802 (1989).
[117]G.R. No. 72222, 169 SCRA 606 (1989).
[118]G. R. No. 83751, 178 SCRA 198 (1989).

of the Labor Code was illegal and in ordering his reinstatement as probationary employee for a period of five months or a total of nine months probationary period. The Court said that the provision of Article 280 that "probationary employment shall not exceed six months" means that the probationary employee may be dismissed at any time before the expiration of six months after hiring. If after working for less than six months, he is found to be unfit for the job, he can be dismissed but if he continues to be employed beyond six months, he ceases to be a probationary employee and becomes a regular employee.

Substantial Evidence

The decision in *Planters Products Inc. v. National Labor Relations Commission* and *Renato Abejar v. Planters Products Inc.*[119] reaffirms the settled rule that the findings of fact of administrative agencies are binding on the courts if supported by substantial evidence. To the same effect is the decision in *Industrial Timber Corporation v. National Labor Relations Commissions*[120] where it was held that the findings of fact of quasi-judicial bodies are generally binding on the courts. Nonetheless, the Court said that it has never hesitated to exercise its corrective powers and to reverse administrative decisions in the following cases:

> (1) The conclusion is a finding grounded on speculation surmises and conjectures.
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> (2) The inferences made are manifestly mistaken, absurd or impossible.
>
> (3) There is grave abuse of discretion.
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> (4) There is misapprehension of facts.
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> (5) The Court in arriving at its findings went beyond the issues of the case and the same are contrary to the admission of the parties or the evidence presented.
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> (6) Where respondent Commission has sustained irregular procedure and through the invocation of summary methods, including rules on appeal, has affirmed an order which tolerates a violation of due process; and
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> (7) Where the rights of a party were prejudiced because the administrative findings, conclusions or decisions were in violation of constitutional provisions, in excess of statutory authority, or jurisdiction, made upon an irregular procedure, vitiated by fraud, imposition or mistake, not supported by substantial evidence adduced at

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[119]G.R. Nos. 78524 and 78739, 169 SCRA 328 (1989).
[120]G.R. No. 83616, SCRA 169 341 (1989).

> the hearing or contained in the records or disclosed to the parties or arbitrary or capricious.

Where none of the above-mentioned grounds are present which could warrant a reversal of the findings made by respondent Commission that an employer-employee relationship exists between the parties, then the findings of fact would not be disturbed.

**Thirteenth-Month Pay**

Under the 13th-month pay Decree, the term equivalent for purposes of compliance shall include Christmas bonus, mid-year bonus, profit sharing payments, and other cash bonuses amounting to not less than one-twelfth of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employees as well as non-monetary benefits.[121]

In its decision in *Framanlis Farms, Inc. v. Hon. Minister of Labor*,[122] it was held that non-monetary benefits in the form of a weekly subsidy of choice pork meat for only ₱9.00 per kilo and later increased to ₱11.00 per kilo in March 1980, instead of the market price of ₱10.00 to ₱15.00 per kilo; free choice of pork meat in May and December of every year; and free light or electricity cannot be considered an equivalent of the 13th month pay under the specific provisions of the decree.

In the same vein, year-end rewards for loyalty and service cannot be considered an equivalent of the 13th month pay in the light of Section 10 of the Rules and Regulations implementing Decree No. 851 which provides that nothing herein contained shall be construed to authorize any employer to eliminate or diminish in any way supplements or other employee benefits or favorable practice being enjoyed by the employees at the time of the promulgation of this issuance.

**Unfair Labor Practice**

*Interference, Restraint or Coercion*

Under the Labor Code, it shall be an unfair labor practice for an employer to interfere with, restrain or coerce employees in their right to self-organization.[123]

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[121]Pres.Dec. No. 851, sec. 3.
[122]G.R. Nos. 72616-17, 171 SCRA 87 (1989).
[123]Art. 279.

In *Rubberworld Philippines, Inc. v. The National Labor Relations Commission,*[124] it was settled that there is no unfair labor practice where it cannot be shown that the employer actually performed positive acts to restrain union participation of the private respondents. The facts disclosed that respondent Malabanan was employed by petitioner in September 1978 as an ordinary clerk and was promoted to the position of production scheduler with corresponding salary increase in May 1980. He was again transferred to the inventory control section as stock clerk in September, 1983. Petitioner company discovered certain discrepancies in stock invetories which led to a recommendation for the dismissal of respondent Malabanan. In June, 1984, respondent Malabanan was dismissed by petitioner company. He then filed a complaint for unfair labor practice and illegal dismissal against petitioner company, alleging that he was a member of the monthly-salaried employees union affiliated with TUPAS; that petitioner Company asked him and other members to disaffiliate from said union; and that due to their refusal, they were ultimately dismissed from employment. In resolving the issue, the Supreme Court said that the question whether an employee was dismissed for his union activities is essentially a question of fact as to which the findings of the labor agency concerned are conclusive and binding upon the courts if supported by substantial evidence. The Court then quoted with approval the findings of the Labor Arbiter that there was no unfair labor practice committed by the company since it was doubtful whether Malabanan was really engaged in the organization of a labor union affiliated with TUPAS. The complaint showed that the Union itself was not impleaded as a co-complainant and that private respondent was represented by the PAFLU in filing and prosecuting the unfair labor practice complaint.

In the same context, the transfer of respondent to the position of stock clerk is an exercise of management prerogative which cannot be considered an unfair labor practice.

> As a rule, it is the prerogative of the Company to promote, transfer or even demote employees to other positions when the interest of the Company reasonably demand it. Unless there are circumstances which directly point to interference by the Company with the employees' right to self-organization, the transfer of private respondent should be considered as within the bounds allowed by law. Furthermore, although private respondent was transferred to a lower position, his original rank and salary remained undiminished, which fact was not refuted or questioned by private respondent.

[124]G.R. No. 75704, 175 SCRA 450 (1989).

**Violation of CBA**

The Labor Code makes it an unfair labor practice for an employer to violate a collective bargaining agreement.[125] However, under a recent amendment, violations of a collective bargaining agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement.[126]

Prior to this amendment, it has been held that an honest difference of opinion between the parties as to the interpretation and implementation of the terms of a collective bargaining agreement is not necessarily an unfair labor practice. In a recent decision, it was held that an error in interpretation without malice or bad faith does not constitute an unfair labor practice. The Court took note of the fact that the parties may have honest differences in the construction and the actual application of contractual provisions.[128]

Similarly, changes in the terms of a collective bargaining agreement duly renegotiated with the bargaining agent and ratified by the employees within the appropriate bargaining unit cannot be declared an unfair labor practice at the instance of retrenched employees who claim to have been prejudiced by the amendment. This is the doctrine in *Planters Products, Inc. v. National Labor Relations Commission* and *Renato Abejar v. Planters Products Inc.*.[128] The prior collective bargaining agreements between the parties from 1975 onwards granted a termination allowance of three weeks to one month pay for each year of service upon the employees' separation. On Sept 28, 1984, the parties signed a new collective bargaining agreement for the period 1984-1987. This collective bargaining agreement modified the provisions of the previous collective bargaining agreements on termination allowance or benefit and limited its application to separation from the service of the company by reason solely of the employee's disability. Certain employees, retrenched and retired with benefits under the company's retirement plan, are sued for the payment of termination benefits under the old collective bargaining agreements. They claimed that the change where termination allowance is applied only to employees separated due to the disability was an unfair labor practice as it denied benefits the workers would otherwise have received under the old collective bargaining agreements. Rejecting this claim the Supreme Court said:

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[125]Art. 248, par. (i).

[126]Art. 261.

[127]Singapore Airlines Local Employees Association v. NRLC, G.R. No. 65786, 130 SCRA 472 (1984).

> We apply the established rule that a CBA is the law among the parties to the 1984-1987 CBA.
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> Bad faith in the negotiations was not present considering that the provision on termination allowance was made to apply to everybody including those subsequently retrenched or retired after complainants and complainants-intervenors' retrenchment. There was no singling out of the complainants and intervenors-complainants.
>
> Under Section 231 of the Labor Code and Section 1 Rule 9 Book V of the Implementing Rules, the parties to a collective agreement are required to furnish copies to the appropriate regional office with accompanying proof of ratification by the majority of all the workers in the bargaining unit. This was not done in the case at bar. But we do not declare the 1984-1987 CBA invalid or void considering that the employees have enjoyed benefits from it. They cannot receive benefits under provisions favorable to them and later insist that the CBA is void simply because other provisions turn out not to the liking of certain employees. Moreover, the two CBAs prior to the 1984-1987 CBA were also not formally ratified, yet the employees are basing their present case on these collective bargaining agreements. It is inequitous to receive benefits from the CBA and later on disclaim its validity.
>
> There is nothing in the records before us to show that PPI was guilty of unfair labor practice.

In *San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Blas F. Ople,*[129] the petitioner union and the employer concluded a collective bargaining agreement on April 17, 1978 which provided that employees within the appropriate bargaining unit shall be entitled to a basic monthly compensation plus commission based on their respective sales. In September 1979, during the lifetime of the said collective bargaining agreement, the Company introduced a marketing scheme known as "Complementary Distribution System" whereby its beer products were offered for sale directly to wholesalers through SMC's sales offices. Petitioner union filed a complaint for unfair labor practice with the MOLE against SMC as the CDS ran counter to the existing marketing scheme whereby salesmen were assigned specific territories within which their stocks of beer were sold and where wholesalers bought their products, not from SMC. It was alleged that the marketing scheme violated Section 1, Article IV of the collective bargaining agreement as the introduction of the CDS reduced the take-home pay of the salesmen and the truck helpers and SMC would be unfairly competing with them. The Minister of Labor upheld the validity of the CDS. The Supreme Court affirmed and said:

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[129]G.R. No. 53515, 170 SCRA 25 (1989).

Public respondent was correct in holding that the CDS is a valid exercise of management prerogatives:

> Except as limited by special laws, an employer is free to regulate according to his own discretion and judgment, aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, tranfer of employees, work supervision, lay off of workers and the discipline, dismissal and recall of work . . . (*NLU v. Insular La Yebana Company*, 2 SCRA 924; *Republic Savings Bank v. CIR*, 21 SCRA 226, 235; Perfecto V. Fernandez, LABOR RELATIONS LAW, 1985 ed., 44).

Every business enterprise endeavors to increase its profits. In the process, it may adopt or revise means designed towards that goal. In *Abbott Laboratories v. NLRC*, 154 SCRA 713, We ruled:

> Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

So long as the Company's management prerogatives are exercised in good faith, for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them (*LVN Pictures Workers v. LVN*, 35 SCRA 147; *Phil. American Embroideries v. Embroidery and Garment Workers*, 26 SCRA 634; *Philippine Refining Company vs. Garcia, 18 SCRA* 110). San Miguel Corporations' offer to compensate the members of its sales force who will be adversely affected by the implementation of the CDS by paying them a so-called 'back adjustment commission' to make up for the commission they might lose as a result of the CDS, proves the Company's good faith and lack of intention to bust the union.

### Union Dues/Individual Authorizations

The Labor Code provides that other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or other extra-ordinary fees may be checked-off from any amount due an employee without an individual written authorization duly signed by him. The authorization should specifically state the amount, purpose and beneficiary of the deduction.[130] The Labor Code also provides that no officer agent or member of a labor organization shall collect any fees, dues or other contributions in its behalf or make any disbursement of its money or funds

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[130]Art. 241 (o).

unless he is duly authorized pursuant to its constitution and by-laws.[131] It is further provided that the members shall determine by secret ballot, after due deliberation, any question or major policy affecting the entire membership of the organization.[132]

It has been held that a proposed increase in union dues is a major question of policy which should be referred to the general membership in a referendum. An increase in union dues pursuant to a duly approved resolution of the Board of Directors as authorized in the union constitution and by-laws is illegal even if the union members gave individual authorizations for a check-off of increased dues, since it is required that this must be submitted to a referendum among the general membership.[133]

In *Johnson and Johnson Labor Union-FFW v. Director of Labor Relations*,[134] the Supreme Court said that the provision of a union's constitution and by-laws providing for the grant of financial aid to dismissed members is self-executing and such financial aid must be provided to a dismissed member even without the need of individual authorizations from the other members. The Supreme Court explained:

> Section 5, Article 13 of petitioner union's constitution and by-laws earlier aforequoted is self-executory. The financial aid extended to any suspended or terminated union member is realized from the contributions declared to be compulsory under the said provision in the amount of P75.00 due weekly from each union member. The nature of said contribution being compulsory and the fact that the purpose as stated is for financial aid, clearly indicate that the individual payroll authorizations of the union members are not necessary. The petitioner union's constitution and by laws govern the relationship between and among its members. As in the interpretation of contracts, if the terms are clear and leave no doubt as to the intention of the parties, the literal meaning of the stipulation shall control. (*See Government Service Insurance System vs. Court of Appeals, 145 SCRA 311 [1986]).* Section 5, Article 13 of the said Constitution and By-Laws is in line with the petitioner union's aims and purposes which under Section 2, Article II includes:
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> > To promote, establish and devise schemes of mutual assistance among the members in labor disputes.

Thus, there is no doubt that the petitioner union can be ordered to release its funds intended for the promotion of mutual assistance in favor of the private respondent.

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[131]Art. 241 (g).

[132]Art. 241 (d).

[133]San Miguel Corporation Employees Union v. Noriel, G.R. No. 53918, 103 SCRA 185 (1981).

[134]G.R. No. 76427, 170 SCRA 469 (1989).