LIMITATIONS ON THE RIGHT TO STRIKE

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1. INTRODUCTION

The right to strike is a right inherent in the workers' now well entrenched right to organize for their mutual benefit and protection. However, it is not an absolute and an unlimited right. It is a right that has always been subjected to certain conditions imposed by law. The Constitution itself provides that the exercise of the right to strike must be a "peaceful concerted activity" and "in accordance with law."[1] This paper focuses on the effect of the phrase "in accordance with law" to the constitutional guarantee of the right to strike and the possible extent of regulation that the state can undertake with respect to the exercise of this right.

II. DEFINITION OF "STRIKE"

A "strike" has been defined as "a concerted agreement of all employees not to work,"[2] or to stop working at a "preconcerted time".[3] The object of the work stoppage is usually to enable the striking workers to obtain better terms of employment and other concessions with respect to certain economic demands as well as conditions of employment from the employer. It is a means adopted by the working force of an establishment "in order to coerce their employer in some way"[4] "until the object of the strike is attained."[5] It is designed to prevent the employer from conducting his business as usual, thereby threatening him with economic loss in order to make him accede to the demands of the employees.

Under Philippine law, a "strike" is defined as "any temporary

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[1]Art. XIII, sec. 3.

[2]Howard Bros. Mfg. Co. v. Director of Division of Employment Sec., Mass., 130 N.E.2d 108 (1955).

[3]U.S. Coal Co. v. Unemployment Compensation Board of Review, 32 N.E.2d 763 (1940).

[4]Sandoval v. Industries Comm., 130 P.2d 930 (1942).

[5]Hogan v. Unemployment Compensation Board of Review, 83 A.2d 386 (1951).

stoppage of work by the concerted action of employees as a result of an industrial or labor dispute."[6] From this definition we may be able to extract the elements of a "strike". Thus, it is (a) a temporary stoppage of work; (b) a concerted action of employees; and (c) the result of an industrial or labor dispute.

"Strike" as a temporary stoppage of work.

The necessary implication of the first element is that when workers go on strike and refuse to work, they do not intend to do so permanently. There is a clear intention to return to the employment of the same employer once the dispute causing the strike has been satisfactorily settled. In fact, there is absolutely no intention to break or even to suspend the employer-employee relationship and such relationship does not terminate by the mere fact that employees went on strike. Thus in *FEATI University v. Bautista*,[7] the Court held that

> The faculty members, by striking, have not abandoned their employment but, rather, they have only ceased from their labor... The striking faculty members have not lost their right to go back to their positions, because the declaration of a strike is not a renunciation of their employment and their employee relationship with the University...

On the other hand, where employees perform an act which may be construed as an intention to terminate this employer-employee relationship, they may not be considered as engaged in a "strike" and the protection of the law for the exercise of this right is not available to them. The tendering of resignation to avoid compliance with a return-to-work order, for instance, was held not protected by the statute and the resigning employees may not demand reinstatement to their former positions.[8]

"Strike" as a concerted activity.

The second element is that it is a concerted action. One employee cannot declare a strike. In *Moreland Theatres Corporation v. Portland Moving Picture Machine Operators Protective Union, Local No. 159*[9] it was held that

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[6]LABOR CODE, art. 212(l).

[7]18 S.C.R.A. 1191 (1966).

[8]Philippine Airlines Employees' Association of the Philippines v. Court of Industrial Relations, 76 S.C.R.A. 274 (1977).

[9]12 P.2d 333 (1932).

> ... where but one man is employed... no lawful right to strike in such a case could arise... A strike is a combination to obtain higher wages, shorter hours of employment, better working conditions, or some other concession from their employer by the employees stopping work at a preconcerted time. It involves a combination of persons and not a single individual.

Strike must result from an industrial or labor dispute.

The third element is that it results from an industrial or labor dispute, which means that the grounds for going on strike may only proceed from "any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment..."[10] Thus, in *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills,*[11] the Court held that the mass action participated in by the labor organization was not a strike and, therefore, not violative of the no-strike clause in the collective bargaining agreement because it was a demonstration to denounce the abuses of some Pasig policemen and not a concerted action against the employer.

III. PHILOSOPHICAL AND HISTORICAL BASIS OF THE RIGHT TO STRIKE

The right to strike stems from the broader right of workers to organize for their mutual benefit and protection. This right has not always developed side by side with other rights which we consider to belong to the broader area of human rights. In most societies, the relationship between the worker and his employer was considered as a contractual relationship and was, therefore, governed by the law on contracts and each party was bound by the terms of the contract. The growth of the concept of social justice brought to the fore the plight of the working man. It was during the post-World War II period that the right or freedom of association found its full blossoming. The concern for social justice became manifest during this period and society began to be aware of the need to protect the workers from the "arbitrary use of power in the workplace... to enable the individual to participate through his union in the process of making and administering the rules which governed working life."[12]

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[10] LABOR CODE, art. 212 (j).

[11] 31 S.C.R.A. 189 (1970).

[12] K. D. EWING, THE RIGHT TO STRIKE 141 (1991).

Trade unionism, then, developed as a consequence of and as a response to the inequality of positions of labor and capital in the process of production. As Prof. Cole aptly put it, "employers and workmen may be, in the eyes of the law, equal parties to a civil contract, but they are never equal partners in fact...."[13] In the Philippines, the growth of the labor movement, according to Elias T. Ramos, may be divided into two periods: the pre-World War II period and the post-war period. The pre-war period was characterized by the labor movement's intense involvement in politics. The post-war period, on the other hand, saw a stronger emphasis on the labor organization's economic function.[14]

Side by side with the recognition of the workers' right to organize is the increasing State recognition of the validity and utility of strike as an effective weapon for labor -- the main weapon, in fact, in the balance of inequality which is implicit in the employer-employee relationship.[15] By the mere fact that capital will suffer economic losses during the strike, employers are often forced to give in to the demands of labor. However, although it is thus grudgingly recognized as an essential element in the right to organize, the consensus is that the strike must be labor's "weapon of last resort."[16]

IV. CONSTITUTIONAL AND LEGAL BASIS OF THE RIGHT TO STRIKE

The development of Philippine law on the subject of the workers' right to strike is indicative of the growing consciousness of the importance of the workers' role in the production process and in society as a whole. Hence, while the 1935 and 1973 Constitutions merely guaranteed "the right to form associations or societies for purposes not contrary to law,"[17] sec. 3, par. 2, Art.XIII of the 1987 Constitution provides that "[t]he state... shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities *including the right to strike...*"

This is not to say, however, that the right to strike did not exist prior to the 1987 Constitution. We could perhaps trace the major

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[13]K. G. KNOWLES, STRIKES: A STUDY IN INDUSTRIAL CONFLICT 5 (1952).

[14]E. T. RAMOS, PHILIPPINE LABOR MOVEMENT IN TRANSITION 9 (1976).

[15]*Ibid.*

[16]E. MORABE, THE LAW ON STRIKES 3 (1962).

[17]CONST. (1935), art. III, sec. 1; CONST. (1973), art. IV, sec. 7.

developments of the law in this area by categorizing these into three main periods, namely, the Commonwealth Period to Martial Law, the Martial Law Period to the 1987 Constitution, and the present legal framework under the 1987 Constitution.

Commonwealth Period to Martial Law.

This period has not been very pleasant for the striking workers. A survey of the then existing laws and jurisprudence would reveal a negative tendency towards the exercise of the right to strike. More often than not, laws were construed strictly against strikers and more liberally in favor of the employer.

Commonwealth Act No. 103: 1935-1953

Commonwealth Act No. 103 creating the Court of Industrial Relations gave the industrial court jurisdiction over disputes "causing or likely to cause a strike or lockout,"[18] and further provided that when such disputes have been submitted to the Court for settlement and arbitration, "the employee, tenant or laborer shall not strike or walk out of his employment *when so enjoined by the Court...*"[19] Although the foregoing provision is rather restrictive of the right to strike, it does imply that the worker, after all, is not prohibited from going on strike but subject to restrictions imposed by law. The restrictions, however, were so tight that the right to strike virtually became an empty one. For instance, while the same law prohibited employers from accepting other employees, tenants or laborers while the dispute is pending, they may do so with the express authority of the Court.[20] Furthermore, employers may not be compelled to re-admit strikers pending resolution of the dispute when the employer has put the legality or illegality of the strike at issue. Thus, in *Philippine Can Company v. Court of Industrial Relations,*[21] expressing the opinion that "a strike is a coercive measure resorted to by laborers to enforce their demands," the Supreme Court ruled that the re-employment of the strikers whose services the company no longer needed would mean considerable loss to said company, but that "as to the strikers, they would suffer no damage by not being readmitted pending decision of the case."

[18]COM. ACT NO. 103, sec. 4.
[19]COM. ACT NO. 103, sec. 19.
[20]COM. ACT NO. 103, sec. 19.
[21]87 Phil. 9 (1950).

Then, too, in the case of *National Labor Union v. Philippine Match Factory*[22] the Court observed that "the recognition, if at all, by law of the laborers' right to strike is, at most, a negative one and, in the final analysis, is nugatory." Thus, in this case, the Court held that

> [w]hile the law recognizes, in a negative way, the laborers' right to strike, it also creates all the means by which a resort thereto may be avoided.... A situation is thus created whereby a remedy is not, in plain terms outlawed, but is, by all means, discouraged.... Accordingly... a resort thereto by the laborers shall be deemed to be a choice of a remedy peculiarly their own, and outside of the statute and, as such, the strikers must accept all the risks attendant upon their choice. If they succeed and the employer succumbs, the law will not stand in their way in the enjoyment of the lawful fruits of their victory. But if they fail, they cannot thereafter invoke the protection of the law from the consequences of their conduct, unless the right they wish to vindicate is one which the law will, by all means, protect and enforce.

Republic Act No. 875: 1953-1972.

Republic Act No. 875 passed in 1953 and which aimed at eliminating the causes of industrial unrest "by encouraging and protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining and for the promotion of their moral, social and economic well-being,"[23] guaranteed the employees' right to *engage in concerted activities*.[24] It is conceded that a "strike" is one such concerted activity. This law is significant for labor because it abolished the power of the industrial court to issue an injunction against the striking workers[25] except in industries certified by the President as "indispensable to the national interest."[26] The problem here lies in the fact that the President is given the sole power to determine which industries are indispensable to the national interest. Thus, strikes called by workers of transportation companies such as the PANTRANCO, the Batangas Transportation Co., and the Laguna-Tayabas Bus Co. were all certified by the President as affecting the national interest.[27] Likewise, the strike of the workers in the Central Santos-Lopez Co., Inc. was similarly certified for the reason that it was one of the biggest

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[22]70 Phil. 300 (1940).

[23]Sec. 1 (a).

[24]Sec. 3.

[25]Sec. 9.

[26]Sec. 10.

[27]E. Morabe, op. cit. note 16, at 576.

sugar centrals in the Visayas, and that of the workers of Caltex (Phil.), Inc. also for the reason that it was one of the biggest gasoline distributors in the country.[28] It would then appear that the President can prevent workers of big companies from striking on the sole criterion of the company's size. And the industrial court may not question the President's order of certification. Hence, in *Pampanga Sugar Development Co. v. Court of Industrial Relations*,[29] the Court held that

> This is a power that the law gives to the President, the propriety of its exercise being a matter that only devolves upon him. The same is not the concern of the industrial court. What matters is that by virtue of the certification made by the President the case was placed under the jurisdiction of said court.

Martial Law Period to the 1987 Constitution.

It was during the early period of Martial Law that the right of workers to strike suffered its most serious set-back. Exercising his powers under Proclamation No. 1081, Pres. Marcos issued General Order No. 5 on September 22, 1972. While not totally outlawing strikes, it nevertheless prohibited this in "vital industries." The enumeration of what are vital industries is quite extensive in the General Order. The term included such industries as companies engaged in the manufacture or processing as well as in the distribution of fuel gas, gasoline, and fuel or lubricating oil, companies engaged in the production or processing of essential commodities or products for export, companies engaged in banking of any kind, as well as hospitals, and schools and colleges.[30] Given this enumeration, any company which is engaged in the manufacture of any product (*e.g.* flashlight batteries, garments, food products, etc.) may be considered "vital industry" with the only qualification that it be engaged in export trade. Then, Pres. Marcos also issued Presidential Decree No. 21 in October 14, 1972 which required parties to any dispute to first exhaust "all steps in the grievance procedure" provided for either in the respective collective bargaining agreements or "in any other means of dispute settlement."[31] It is with Presidential Decree No. 823, issued on November 3, 1975, that Marcos effectively curtailed the workers' right to strike in an absolute manner. With this decree, he strictly prohibited "all forms of strikes, picketing and lockouts," without any

[28] Id., at 577-580.

[29] 1 SCRA 770 (1961).

[30] 1 Vital Docs. 33.

[31] 1 VITAL DOCS. 200.

qualifications.[32] This absolute ban was lifted on the 16th of December of the same year with the issuance of Presidential Decree No. 849. This decree once more confined the prohibition to "vital industries" and "only on grounds of unresolved economic issues in collective bargaining."[33]

Presidential Decree No. 442 as originally issued on May 1, 1974, did not deal with the subject of the right to strike. The break-through was provided by Batas Pambansa Blg. 130, approved on August 21, 1981. This statute amended Pres. Decree No. 442 and clearly defined the right of workers to strike, subject to certain qualifications and conditions.[34]

Present Legal Framework.

Under the present legal framework, there is hardly any doubt that the right to strike exists and is, in fact, enshrined not only in our statute books but in the Constitution as well. The past experience under a dictatorship induced the framers of the 1987 Constitution to guarantee the exercise of this right in the fundamental law.

The Labor Code of 1974, as amended, provides that

> Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected.[35]

The right to strike is also protected by the International Covenant on Economic, Social and Cultural Rights. Said Covenant provides that

> The State Parties to the present Convention undertake to ensure:
> ... (d) the right to strike, provided that it is exercised in conformity with the laws of the particular country.[36]

As signatory to this Covenant, the Philippines is duty bound to give flesh and blood to its provisions and the rights thereunder that it is committed to protect.

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[32] 29 V.L.D. 21 (1975).
[33] 30 V.L.D. 34 (1975).
[34] Sec. 11.
[35] Art. 263(b).
[36] U.N. DOC. A/6316 (1966), art. 8(d).

V. STATE REGULATION OF THE RIGHT TO STRIKE

Inspite of the legal assurances, it must not be assumed that workers in the Philippines enjoy an absolute right to strike. While the law undoubtedly recognizes the right of workers to self-organization, the right to strike is still begrudgingly conceded. Hence, in the catalog of workers' rights, the right to strike still remains the most susceptible of government regulation and it is, in fact, this right which has suffered the most radical restrictions which even amounted to a complete denial of its exercise during the period of Martial Law.

Rationale: Nature of the Right to Strike

The rationale given for state regulation of the right to strike is the perception that strikes cause injury not only to the parties but also to third persons and to society at large because it "interrupts production, deprives workers of their earnings, employers of their profits, and third parties of goods and services."[37] It is perceived as a remedy "essentially coercive in character and general in its disturbing effects upon the social order and public interests."[38] For while the strike is directed primarily against the employer, its adverse consequences also affect the life of the nation as a whole especially where the strike is staged by workers in industries indispensable to national interest or where the strike is a general one and not merely confined to one company. The economic and political life of the nation is thus imperilled. Hence, the state has ensured, through its laws, that the exercise of this right be confined to the boundaries defined by the state itself. The Constitution, in fact, however broadly, nevertheless defines these limits. It provides that the exercise thereof be "in accordance with law."[39]

Limitations Imposed by Law

The Labor Code and its accompanying rules and regulations provide certain restrictions on the right to strike. The limitations deal with the purpose and object of strikes, the means employed by striking workers, the type of industry involved, and the type of employees who may go on strike. The law also provides certain procedural requisites that have the effect of

[37] P. V. FERNANDEZ, LAW OF STRIKES, PICKETING AND LOCKOUTS xi (1981).
[38] National Labor Union v. Philippine Match Factory, 70 Phil. 300 (1940).
[39] Art. XIII, sec. 3.

restricting the exercise of the right.

Purpose and object of strikes.

Article 263(b) provides that

> Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection... xxx... xxx. However, no labor union may strike... on grounds involving inter-union and intra-union disputes.

The purposes of strikes as provided in this provision is broad enough, that is, for collective bargaining or for mutual benefit and protection. Article 263(c) further categorizes the just causes of strikes, namely, bargaining deadlocks and unfair labor practice. The first is often referred to as an economic strike because the purpose of collective bargaining is precisely economic in nature. Unfair labor practice strikes, on the other hand, are staged in order to preserve the very life of the labor union which the acts of the employer is threatening to kill.

The only limitation in Art. 263 with respect to the purpose of the strike is that the grounds thereof may not include inter-union and intra-union disputes. An inter-union dispute is defined by Art. 212(n) to include "all disputes and grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of the union, including any violation of the rights of union membership..." Article 263(b) prohibits the holding of strikes on these grounds. It also prohibits strikes on the ground of intra-union disputes, the most common of which is union-recognition strikes. In a number of cases, the Supreme Court declared as illegal strikes declared by labor unions to force recognition as exclusive bargaining representative in the respective companies. Thus, in *United Seamen's Union of the Philippines v. Davao Shipowners Association,*[40] it opined that the strike was a "direct off-shoot of a losing effort to have the USUP recognized as the sole collective bargaining agent of the employees" and, consequently, declared it to be legally infirm. The same rulings were handed down in the cases of *Lakas ng Manggagawang Makabayan v. Marcelo Enterprises*[41] and in *United Restauror's Employees Labor Union v. Torres.*[42]

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[40] 20 S.C.R.A. 1226 (1967).

[41] 118 S.C.R.A. 422 (1982).

[42] 26 S.C.R.A. 435 (1968).

Means employed by striking workers.

The law provides that strikers may not commit illegal acts during the strike or they risk the loss of their employment status.[43] Hence, where strikers engaged in picketing commit acts of violence, coercion or intimidation, or obstruct the free ingress to or egress from the employer's premises, or obstruct public thoroughfares, such acts being prohibited under sec. 264(e), the employer would be justified in refusing reinstatement of the erring strikers. However, mere participation in an illegal strike does not result in forfeiture of employment for the rank-and-file union members but only for their officers. In *Pepsi-Cola Labor Union v. NLRC*[44] the Court held that

> .. the members of a union cannot be held responsible for an illegal strike on the sole basis of such membership or even on account of their affirmative vote authorizing the same."

On the other hand, the responsibility of union officers for illegal acts committed by strikers during the strike will depend on whether the illegal acts were pervasive or sporadic. Where violence was found by the Court to be pervasive and pursued as a matter of union policy, it held the union officers liable for the unlawful acts committed by the union members.[45] But where acts of violence were merely sporadic, the Court held that .

> .. absent a pervasive and widespread use of force and violence deliberately promoted and countenanced by the Union... responsibility for such sporadic and isolated acts must be individual in nature.[46]

In *Philippine Airlines, Inc. v. Secretary of Labor and Employment*[47] the Court, in declaring the strike staged by the Philippine Airlines Employees Association to be illegal, held that

> The Labor Secretary exceeded his jurisdiction when he restrained PAL from taking disciplinary action against its guilty employees, for, under Art. 263 of the Labor Code, all that the Secretary may enjoin is the holding of the strike, but not the company's right to take action against union officers who participated in the illegal strike and committed illegal acts.

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[43] Art. 264(a).

[44] 114 S.C.R.A. 930 (1982).

[45] 22 S.C.R.A. 1113 (1968).

[46] FEATI University Faculty Club v. FEATI University, 58 S.C.R.A. 395 (1974).

[47] 193 S.C.R.A. 223 (1991).

Type of industry involved.

The policy has always been to prohibit or discourage strikes in industries perceived to be indispensable to the national interest. Significant here are the changes introduced by Rep. Act No. 6715 to Art. 263(g) of the Labor Code. As amended, the provision reads:

> When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout *in an industry indispensable to the national interest*, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration..."

The original phraseology was "strikes or lockouts adversely affecting the national interest," which is obviously much broader in scope and less definite than "in an industry indispensable to the national interest."

The amendment introduced by Rep. Act No. 6715 to the same article deleted the non-exclusive enumeration of industries affecting the national interest. Considering, however, the non-exclusiveness of this enumeration, this deletion does not have any real significance. The fact remains that the President, even in this latest amendment, is still not precluded "from determining the industries that, in his opinion, are indispensable to the national interest." We have, therefore, in this article, a very broad grant of authority both to the President and the Secretary to determine which industries are indispensable to national interest and to certify the same. Such certification, according to this section, "shall have the effect of automatically enjoining the intended or impending strike..." or if one has already taken place, "all striking... employees shall immediately return to work..." This prohibition is further reiterated in par. 2 of Art. 264(a). This provision declares that

> No strike or lockout shall be declared after assumption of jurisdiction by the President or the [Secretary] or after certification or submission of the dispute to compulsory or voluntary arbitration.

Furthermore, in *Union of Filipro Employees v. Nestle Philippines, Inc.*,[48] the Supreme Court upheld the constitutional validity of articles 263 and 264, stating that "[r]egardless of their motives, or the validity of their claims, the striking workers must cease and/or desist from any and all acts

[48]192 S.C.R.A. 396 (1990).

that tend to, or undermine this authority of the Secretary of Labor, once an assumption and/or certification order is issued."

In *FEATI University v. Bautista*,[49] the Court re-affirmed its earlier ruling that presidential certification of a labor dispute may not be questioned by the courts. The ill-effects of this blanket authority given to the President, and now even to the Secretary of Labor and Employment, has earlier been discussed but it bears repeating. The temptation to exaggerate what constitutes "national interest" is too great for those who have the power to define it under the pretext of maintaining industrial peace. To allow one person to determine the meaning of "national interest" spells real danger to the exercise of the right to strike.

Type of employees

The law distinguishes between managerial employees and rank-and-file employees, between those employed in the private sector and those of the public sector, and, as to the latter, between those employed in government corporations and employees of the civil service.

a. Managerial and supervisory employees

The ruling in *Bulletin Publishing Corp. v. Sanchez*[50] which declared the Supervisors' Union as illegal is still a valid pronouncement because the Court found in this case that the nature of private respondents' duties as reflected in their job descriptions "gives rise to the irresistible conclusion that most of the herein private respondents are performing managerial functions... ."[51] However, it must be accepted with caution in the light of the subsequent passage of Rep. Act No. 6715 which distinguishes managerial employees from supervisory employees. Section 4 of said Act, which became art. 212(m) of the Labor Code, provides that

> Managerial employee is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not

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[49] 18 S.C.R.A. 1191 (1966).

[50] 144 S.C.R.A. 628 (1986)

[51] The private respondents in Bulletin Publishing Corp. v. Sanchez were "managers, purchasing officers, personnel officers, property officers, supervisors, cashiers, heads of various sections and the like."

merely routinary or clerical in nature but requires independent judgment.

Section 18 of the same Act further provides that although "supervisory employees shall not be eligible for membership in a labor organization of rank-and-file employees," they may "join, assist or form separate labor organizations of their own." However, even under the present law, managerial employees are still prohibited from joining, forming or assisting any labor organization.[52]

The test, then, is to determine whether or not the employees concerned are performing managerial functions. Hence, in *Zamboanga Wood Products v. NLRC*[53] the Court held that Dionisio Estioca, personnel supervisor and next in rank to the personnel manager in petitioner-company, may head the labor organization "composed of administrative and supervisory personnel." Likewise, in *Pagkakaisa ng Mga Manggagawa sa Triumph International-United Lumber and General Workers of the Philippines v. Ferrer-Calleja*, the Court upheld Director Ferrer-Calleja's findings that the employees sought to be represented by respondent union are not managerial employees because they "are not involved in policy-making and their recommendatory powers are not even instantly effective since the same are still subject to review by at least three managerial heads... . The fact that their work designations are either managers or supervisors is of no moment."[54]

With respect to the right of security guards to join labor organizations and, consequently, to engage in strikes, the Court in *Manila Electric Company v. Secretary of Labor and Employment* declared par.2, sec.1, Rule II, Book V of the Implementing Rules of Rep. Act No. 6715 prohibiting security guards from joining unions of the rank-and-file as null and void "for being not germane to the object and purposes of EO 111 and RA 6715 upon which such rules purportedly derive statutory moorings."[55] Security guards, therefore, may now join any labor organization of their choice.

b. The public sector.

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[52] LABOR CODE, art. 245.
[53] 178 S.C.R.A. 482 (1989).
[54] 181 S.C.R.A. 119 (1990).
[55] 197 S.C.R.A. 275 (1991).

Employees of government corporations established under the Corporation Code may organize and bargain collectively with their respective employers.[56] Since the right to strike is a necessary element of the right to collectively bargain, then, they may also go on strike. This right has been upheld even under the Industrial Peace Act. Hence, in *NARIC Workers' Union v. Alvendia*,[57] it was held that

> Under the proviso of sec.11 of the Industrial Peace Act... the prohibition to strike is clearly limited to 'employees employed in governmental functions and not to those employed in proprietary functions of the government'...

With respect to employees of the civil service, the question is whether or not the constitutional guarantee that

> The right of the people, *including those employed in the public and private sectors*, to form unions, associations, or societies *for purposes not contrary to law* shall not be abridged.[58]

has impliedly repealed laws prohibiting government employees to strike. A perusal of the pertinent constitutional provisions affecting the subject would show that while the provision on labor guarantees the right to *self-organization, collective bargaining and negotiations and peaceful concerted activities, including the right to strike*,[59] the provision on the civil service merely guarantees the *right to self-organization*.[60] Similarly, while Art. 244 of the Labor Code explicitly grants employees of government corporations established under the Corporation Code the right to collectively bargain, it merely grants employees in the civil service the right to form associations for purposes not contrary to law. Then, too, Executive Order No. 180, issued by Pres. Aquino on June 1, 1987, providing guidelines for the exercise of the right to organize of government employees, states that

> The Civil Service Law and Rules governing concerted activities and strikes in the government service shall be observed, *subject to any legislation that may be enacted by Congress*.[61]

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[56] Art. 244.
[57] 107 Phil. 404 (1960).
[58] CONST., art. III, sec. 8.
[59] CONST., art. XIII, sec. 3.
[60] CONST., art. IX, B. sec. 2, par. (5).
[61] Sec. 14.

Justice Cortes, in *Social Security System Employees Association v. Court of Appeals*,[62] opined that

> The President was apparently referring to Memorandum Circular No. 6, s.1987 of the Civil Service Commission under date April 21, 1987 which, 'prior to the enactment by Congress of applicable laws concerning strike by government employees... enjoins under pain of administrative sanctions, all government officers and employees from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass action which will result in temporary stoppage or disruption of public service.' The air was thus cleared of the confusion. At present, in the absence of any legislation allowing government employees to strike, recognizing their right to do so, or regulating the exercise of the right, they are prohibited from striking, by express provision of Memorandum Circular No. 6 and as implied in E.O. No. 180.

In the case of *Republic v. Court of Appeals*, the Court passed upon the issue of whether or not the National Parks Development Committee, Inc. is a government agency. Having decided that it is, the Court ruled that "its employees are covered by civil service rules and regulations." Hence, while they are allowed to organize and join unions under the 1987 Constitution, "there is yet no law permitting them to strike."[63]

In *Manila Public School Teachers Association v. Laguio, Jr.*,[64] the majority held that "from the pleaded and admitted facts," the teachers' mass actions in September 1990 were "to all intents and purposes a strike;" that "they constituted a concerted and unauthorized stoppage of, and absence from, work" and that "employees in the public (civil) service, unlike those in the private sector, do not have the right to strike, although guaranteed the right to self-organization, to petition Congress for the betterment of employment terms and conditions and to negotiate with appropriate government agencies for the improvement of such working conditions as are not fixed by law." While the Court was divided in this case, the area of dissent was mostly on the right of the public school teachers concerned to free speech and redress of grievances and alleged violation of their right to due process rather than on their right to strike. In his dissenting opinion, Justice Hugo Gutierrez conceded that "employees in the civil service may not engage in strikes, walkouts and temporary work stoppages like workers in the private sector." According to him,

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[62] 175 S.C.R.A. 686 (1989).

[63] 180 S.C.R.A. 428 (1989).

[64] 200 S.C.R.A. 323 (1991)

> Employment in the government is governed by law. Government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The terms and conditions of employment are effected through statutes and administrative rules and regulations, not through collective bargaining agreements.

However, Justice Gutierrez believes that the teachers' concerted action "was more of a peaceful assembly, an exercise of speech by a gathering, not a strike."

Procedural limitations.

The law imposes certain procedural requirements for the validity of strikes. Article 264(a) enumerates the requisites of compliance with the duty to bargain, the duty to file a notice of strike, and the taking of the necessary strike vote before declaring the strike.

With respect to the strike vote, Art. 263(f) provides that

> A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose...

In addition to this, Rep. Act No. 6715 inserted Article 265 providing for *improved offer balloting*, as follows:

> In an effort to settle a strike, the Department of Labor and Employment shall conduct a referendum by secret balloting on the improved offer of the employer on or before the 30th day of the strike. When at least a majority of the union members votes to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

In case of a bargaining deadlock, or an economic strike, the notice of strike shall be filed with the Department of Labor and Employment at least thirty (30) days before the intended date for the strike. A shorter period of fifteen (15) days is required for the filing of the notice in case of unfair labor practice committed by the employer. However, where the employer's unfair labor practice acts constitute union-busting, thereby threatening the very existence of the union, the 15-day "cooling-off" period is dispensed with and "the union may take action *immediately*.[65] It is important to emphasize at this point the urgency of union action in cases where its very life is at peril.

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[65] Art. 263(c).

The law, which must be construed in favor of the labor union, recognizes this urgency and so it authorizes immediate action. However, the Secretary of Labor and Employment, on the 26th of March 1987, issued the Rules Implementing Executive Order No. 111 which amended the Labor Code of 1974. Under these implementing rules, the union, in case of union-busting may take action "immediately after the strike vote is conducted and the results thereof submitted to the Department of Labor and Employment."[66] This addition introduces an element of delay which is contrary to the spirit of the law and it is doubtful whether the Secretary had not thereby exceeded his powers to promulgate rules by adding an element which is not contemplated by the law which it seeks to implement.

Another limitation imposed by law may be found in Art. 264(a), par. 2. It provides that "No strike or lockout shall be declared... during the pendency of cases involving the same grounds for the strike or lockout."

Limitations imposed by contract

Aside from the limitations imposed by law, the right to strike may be further restricted by contract. The parties to a collective bargaining agreement may include an "arbitration clause" in the CBA outlining the procedures for resolving disputes between them, in which case, the parties must first resort to the stipulated grievance machinery before declaring a strike or lockout. The CBA may also include a "no-strike" clause where no strikes may be called pending resolution of the dispute by the courts or by proper authorities. It was held in *Philippine Metal Foundaries, Inc. v. Court of Industrial Relations*[67] that "the strike declared by the Union... cannot be considered a violation of the 'no strike' clause of the Collective Bargaining Agreement because it was due to the unfair labor practice of the employer..." and that "a no-strike clause prohibition in a Collective Bargaining Agreement is applicable only to economic strikes." However, in *GOP-CCP Workers Union v. Court of Industrial Relations*[68] where the collective bargaining agreement expressly stipulated that "in case of any alleged unfair labor practice on the part of either party, there will be no strikes, lockouts, or any prejudicial action... until the question or grievance is resolved by the proper court if not settled through a grievance procedure therein outlined," the Court upheld the validity of the above-quoted no-strike clause and declared the strike illegal. The Philippine Metal

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[66] Sec. 7.
[67] 90 S.C.R.A. 135 (1979).
[68] 93 S.C.R.A. 118 (1979).

Foundaries decision is more in keeping with present State policy of protection to labor and labor's right to organize. The "no-strike" clause which was explicitly made applicable to unfair labor practice cases should have been declared null and void for being contrary to public policy.

VI. CONCLUSION

The rule seems to be well-settled that the state can and has, in fact, regulated the right to strike through its laws. This may be considered as a valid exercise of police power and a measure of "self-defense" on the part of the government against the disruption of peace and order in society. The question now that comes to fore is, can the state effectively negate this right by enacting laws that are so restrictive that they will have the effect of rendering the exercise of this right nugatory? In other words, can the state prohibit strikes altogether in the interest of "industrial peace"? Is "industrial peace" in conflict with the worker's right to strike? These questions must be answered in the negative.

Limitations to State Regulation of the Right to Strike.

The power of the State to regulate the right to strike finds its limitations in the constitutional guarantee of the exercise of this right as well as in the fact that the Philippines is part of a larger community of nations and, as such, is bound by its commitments to the ideals of this community as expressed in various international instruments of which it is a signatory.

Constitutional guarantee of the right to strike.

The extent of State regulation of the right to strike is limited by the fact that the right is guaranteed by the Constitution in Art. XIII, sec. 3, par. 2, notwithstanding the fact that, according to the same constitutional provision, it's exercise must be "in accordance with law." The phrase "in accordance with law" here only means that the law may impose certain conditions for the valid exercise of the right to strike but it may not, through these regulatory laws, totally prohibit the exercise of this right except in exceptional circumstances when the very life of the nation is imperilled. A contrary interpretation would make of this constitutional guarantee nothing but a "dead letter". The fact that the right was specifically enshrined, for the first time, in the fundamental law of the land underlines its importance.

The right to strike as embodied in international instruments.

The right to strike is likewise guaranteed by international instruments to which the Philippines adheres, particularly the International Covenant on Economic, Social and Cultural Rights and the ILO conventions on freedom of association.

Article 11 of the ILO Convention concerning Freedom of Association and Protection of the Right to Organize mandates each member of the ILO "to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize."[69] Article 1, par. 1 of the ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively provides that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment."[70] Although both conventions did not specifically deal with the labor organizations' right to strike, the right may be inferred from the strong mandate for protection of workers' right to organize and to bargain collectively. As has been previously pointed out, the right to strike is a necessary element of the right to organize and to bargain collectively.

The International Covenant on Economic, Social and Cultural Rights is more explicit. Under this covenant, the State Parties

> ... undertake to ensure:
>
> (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. *No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others...*
>
> (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.[71]

The Convention, further provides that

> Nothing in this article shall authorize State Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice or apply the law in such a manner as would

[69] I.L.O. Convention No. 87 (1950).
[70] I.L.O. Convention No. 98 (1951).
[71] Art. 8, par. 1.

> prejudice, the guarantees provided for in that Convention.[72]

According to Prof. Lotilla, the phrase "undertake to ensure," as it is used in the Convention, expresses "immediate demandability" of State implementation of what is provided. The phrase is employed to describe the obligation of a contracting State in relation to the right to form trade unions and the right to strike.[73] Prof. Lotilla further distinguishes immediately demandable obligations between "those which merely require the State to abstain from acting and those which require it to take action in order to meet its obligations." If the obligation is merely to abstain from acting, then, according to him, it "immediately attaches in the domestic domain." Prof. Lotilla observes that "[t]his is best exemplified by the right to trade unions and the right to strike."[74]

Industrial peace and the right to strike.

It is this writer's view that no matter how noteworthy "industrial peace" may be as a goal, it cannot and it must not become an obstacle to the exercise of a right as basic as the right to strike. An important indicator of the universality of this principle is the fact that one of the oldest and most important institutions in our global society, the Roman Catholic Church, considers this right as a fundamental condition for peace in the modern world.

In the papal encyclical Laborem Exercens, Pope John Paul II, while cautioning labor not to abuse the strike weapon as this "can lead to the paralysis of the whole of socioeconomic life," and this would be "contrary to the requirements of the common good of society," nevertheless emphasizes that the right to strike "is recognized by Catholic social teaching as legitimate in the proper cónditions and within just limits."[75] He further affirms that

> While work, in all its many senses, is an obligation... it is also a source of rights on the part of the worker. These rights must be examined in the broad context of human rights as a whole... Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world... *The human rights that flow from work are part of the broader*

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[72] Art. 8, par. 3.

[73] R. P. LOTILLA, STATE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS 7 (1988).

[74] *Id.*, at 27.

[75] JOHN PAUL II, *Pope*, LABOREM EXERCENS 76 (1981).

context of these fundamental rights of the person.[76]

Being part of this "broader context of... fundamental rights," the State must recognize and respect the right to strike. The Philippines as a signatory to international agreements and covenants that mandate recognition of the basic rights of the person must abide by these commitments. Article 55 of the U.N. Charter states that "The United Nations shall promote... (c) universal respect for, and observance of, human rights and fundamental freedoms for all..." and the Universal Declaration of Human Rights provides in Art. 23(4) that "[e]veryone has the right to form and join trade unions *for the protection of his interests.*"[77]

The foregoing discussions lead us to the conclusion that the State may regulate the right to strike; it may do so extensively during times of necessity; but under no circumstances may it effectively negate the exercise of this right without violating its internal laws as well as the law of nations.

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[76] *Id.*, at 58.

[77] U.N. GEN ASS. RESOL. 217 A (III), Dec. 10, 1948, U.N. DOC., A/810 (1948).