ANALYTICAL SURVEY OF 1991 SUPREME COURT DECISIONS ON THE LAW ON LABOR STANDARDS AND LABOR RELATIONS

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I. LABOR AND THE SUPREME COURT

The role of the Supreme Court in the administration of labor justice is essentially *passive*.[1] The Court becomes a participant in labor-management relations only when its power of judicial review of administrative decisions by labor agencies exercising quasi-judicial functions is invoked by labor, management, or both.[2]

II. LABOR AND THE CONSTITUTION

The Constitutional affirmation that the labor sector of our society is a primary social and economic force,[3] and its mandate that the State shall

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[1] For a discussion of the role of the Court in the administration of labor justice, *See*: Irene R. Cortes, *The Role of the Supreme Court in the Administration of Labor Justice and Maintenance of Industrial Peace*. Paper submitted to the First National Convention of Accredited Voluntary Arbitrators, December 4, 1990. REPORT OF THE PROCEEDINGS FIRST NATIONAL CONVENTION OF ACCREDITED VOLUNTARY ARBITRATORS, 125-126. Justice Cortes, wrote:

> The Court comes in only when the parties to a labor dispute fail to arrive at an amenable solution of their difficulties and the administrative process likewise fails to resolve the conflict....
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> The state of our present law relating to the role of the Supreme Court in the administration of labor justice involves the subject of judicial review of administrative decisions.

[2] RULES OF COURT, Rule 65, section I, reads :

> *Petition for certiorari.* - When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

[3] CONST., art. II, sec. 18.

protect the rights of workers, promote their welfare,[4] afford full protection to labor,[5] and promote social justice[6] are declarations that are so near and dear to the minds and hearts of the laboring masses. These Constitutional provisions are also the favorite catch words of labor law practitioners. The proper application of these Constitutional provisions, so emotionally-laden in their phraseology in concrete cases, is not often mechanically carried out by the Court. The Court's labor law decisions are always anchored on positive statutory provisions, and Constitutional provisions are invoked only to buttress the meaning of and provide the broader context for the decision. The following cases illustrate how the Court *correctly* invoked constitutional provisions on labor to support its decisions. However, it bears repeating that the decisions in all these cases were based on positive provisions of law.

In *Aris (Phil.) Inc. v. National Labor Relations Commission,*[7] the Court upheld the validity of Article 223 of the Labor Code as amended, which provides that decisions of labor arbiters in termination cases ordering the reinstatement of illegally dismissed workers are immediately executory while pending appeal. The Court explained the rationale behind these Constitutional provisions as follows:

> In authorizing the execution pending appeal of the reinstatement aspect of a decision of the labor arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the workingman.
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> These provisions are the quintessence of the aspirations of the workingman for recognition of his role in the social and economic life of the nation, for the protection of his rights and the promotion of his welfare.
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> These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity.[8]

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[4] *Id.*
[5] CONST., art. XIII, sec. 3.
[6] , art. II, sec. 10.
[7] 200 SCRA 246 (1991)
[8] *Id.* at 253-254.

In *Employers Confederation of the Philippines v. National Wages and Productivity Commission,* the Court upheld the validity of a "salary cap method" of minimum wage fixing or an "across the board" wage increase by the Regional Tripartite Wages and Productivity Board in the performance of its minimum wage fixing function under Republic Act No. 6737. The Court said that the law cannot be interpreted to mean that it left:

> labor and management alone in deciding wages. The Court does not think that the law intended to deregulate the relation between labor and capital...[9].

Again in *Reliance Surety and Insurance Co. v. National Labor Relations Commission,*[10] the Court sounded a note of warning that the Constitutional provisions on labor are not mechanical and self effectuating concepts. It warned that considerations of fairness and conformity with rules cannot be ignored in decision making. Said the Court:

> As a general rule, the sympathy of the Court is on the side of the laboring classes, not only because the Constitution imposes sympathy but because of the one-sided relation between labor and capital. The Court must take care, however, that in the contest between labor and capital, the results achieved are fair and in conformity with rules.

All these cases illustrate that the Court was not overly generous in applying in favor of the workers the Constitutional provisions on labor. The Court, in fact, conveyed the message that they are not *panaceas,* or mechanical tools, or substitutes to positive provisions of labor law in decision making.

III. LABOR LAW INTERPRETATION

It is a paramount and time honored principle in both the civil law[11] and labor law[12] that all doubts in the application and interpretation of labor law shall be resolved in favor of the workingman.

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[9]201 SCRA 759, 765 (1991).

[10]193 SCRA 365, 372 (1991).

[11]The Civil Code provides:

Art. 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

The Code Commission explained the rational for the rule as follows:

The Court's decision in *Terminal Facilities and Services Corporation v. National Labor Relations Commission* illustrates a situation where a *doubt* was resolved in favor of labor even if a strict interpretation against it would have been possible. The Court declared:

> A strict interpretation of the cold facts before us might support the position taken by the respondents. However, we are dealing here not with an ordinary transaction but with a labor contract which deserves special treatment and a liberal interpretation in favor of the worker. ...
>
> The paramount duty of this Court is to render justice through law. The law in this case allows two opposite interpretations, one strictly in favor of the employers and the other liberally in favor of the worker. The choice is obvious.[13]

However, in *Philippine Airlines, Inc. v. National Labor Relations Commission* the Court ruled that the relevant facts of the case, and rationality in construction of company rules and an earlier CIR decision cannot be ignored in spite of the solicitous concern of the law for the workingman's welfare.

> That there should be care and solicitude in the protection and vindication of the rights of the workingman cannot be gainsaid; but that care and solicitude cannot justify disregard of relevant facts or eschewal of rationality in the construction of the text of applicable rules in order to

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> The public good requires that this presumption be established whenever there is some doubt in any labor law or labor contract. The safety and decent living of the toiling classes do not affect them alone but are matters of deep and immediate concern of the entire nation. When in any nation, a large section of the inhabitants, are not afforded a safe and decent life, the economic progress of the country is impeded, and the level of general well-being pulled down. (Report of the Code Commission, 13-14, *cited* in Ambrosio Padilla, CIVIL LAW - CIVIL CODE ANNOTATED Vol. V (1974 Ed.) 850.

[12]The Labor Code provides:

> Art. 4. All doubts in the implementation and interpretation of the provisions of the Code.... shall be resolved in favor of labor.

In Abella v. National Labor Relations Commission, 152 SCRA 140 (1987), the Court said -

> [I]t is well settled that in the implementation of and interpretation of the provisions of the Labor Code....the workingman's welfare should be the primordial and paramount consideration....It is the kind of interpretation which gives meaning and substance to the liberal and compassionate spirit of the law.

[13]199 SCRA 269 (1991).

> arrive at a disposition in favor an employee who is perceived as otherwise deserving of sympathy and commensuration.[14]

On balance, the Court applied in an evenhanded manner the rules on interpreting of labor law. In fine, the Court has demonstrated that the rule of liberal interpretation of labor law is not a magic wand that will always tilt a decision in favor of labor, nor a directional guide perpetually pointed towards the side of labor.

IV. MANAGEMENT FUNCTIONS AND PERSONNEL ACTIONS

A. Management Functions

Management Function, originally called *management prerogative,* is an ideological term, again, carrying much emotion in labor-management relations. This *function* is the asserted right of an employer, based on the ancient and recognized *right of property,* to solely and freely manage an enterprise as efficiently and profitably as possible without any intervention from whatever source. Placed in the context of day-to-day labor-management relations in an enterprise, *management function* is the authority of an employer to manage and direct its workforce in all its aspects: selection and placement of the workforce; determination of the terms and conditions of their employment; promotion; discipline; termination of employment; size and scale of enterprise operations; and the continuance of all or a part of the enterprise. It must be fully recognized that *management function* is not a *legal* term. The law recognizes *management function* as historical fact and an organizational necessity based on the institution of property rights. The law limits its area of concern only to the *substance* and *procedure* of the employer's exercise of the *management function.*

In *Employees Association of the Philippine American Life Insurance Company v. National Labor Relations Commission,* the Court recognized the exercise of the management function but defined the limits of its exercise. Thus, the Court said -

> The limitation is embodied in the constitutional requirement for the protection of labor and the promotion of social justice....[15]

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[14]201 SCRA 687 (1991).
[15]199 SCRA 628 (1991).

And in *GTE Directories Corporation v. Sanchez,* it held that:

> So long as a 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, these Courts will uphold them.[16]

In *National Federation of Labor Unions* v. *National Labor Relations Commission* the Court continued:

> Unless there is a showing of grave abuse of discretion, we cannot substitute our discretion and judgment for that which is clearly and exclusively management's prerogative. To do so would take away from the employer what rightly belongs to him.[17]

And again, in *Wiltshire File Co. v. National Labor Relations Commission,* the Court said:

> The wisdom or soundness (of a management decision to determine the continuing need for a Division, and to abolish the same if need be) is not subject to discretionary review on the part of the labor arbiter nor the NLRC so long, of course, as violation of law or merely arbitrary or malicious action is not shown.[18]

Finally, in *National Federation of Labor Unions v. National Labor Relations Commission,* the Court succinctly said:

> The Labor Code and its implementing rules do not vest in the labor arbiters nor in the different Divisions of the NLRC (nor in the courts) managerial authority.[19]

In balance, as shown by its decisions in these cases, the Court judiciously exercised its authority to inquire into the *substance* and *manner* of the exercise by an employer of its asserted *management function.* By and large, the Court sustained the exercise by the employer of its management function.

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[16]197 SCRA 452 (1991).
[17]202 SCRA 346 (1991).
[18]193 SCRA 665 (1991).
[19]202 SCRA 346 (1991).

B. Personnel Actions

1. Employee Standard of Conduct

In *Philippine Commercial International Bank v. Jacinto,* the Court stated the expected employee standard of conduct, when it ruled on the effect of the employees' failure to comply with the same, and the effect of the lack of a written or formal employee designation when invoked by an employee as a defense. Said the Court:

> Any employee who is entrusted with responsibility by his employer should perform the task assigned to him with care and dedication. The lack of a written or formal designation should not be an excuse to disclaim any responsibility for any damage suffered by an employer due to his negligence. The measure of the responsibility of an employee is that if he performed his assigned task efficiently and according to the usual standards, then he may not be held personally liable for any damage arising therefrom. Failing in this, the employee must suffer the consequences of his negligence if not lack of due care in the performance of his duties.[20]

The Court however, mitigated the sanction imposed against an erring employee because the employer contributed to the loss caused by the employee's failure to comply with the prescribed standard of conduct.

In *GTE Directories Corporation v. Sanchez,* the Court ruled that compliance or obedience of Company orders at all times is expected of all employees. The Court said:

> To sanction disregard or disobedience by employees of a rule or order laid down by management, on the pleaded theory that the rule or order is unreasonable, illegal, or otherwise irregular for one reason or another, would be disastrous to the discipline and order that is in the interest of both the employer and his employees to preserve and maintain in the working establishment and without which no meaningful operation and progress is possible. Deliberate disregard or disobedience of rules, defiance of management authority cannot be countenanced.[21]

The Court went on to say that the employees' proper remedy against rules or orders they regard as unjust and illegal is that to:

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[20]196 SCRA 697 (1991).
[21]197 SCRA 452 (1991).

> competent authority, the employees ignore or disobey them at their peril. It is impermissible to reverse the process; suspend enforcement of the orders or rules until their legality or propriety shall have been the subject of negotiation, conciliation or arbitration.[22]

The Court laid down the rules applicable under ordinary circumstances in all these cases. However, the Court's statement in *GTE Directories*, under certain circumstances, may be too expansive. Employees can rightly refuse to comply with orders or rules that may be patently illegal or which endanger life or limb.

2. Promotion

Promotion is basically a *business* and not a *legal* concept. In *business*, promotion is defined as "appointment to a position of higher rank or a job with more responsibility or requiring greater skill. It usually (but not always) is awarded in conjunction with a raise in salary."[23]

In law, *promotion* is defined as "the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.[24] Promotion denotes a hierarchical ascent of an officer or an employee to another position, either in rank or salary.[25]

In *National Federation of Labor Unions v. National Labor Relations Commission*, the Court ruled that a *promotion* does not automatically include nor is it always accompanied by a salary increase. Thus:

> However, *in gratia argumenti* that indeed the petitioner was promoted in rank, it does not necessarily follow that he is entitled to a corresponding salary increase. ..

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[22]*Id.*, at 468.

[23]Christine Ammer and Dean S. Ammer, DICTIONARY OF BUSINESS AND ECONOMICS, REVISED AND EXPANDED EDITION, 373 The Free Press (1984).

[24]National Federation of Labor Unions v. National Labor Relations Commission, 202 SCRA 346 (1991).

[25]*Id.*

> The *word usually means that not all* promotions may be accompanied by a corresponding salary increase; notwithstanding the increase in duties and responsibilities of the employee.[26]

3. Resignation

The Court in *Intertrod Maritime, Inc., v. National Labor Relations Commission* explained the term *resignation* in all its aspects, when it said:

> Resignation is the voluntary act of an employee who "finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, then he has no other choice but to disassociate himself from employment."[27]

As to why there is an advance notice requirement, the Court said:

> The employer has no control over resignations and so, the notification requirement was devised in order to ensure that no disruption of work would be involved by means of the resignation.[28]

The acceptance by an employer of an employee's resignation has far-reaching consequences. Said the Court

> Resignations, once accepted and being the sole act of the employee, may not be withdrawn without the consent of the employer. ...
>
> Once an employee resigns and his resignation is accepted, he no longer has any right to the job. If the employee later changes his mind, he must ask for approval of the withdrawal of his resignation from his employer, as if he were re-applying for the job. It will then be up to the employer to determine whether or not his service would be continued. If the employer accepts said withdrawal, the employee retains his job. If the employer does not...the employee cannot claim illegal dismissal, for the employer has the right to determine who his employees will be...[29]

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[26] *Id.*, at 353-354.
[27] 198 SCRA 318 (1991).
[28] *Id*
[29] *Id.*, at 324.

4. Diminution of Benefits

In Nestle *Philippines, Inc., v. National Labor Relations Commission,* the Court ruled that

> Employees do have a vested and demandable right over existing benefits voluntarily granted to them by their employer. The latter may not unilaterally withdraw, eliminate, or diminish such benefits.[30]

5. Quitclaims

The signing of *a quit claim* or a *release* is usually the final act in terminating a working relationship; however, it is not an assurance that an employer is finally discharged from any and all liabilities arising from a past work relationship, for a worker may subsequently challenge the validity of the same. In *Veloso v. Department of Labor and Employment,* the Court summarized the state of the law on *quitclaims.*

> The law looks with disfavor upon quitclaims and releases by employees who are inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities. On the other hand, there are legitimate waivers that represent a voluntary settlement of laborers' claims that should be respected by the Courts as the law between parties.[31]

In *Samaniego v. National Labor Relations Commission,* the Court held the position that

> ...If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change in mind. It is only where there is a clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration of the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[32]

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[30]193 SCRA 504 (1991).
[31]200 SCRA 201 (1991).
[32]198 SCRA 111 (1991).

In *De Jesus v. Philippine National Construction Corporation,* the Court invalidated a *quitclaim* for failure of the employer to show that the contents of the same which was written in the English language, were fully explained to the worker -

> ... [The Quitclaim] is couched in the English language and the respondent company has not shown that the [worker] understands English. We cannot presume that he, a humble carpenter, is aware of that language, much more, conversant with it, and under the Civil Code, it is incumbent upon the respondent to "show that the terms thereof have been fully explained. It has not made that showing here.[33]

The soundness of these decisions involving quitclaim issues is not open to serious challenge for they advance the cause of the employee, who obviously because of need falls easy prey to an unscrupulous employer.

V. JURISDICTION AND DECISION ENFORCEMENT

A. Jurisdiction

Despite established and consistently applied rulings, questions on jurisdiction continue to be raised before the Court.

I. Labor Code and Civil Service Law - Government-Owned and Controlled Corporations

In *PNOC-Energy Development Corporation v. National Labor Relations Commission,* the Court summarized the present state of the law on the applicability of the Labor Code to government-owned and controlled corporations.

> Thus, under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service law is the manner of its creation, such that government corporations created by special charter are subject to its provisions while those incorporated under the General Corporation Law are not within its coverage.[34]

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[33]195 SCRA 468 (1991).

[34]201 SCRA 487 (1991). Article IX, Section 2(1) of the 1987 CONSTITUTION reads: The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government including government-owned or controlled corporations with original charters.

The Court in *Boy Scouts of the Philippines v. National Labor Relations Commission* ruled that where an entity is both a government owned and controlled corporation with an original charter, and an instrumentality of the Government, its employees "are embraced within the Civil Service and are accordingly governed by the Civil Service law and regulations."[35]

In *Cabrera v. National Labor Relations Commission,* the Court ruled that where the government-owned or controlled corporation was organized under Corporation law and not of a legislative charter:

> [I]ts relations with its personnel are governed by the Labor Code and come under the jurisdiction of the National Labor Relations Commission.[36]

2. Labor Code and Corporation Code - Dismissal of Elected Corporate Officers

In *Fortune Cement Corporation v. National Labor Relations Commission,* the Court ruled that the National Labor Relations Commission has no jurisdiction over a complaint for illegal dismissal filed by a duly elected Executive Vice-President of a Corporation. The Court upheld the position of the Solicitor-General that :

> [A] corporate officer's dismissal is always a corporate act and/or an intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action. The dispute...is of the class described in Section 5, par. (c) of Presidential Decree No. 902-A, hence, within the original and exclusive jurisdiction of the SEC.[37]

The Decisions of the Court on the applicability of the Labor Code to government owned and controlled corporations, and on intra-corporate disputes are in accordance with the provisions of existing law.

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[35]196 SCRA 176 (1991).
[36]198 SCRA 573 (1991).
[37]193 SCRA 258 (1991).

3. Secretary of Labor; Regional Director and Labor Arbiter: Money Claims

The extent of the visitorial and enforcement authority of the Secretary of Labor or his duly authorized representative after notice and hearing to order compliance with the labor standards provisions of the Labor Code, which may include ordering the payment of wages and other monetary benefits arising out of the employer-employee relationship was the subject of controversy in *Servando's Inc., v. Secretary of Labor and Employment*.[38] A divided Court, with nine Justices composing the majority, and six Justices, including the Chief Justice, making up the minority, took opposite views on the extent of the authority of the Secretary of Labor. The bone of controversy revolved around the interpretation of and how to harmonize the following provisions of the Labor Code:

> Art. 128. Visitorial and enforcement power -
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> (b) The provisions of Article 217 of this Code to the contrary notwithstanding and in cases where the relationship of employer-employee still exists, the Minister of Labor and Employment or his duly authorized representative shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of this Code and other labor legislation based on the findings of labor regulation officers or industrial safety engineers made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection.
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> Art. 129. Recovery of wages, simple money claims and other benefits. - Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or houschelper under this Code, arising from employer-employee relations; Provided, That such complaint does not include a claim for reinstatement, Provided further, that the aggregate money claims of each employee or houschelper does not exceed five thousand pesos (P5,000.00).

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[38]198 SCRA 156 (1991).

> Art. 217. Jurisdiction of Labor Arbiters and the Commission.[39]
> (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide...
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> (b) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

The majority opinion penned by Mr. Justice Padilla, neatly phrased the contention of the claimant:

> Respondents invoke the visitorial and enforcement power of the Secretary of Labor under Art. 128(b) of the Labor Code... which, according to them, is entirely separate and distinct from the Regional Director's Power to adjudicate simple money claims under Art. 129 of the same Code; and that Art. 217(a) (b) of the Labor Code granting original and exclusive jurisdiction to Labor Arbiters over all money claims arising from employer-employee relations involving an amount exceeding P5,000.00 whether or not accompanied with a claim for reinstatement, should not be interpreted as an amendment to Art. 128(b), *i.e.*, as providing an additional exception to the visitorial and enforcement power of the Secretary of Labor.[40]

The majority of the Court ruled that the Secretary of Labor, in the exercise of his visitorial and enforcement authority, has no authority to hear and decide and order the payment of wages and other monetary benefits arising from employer-employee relations where the claim of each employee exceeds P5,000.00.

> To construe the visitorial power of the Secretary of Labor to order and enforce compliance with labor laws as including the power to hear and decide cases involving employees' claims for wages, arising from employer-employee relations, *even if* the amount of said claims exceeds P5,000.00 for each employee, would, in our considered opinion, emasculate and render meaningless, if not useless, the provisions of Article 217(a) (b) and Article 129 of the Labor Code which...confer *exclusive* jurisdiction on the labor arbiter to hear such employees' claims (exceeding P5,000.00 each employee)

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[39]As amended by REP. ACT No. 6715, sec. 9.
[40]*Id.*, at 158.

> ...that to *harmonize* [Articles 128, 129 and 217 of the Labor Code] the Secretary of Labor should be held as possessed of his plenary visitatorial powers...but the power to hear and decide employee's claims exceeding P5,000.00 for each employee should be left to the Labor Arbiter as the *exclusive repository* of the power to hear and decide such claims. In other words, the inspection conducted by the Secretary of Labor, through labor regulation officers...may yield findings of violations of labor standards under labor laws; the Secretary of Labor may order compliance with said labor standards, if necessary, through appropriate writs of execution but when the findings disclose an employee claim of over P5,000.00, the matter should he referred to the Labor Arbiter in recognition of his *exclusive* jurisdiction over such claims.[41]
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> 3. Besides, it would seem that as the law (Article 129) limits the jurisdiction of the Regional Director (and, therefore, the Secretary of Labor on appeal from the Regional Director) to "complaints of any interested party" seeking an amount of not more than P5,000.00 for each employee, it cannot be that, because of the absence of any complaint from an interested party, the Secretary of Labor under his visitatorial power, is *motu propio* empowered to hear and decide employee's claim of more than P5,000.00 for each employee.[42]

In addition, the majority of the Court further ruled :

> [T]he Court cannot overlook the fact that petitioner contests the findings of the labor regulation officer.Moreover, the total amounts of the respondents' award against petitioner, is P964,952.50 (with the award for each of the fifty-four (54) employees involved not being less than P5,000.00). The total award of P964,952.50 is a tidy sum sufficient to knock-off any viable enterprise. What is worse is that all this is done through summary proceedings.
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> The elementary demands of *due process* upon which the *express exception* to the visitorial powers of the Secretary of Labor is obviously anchored, would require something more than a summary procedure.[43]

The dissenting opinion, written by Mr. Justice Narvasa, neatly phrased the issue thus:

> The fundamental issue which the opinion addresses concerns the interpretation of *Article 128 - dealing with the "visitorial and*

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[41] *Id.*, at 160.
[42] *Id.*, at 161.
[43] *Id.*, at 162.

> *enforcement power"* of the Regional Directors as "authorized representative" of the Secretary of Labor in relation to *Article 129, treating of the same Regional Directors adjudicative or quasi-judicial authority*,...and *Article 217*, defining the cases falling within the exclusive original jurisdiction of Labor Arbiter.
>
> Both Articles 217 and 129 [deal with jurisdiction].
>
> The question that now arises is whether [the] limitation on the *adjudicating authority or jurisdiction of* the Regional Directors *i.e.*, that money claim of each employee or household should not *exceed P5,000.00 [*Article 129]--also applies to and operates to limit as well the *visitorial and enforcement power* of said Regional Directors described in Article 128.[44]

Succinctly put, the minority, in dissent, ruled that the limitation of the jurisdiction of the Regional Director over a money claim not to exceed P5,000.00 under Article 129 does not apply nor operate to limit the *Director's visitorial and enforcement* authority under Article 128.

Going directly to the issue raised on appeal, the minority opinion ruled:

> It is noteworthy that the Regional Director's powers to order and administer, after due hearing, compliance with labor standards provisions of this Code and other labor legislation...is conferred on them by Article *128 "[T]he provisions of Article 217 x x x to the contrary notwithstanding."* What Article 128 is plainly saying is that although the power of compulsory arbitration over violations of the Labor Code and other legislation-including the payment of wages and other pecuniary benefits *amounting to more than P5,000.00 for each employee*--is lodged by Article 217 in Labor Arbiters, and not in Regional Directors, the Regional Directors may nevertheless wield the authority to order "compliance with the labor standards provisions of x x [the] Code and other labor legislation" and issue execution in that connection, through proceedings more summary than those before Labor Arbiters.[45]

The minority view explained the reason why this is so:

> The "clear purpose" of the law in extending such a power on Regional Directors is, according to Policy Instructions No. 7 of the Department of Labor and Employment, to take labor standards cases from the arbitration system and place them under the enforcement system and in

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[44] *Id.*, at 164-165.
[45] *Id*, at 168.

> this way, "assure the worker the rights and benefits due to him under labor standards laws, *without* having to go through arbitration ... (for) the worker *need not litigate* to get what legally belongs to him ... (and the) whole enforcement machinery of the Department of Labor exists to insure *its expeditious delivery to him free of charge.*[46]

Analyzing further Article 128 (Visitorial and Enforcement power of the Regional Director), the Court ruled that "no other limitation, particularly as to the amount of the pecuniary benefits declared to be due and owing to employees, is found in Article 128."[47]

Again, focusing on Article 128, [Regional Director, Recovery of Wages, Simple Money Claims and other benefits] and Article 128 [Regional Director, Visitorial and Enforcement powers], it said :

> Now, obviously, the law envisions the situation in Article 129 to be quite distinct from Article 128. The formulation of two separate articles dealing with one and the same situation...would otherwise make no sense.
>
> To interpret Article 128 as subject to the same limited coverage as Article 129, or, therefore, applicable only to claims not in excess of P5,000.00 is not justified by the text of those provisions...
>
> It also bears repeating that the exclusionary phrase, "the provisions of Article 217 of this Code to the contrary notwithstanding," with which Article 128(b) prefaced its conferment upon the Secretary of Labor and Employment or his duly authorized representatives of the powers therein specified is of so plain and unambiguous meaning as to warrant only one conclusion: that quite apart from the fact that both provisions deal with distinct and distinguishable powers, the grant in Article 217 to Labor Arbiters of original and exclusive jurisdiction over claims in excess of P5,000.00, arising from employer-employee relations, does not operate to oust Regional Directors of their visitorial and enforcement powers *vis-a-vis* labor standards infractions also involving amounts exceeding such sum. A contrary reading would do violence to the language of said phrase and render it meaningless.[48]

The minority view is more in accord with both the *letter* and *spirit* of the law; and accords to the employee, with substantial damage to the employer, a more speedy form of labor justice which the workingman can understand. This is not to say that the majority view did not do justice to

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[46] *Id*, at 168-169.
[47] *Id*, at 169.
[48] *Id*, at 170-171.

him; rather, under the majority view, the workingman would go through a lengthier and more circuitous route to enforce his claim. The majority view was reiterated in *Sphinx Security and Foreign Boat Watchman Agency v. Secretary of Labor.*[49]

4. Regular Courts and Labor Cases

The Supreme Court in *Guimoc v. Rosales* ruled that the Regional Trial Court has no jurisdiction to review decisions or awards of Labor Arbiters, nor to enjoin the execution of final judgments of the National Labor Relations Commission.[50]

In *New Pangasinan Review Inc. v. NLRC,* the Court was more explicit.

> It is basic that the RTC is not superior to but equal in rank with the NLRC and has no jurisdiction to issue the restraining order against the execution of the NLRC decision.Courts cannot enjoin execution of judgment rendered by the NLRC.
>
> Chief Justice Marcelo Fernan cautioned judges of lower courts in entertaining actions involving decisions, demands, or orders of labor arbiters as well as the NLRC, particularly where the caption is "Prohibition with Preliminary Injunction" which is sufficient to put a judge on guard.[51]

This Decision is in accord with law and existing doctrine.

B. EXECUTION OF JUDGMENT

Republic Act No. 6715 introduced a novel approach in enforcement or execution of Awards of Orders of Labor Arbiters ordering the reinstatement of dismissed employees termination cases, even pending appeal.[52]

In *Aris (Phil.) Inc., v. NLRC,* the Court upheld the constitutionality of Republic Act No. 6715, amending Article 223 of the Labor Code, and

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[49] 202 SCRA 528 (1991).
[50] 201 SCRA 468 (1991).
[51] 196 SCRA 55 (1991).
[52] THE LABOR CODE provides: Art. 223. *Appeal.* -In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspects is concerned, shall immediately be executory even pending appeal.

upheld the order of a Labor Arbiter directing the execution of his Decision even pending appeal. The Court said :

> The right to appeal, however, is not a constitutional, natural, or inherent right. It is a statutory privilege of statutory origin and therefore, available only if granted or provided by statute. The law may then validly provide limitations of qualifications thereto or relief to the prevailing party, in the event an appeal is interposed by the losing party.[53]

VI. EMPLOYER-EMPLOYEE RELATIONSHIP

Cases involving the determination of the existence of employer-employee relationship is a well trodden path in labor law. Decisions on the subject in the last couple of years clearly indicate that the determinative test of a relationship has not set the issue to rest.[54] The controversy revolves around the proper application of the determinative factor of *control* or the so-called *control test* rule.

In *Singer Sewing Machine Company v. Drilon,*[55] the Court had to resolve the nature of the working relationship between a Company and its Collection Agents.

The company relied on the stipulations in the collection agency agreement to support its contention that the company's relation with its collection agents is one of *independent contractor* and not of *employer-employee.* The petition relies on the following stipulations: (a) collector is designated as a "collecting agent" who is to be considered at all times as an independent contractor and not an employee of the company; (b) collection of all payments on installment accounts are to be made monthly or more often; (c) an agent is paid his compensation for service in the form of a commission of 6% of all collections made and turned over plus a bonus on said collections; (d) an agent is required to post a cash bond...to assure the faithful performance and observance of the terms and conditions under the agreement; (f) the agreement is effective for one year from the date of its execution and

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[53]200 SCRA 246 (1991).

[54]*See e.g.,* Mafinco Trading Corporation v. Ople, 70 SCRA 139 (1976), *citing* Viaña v. Al-lagadan and Piga, 99 Phil. 408 (1956), the Court ruled -

In determining the existence of employer-employee relationship, the following elements are generally considered namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissed; and (4) the power to control the employees conduct--although the latter is the most important element.

[55]193 SCRA 270 (1991).

renewable on a yearly basis; and (g) his services shall be terminated in case of failure to satisfy the minimum monthly collection performance required, failure to post a cash bond, or cancellation of the agreement at the instance of either party unless the agent had a pending obligation or indebtedness in favor of the company.[56]

The collection agents on the other hand, relying on the same Agreement asserted that they are *employees*. The agreement provided :

> [A]n agent shall utilize only receipt forms authorized and issued by the Company... agent has to submit and deliver at least or as often as required a report of all collections made using report forms furnished by the Company... the monthly collection quota [requirement].[57]

The Court, after analyzing the terms of the collection agreement ruled that there was no *employer-employee* relationship between the parties.

The Agreement confirms the status of the Collecting Agent...as an independent contractor not only because he is explicitly described as such.[58]

On the matter of *control,* the Court explained :

> The requirement that the Collection Agents utilize only receipt forms and report forms issued by the Company and that reports shall be submitted at least once a week is not necessarily an indication of control over the means by which the job of collection is to be performed. The agreement itself specifically explains that receipt forms shall be used for avoiding a co-mingling of personal funds of the agent with the money collected on behalf of the Company. Likewise, the use of standard report forms as well as the regular time within which to report a collection are intended to facilitate order in office procedures. Even if the report requirements are to be called control measures, any control is only with respect to the end result of the collection since the requirements regulate the things to be done after the performance of the collection job or rendition of the service.
>
> The monthly collection quota is a normal requirement found in similar contractual agreements and is so stipulated to encourage a collecting agent to report at least the minimum amount of proceeds....From the records, it is clear that the Company and each collecting Agent intended

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[56] *Id.*, at 275.
[57] *Id.*, at 275-276.
[58] *Id*, at 276.

> that the former take control only over the *amount of collection* which is a result of the job performed.[59]

In addition, the following factors worked against the collection agents' cause which factors they "never refuted either in the trial proceedings before the labor officials nor in the pleadings filed before this Court":[60]

> 1. (Agents are)... not required to observe office hours or report to Singer's office everyday except, naturally and necessarily, for the purpose of remitting their collections.
>
> 2. The collection agents do not have to devote their time exclusively for SINGER. There is no prohibition on the part of the collection agents from working elsewhere. Nor are these agents required to account for their time and submit a record of their activity.
>
> 3. The manner and method of effecting collections are left solely to the discretion of the collection agents without any interference on the part of Singer.[61]

This was a close decision or one which could have been decided by the Court in favor of the Collection Agents' claim that they were *employees*. This is so because the case revolved around the appreciation of the control mechanisms established by the company both as to the *methods* and *result* of the agent's work. There are indications in the facts of this case that *control* both as to *method* and *result* was present.

A reading of the decision provokes several questions: One, the Court's statement that the agents were not employees because the Agreement explicitly characterizes their relationship as one of *independent contractors* rests on fragile ground. In *Tabas v. California Manufacturing Co., Inc.*, the Court said "The existence of employer-employee relation is a question of law and being such, it cannot be made the subject of an agreement."[62]

Two, the control mechanisms, both as to *method* and *result* were set in place by the Company and were operative. The use of official receipts provided by the Company and the requirement that an agent submit a report once a week or as often as required on company-provided forms, all indicate

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[59]*Id*, at 276-277.
[60]*Id*, at 277.
[61]*Id*, at 277.
[62]169 SCRA 497 (1989).

a degree of control as to *method* of work which was established by the Company for its benefit. That the reporting requirement was to be done after the completion of the work is of no consequence. The company likewise controlled the *results* of the agent's work such as the setting of a collection quota. The sanctions in case of a violation, and the terms of the collection agreement can be correctly interpreted to be a system of control as to the work *results.* Finally, a Decision according *employee* status on the agents would be more in keeping with the statutory policy of extending the benefits of the law to as wide a segment of the workforce as possible. What was involved was the right of the workers to self-organization as a pre-requisite of collective bargaining, which are constitutionally and statutorily guaranteed rights.[63]

In *Pan-Pacific Industrial Sales Co., Inc., v. NLRC,*[64] the Court disregarded the position title "Consultant" and, instead, relied on the nature of the work as *indicia* of employer-employee relationship, and, all the more, where the use of a position title is a euphemism and an indication of an attempt to go around the law.

VII. EMPLOYEE CLASSIFICATION

The proper classification of an employee, whether regular, project, seasonal, and casual is a contentious issue in labor-management relations because tenurial security and the terms and conditions of employment are closely associated with employee classification.

A. Law On Employee Classification

In *Mercado v. National Labor Relations Commission,* the Court took the opportunity to interpret and clarify employee classification as provided for in Article 280 of the Labor Code.

> Art. 280. *Regular and Casual Employment.* - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be 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 employment has been fixed for a specific project or undertaking the completion or termination of which has been

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[63] LABOR CODE, arts. 211 (a), (b) and (c), and 243; *Also* 1987 CONST., art. III.
[64] 194 SCRA 633 (1991).

> determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, that, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.

Said the Court:

> (R)egardless of any written or oral agreement to the contrary, an employee is deemed regular where he is engaged in necessary or desirable activities in the usual business or trade of the employer, except for project employees.
>
> A project employee has been defined to be one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement of the employee, or where the work or service to be performed is seasonal in nature and the employment is for the duration of the same.
>
> The second paragraph of Art. 280 demarcates as "casual" employees, all other employees who do not fall under the definition of the preceding paragraph. The proviso, in said paragraph, deems as regular employees those "casual" employees who have rendered at least one year of service regardless of the fact that such service may be continuous or broken.[65]

Interpreting the proviso, in the second paragraph of Article 280, the Court ruled that the proviso is applicable only to casual employees, and not to project or seasonal employees.

> The general rule is that the office of a proviso is to qualify or modify only the phrase immediately preceding it or restrain or limit the generality of the clause that it immediately follows.[66]

This decision is in full accord with Article 280 of the Labor Code.

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[65]201 SCRA 332 (1991), at 341-342.
[66]*Id.*, at 342.

B. Regular Employees - Necessary or Desirable Work

The Court in *Ecal v. National Labor Relations Commission* correctly ruled that workers in a sawmill whose work consisted of "segregating lumber materials as to sizes and loading and unloading the same in the chamber for drying" are regular employees because they are performing functions necessary or desirable to an enterprise engaged in the lumber business.[67]

A similar ruling was also promulgated in *Tucor Industries, Inc. v. National Labor Relations Commission,* where the employees were packers, drivers and utilitymen/carpenters of an enterprise engaged in transport and storage and transfer of goods owned by service men in American military facilities.[68]

C. Project Employee

In *De Jesus v. Philippine National Construction Corporation,* the Court correctly ruled that a carpenter who was given a series of thirteen (13) appointments for specific projects over a ten (10) year period cannot be considered a project employee but a regular employee because of his length of service of more than ten (10) years, and that the nature of his work was "necessary or desirable" in the employer's field of activity.

> Without question, ... a carpenter, performs work "necessary, or desirable" in the construction business... The fact however that he had been involved in project works will not alter his status because the law requires a "specific project or undertaking the completion or termination of which has been determined at the time of engagement" in order to make a project employee a true project employee.
>
> We cannot say that [the workers] engagement has been determined because the duration of the work is "contingent upon the progress accomplishment" and secondly, the company, under the contract, is free to" determine the personnel and the number as the work progresses. Clearly, the employment is subject to no term but rather, a condition, that is "progress accomplishment". It cannot therefore be said to be definite that will exempt the respondent company from the effects of Article 280.[69]

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[67] 195 SCRA 229 (1991).
[68] 197 SCRA 296 (1991).
[69] 195 SCRA 468 (1991), at 472.

In *Mercado Jr. v. National Labor Relations Commission,* the Court ruled that workers who are engaged "only to do a particular phase of agricultural work necessary in rice production and/or sugar cane production, after which they would be free to render services to other farm owners who need their services",[70] even after years of service are project employees.

The decision of the Court in all these cases on the issue of Employee Classification faithfully and closely adhered to the law on the subject.

VIII. ALIEN EMPLOYMENT

General Milling Corporation v. Torres, is a case of first impression interpreting the Labor Code provision regulating the employment of non-resident aliens.[71] The Court ruled that the hiring of a foreign coach is a prerogative of the employer but subject to statutory regulation.

Petitioner GMC's claim that hiring a foreign coach is an employer's prerogative has no legal basis at all. Under Article 40 of the Labor Code, an employer seeking employment of an alien must first obtain an employment permit from the Department of Labor. Petitioner GMC's right to choose whom to employ is, of course, limited by the statutory requirement of an alien permit.[72]

On the question of defining alien classification, the Court said that the terms "non-resident alien" and its reverse "resident alien", here must be given their technical connotation under our law on immigration."[73]

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[70]201 SCRA 332 (1991), at 334-335.

[71]The following is the pertinent provision of Labor Code:

Art. 40. Employment permit of non-resident aliens. Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.

The employment permit may be issued to a non- resident aliens or to the applicant employer, after determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of the application to perform the services for which the alien is desired.

For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise.

[72]196 SCRA 215 (1991), at 217.

[73]*Id.*

Petitioners contended that respondent Secretary of Labor should have deferred to the findings of the Commission on Immigration and Deportation the question on the necessity of employing [an alien]. The Court said that the Labor Code specifically empowers [the Secretary of Labor] to make a determination as to the availability of the services of a "person in the Philippines who is competent, able and willing at the time of application to perform the services for which an alien is desired." In short, the Department of Labor is the agency vested with jurisdiction to determine the question of availability of local workers.[74]

The Court also ruled that the Secretary of Labor may consider whether the employment of an alien will "redound to the national interest", even if the law is silent on the matter because "The permissive language employed in the Labor Code indicates that the authority granted involves the exercise of discretion on the part of the issuing authority.[75] The Court's ruling is in full accord with the law.

IX. WAGES

A. Minimum Wage Fixing

The case of *Employees Confederation of the Philippines v. National Wages and Productivity Commission,* is a case of first impression explaining the methods or techniques of minimum wage fixing; the need for wage rationalization; and the principle that minimum wage fixing is not solely a legislative function but may be delegated to specialized agencies of government.

The Court took cognizance of the fact that there are two methods of minimum wage fixing, namely, "floor wage" and "salary ceiling" methods.

> Historically, legislation involving the adjustment of the minimum wage made use of two methods. The first method involves the fixing of determinate amount that would be added to the prevailing statutory minimum wage. The other involves "the salary-ceiling method" whereby the wage adjustment is applied to employees receiving a certain denominated salary ceiling.[76]

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[74] *Id.*, at 218.
[75] *Id.*, at 220.
[76] 201 SCRA 759 (1991), at 763.

The technique or method of rationalizing wages is to assign this function to specialized agencies with grant of adequate power... first, by providing for full time boards to police wages round-the-clock, and second, by giving the Boards enough powers to achieve this objective.[77]

The Court also ruled that minimum wage fixing is not solely a legislative function.

> ...[T]he Act is meant to rationalize wages, that is, by having permanent boards to decide wages rather than leaving wage determination to Congress year after year and law after law... The Court is not of course saying that the Act is an effort of Congress to pass the buck, or worse, to abdicate its duty, but simply, to leave the question of wages to the expertise of experts.[78]

Thus, the Court upheld the authority of the Regional Wages and Productivity Branch to promulgate a Wage Order setting a minimum wage based on the "salary ceiling" method.

A careful reading of R.A. No. 6727 will clearly show that the method of wage fixing, *i.e.*, either "floor wage" or "salary ceiling" methods is not provided for by the law. All that the law provides is the authority to fix minimum wages, and the procedure and criteria for wage determination.[79]

The Decision of the Court in this case requires careful inquiry and analysis because of its far reaching consequences.

First, a careful reading of R.A. No. 6727 clearly shows that the law does not specifically provide for the method of wage fixing by the Regional Wages and Productivity Boards. All that the law provides, among others, is the authority of the Boards to fix minimum wages. The statutory authority of the Boards to fix minimum wages as provided for by R.A. No. 6725 states:

> Art. 122. Creation of Regional Tripartite Wages and Productivity Boards.

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[77] *Id.*, at 764.
[78] *Id.*, at 766.
[79] *See* Arts. 99, 122 and 124, REP. ACT No. 6727.

> The Regional Boards shall have the following powers and functions in their respective territorial jurisdiction...
>
> *(b) To determine and fix minimum wage rates applicable in their region, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission.* (Emphasis supplied).

Second, the following statement of the Court may not be reflective of either the realities of wage distortion as a result of the implementation of a Wage Order, or the legislative intent on the methodology of settling wage distortion issues as provided for in R.A. No. 6727.[80]

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[80] "...The shift from [fixing of determinate amount that would be added to the prevailing statutory minimum wage] to the [salary ceiling method whereby the wage adjustment is applied to employees receiving a certain denominated salary ceiling] was brought about by labor disputes arising from wage distortions, a consequence of the implementation of said wage orders. Apparently, the wage order provisions that wage distortion shall be resolved through the grievance procedure was perceived by legislators as ineffective in checking industrial invest resulting from wage order implementations. With the establishment of the [salary ceiling method] as a practice in minimum wage fixing, wage distortions were minimized.

As the Commission noted, the increasing trend is toward the second mode, the salary-cap method, which has reduced disputes arising from wage distortions (brought about, apparently, by the floor wage method). Of course, disputes are appropriate subjects of collective bargaining and grievance procedures, but as the Commission observed and as we are ourselves agreed, bargaining has helped very little in connecting wage distortions.

The Court seemed to have overlooked an earlier decision on the concept of minimum wage.

> In *Philippine American Management Company, Inc. v. Philippine American Management Employee Association* (49 SCRA 194, [1973]), the Court ruled that minimum wage is "an area placed beyond the sphere of bargaining between the parties...(because) legislation of that character proceeds on the premise that there is a floor below which the amount paid to labor should not fall".

Similarly, the same tone is re-stated in the Rules Implementing Wage Orders No. NCR-01 and NCR-01-A, which were both promulgated by the Regional Tripartite Wage and Productive Board after the promulgation of the Wage Order, subject of the case.

> Section 1. Definition of Terms. As used in these rules:
>
> n) "Statutory Minimum Wage Rates" refer to the lowest wage rate fixed by law that an employer can pay his workers.

B. Worker Preferential Claim

The workers preferential claim to "unpaid wages and other monetary claims" as against other creditors of a bankrupt employer has been the subject of a series of decisions. Despite the amendment introduced by R.A. No. 6715,[81] the Court continues to reiterate its earlier rulings as it did in

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> o) "Minimum Wage Rates" refer to the lowest wage rates that an employer can pay his workers, as fixed by the Board, and which shall not be lower than the applicable statutory minimum wage rates.

Viewed in the above context, it cannot be said the Wage Order, subject of the litigation, did not fix a minimum wage, rather the so called "salary ceiling method" was an across the board wage increase, and not a statutory minimum wage.

A wage distortion will always be an inevitable consequence of any wage movement because of its escalating effect. Literally, a wage distortion can go very high up the wage structure of an enterprise. It is precisely because of this reality that R.A. No. 6727, provided for a mechanism for wage distortion disputes.

> Art. 124. *Standards/Criteria* for minimum wage filing.
>
> Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortion of the wage structure within an establishment, the employer and the Union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration.
>
> In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.
>
> Nowhere can it be found that the law makers intended that either the Regional Tripartite Wage and Productivity Board nor the Courts will be the arbiters of wage distortion disputes. The law makers anchored their faith in the efficacy of the mechanisms set forth in the law, and the rationality of the direct parties in the labor relations system.

[81] Article 110. *Worker's preference in case of bankruptcy.* - In the event of bankruptcy or liquidation of the employer's business, his workers shall enjoy first preference as regards their unpaid wages and other monetary claims any provision of law to the contrary

Development Bank of the Philippines v. Minister of Labor, that "the Labor Code provision on worker preference must be read in conjunction with the concurrence and preference of credit provisions of the Civil Code."[82]

The above ruling is not in full accord with both the clear letter and spirit of Article 110 of the Labor Code as amended. There are several dissenting opinions on the matter.[83]

X. INDEPENDENT CONTRACTOR - LABOR ONLY CONTRACTOR AND LIABILITIES

In *Ecal v. National Labor Relations Commission,* the Court ruled that all the facts and circumstances of a case must be carefully analyzed before a definitive characterization of a work relationship can be ascertained:

> The Court carefully examined the records of the case and finds that the NLRC limited itself to a superficial evaluation of the relationship between the parties based mainly on...documents with emphasis on the company payrolls without regard to the particular circumstance of the case.
>
> The foregoing observation [as to work procedures and extent of supervision] suggest that there is a certain relationship between the parties although a clear-cut characterization of such relationship - whether it is an employer-employee relationship or an independent contractor relationship is unavailing. However, a closer scrutiny of said relationship is in order.[84]

The Court further ruled that a labor only contracting relationship exists where the alleged independent contractor is only a poor laborer who -

> ...definitely does not have sufficient capital to invest in tools, equipment and machinery...[85]

and where:

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notwithstanding. Such unpaid wages and monetary claims shall be paid in full before the claims of the Government and other creditors may be paid.

[82]195 SCRA 463 (1991), at 466.

[83]*See e.g.*, the dissenting opinions in DBP v. Ortiguera, 183 SCRA 328 (1990); Bolinao v. Padolina, 186 SCRA 368 (1990); and DBP v. NLRC, 186 SCRA 841 (1990).

[84]195 SCRA 224 (1991), at 227-229.

[85]*Id.*, at 232.

> There is no question that the task performed by [the workers of the alleged independent contractor] is directly related to the business [of an employer] The work... is an integral part of operation of the sawmill...without which production and company sales will suffer.[86]

The following statement by the Court is fair warning to lawyers and businessmen.

The Court had in fact observed that businessmen, with the aid of lawyers, have tried to avoid the bringing about of an employer-employee relationship in some of their enterprises because the juridical relations spawn obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.[87]

The Court finally concluded that :

> Without a law prohibiting "labor only" contracting to protect the rights of labor, these poor workers will always be at the mercy of the employer.[88]

On the other hand, the legal effect of a finding that a contractor is merely a "labor-only" contractor was explained in *Philippine Bank of Communications v. National Labor Relations Commission:*

> [T]he 'labor-only' contractor - *i.e.*, the person or intermediary' - is considered merely as an agent of the employer.' The employer is made by the statute responsible to the employees of the 'labor-only' contractor as if such employee had been directly employed by the employer. Thus, where 'labor-only' contracting exists in a given case, the statute itself implies or establishes an employer-employee relationship between the employer (the owner of the project) and the employees of the 'labor-only' contractor, this time for a comprehensive purpose: to prevent any violation or circumvention of any provision of this Code.' The law in effect holds both the employer and the 'labor-only' contractor responsible to the latter's employees for the more effective safeguarding of the employees' rights under the Labor Code.[89]

What is the liability of an employer to the employees of an independent contractor is the issue presented in *Baguio v. National Labor*

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[86] *Id.*, at 223.
[87] *Id.*, at 233.
[88] *Id.*, at 234.
[89] *Id*, at 231.

Relations Commission.[90] Both the majority of the Court and the dissenting opinions, as well as the National Labor Relations Commission agreed that an employer and an independent contractor are jointly and severally liable to the employees of the contractor for unpaid wages.

However, the majority and the dissenting opinion differed on which of the following provisions of the Labor Code is the basis for the liability.

> Art. 106. Contractor or subcontractor. -- Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor 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.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting, and determine who among the parties involved shall be considered the employer for purposes of this Code, in order to prevent any circumvention of the law.
>
> There is "labor-only" contracting 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 such employer. In such cases, the person or intermediary shall be considered merely as 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.
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> Art. 107. Indirect employer. -- The provision of the immediately preceding Article shall likewise apply to any person, partnership,

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[90] 202 SCRA 465 (1991).

> association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.
>
> Art. 108. Posting of bond. -- An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.
>
> Art. 109. Solidary liability.-- The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

In his "Manifestation in Lieu of Comment," the Solicitor General recognizes the solidary liability of the employer and the independent contractor but bases recovery on Article 108 of the Labor Code *infra*, contending that inasmuch as the employer failed to require them the independent contractor a bond to answer for the latter's obligations to his employees, as required by said provision, the employer should, correspondingly, be deemed solidarily liable.

In their respective Comments the employer and the NLRC maintain that Article 106 finds no application in the instant case because it is limited to situations where the work being performed by the contractor's employees are directly related to the principal business of the employer. The NLRC further opines that Article 109 on "Solidary Liability" finds no application either because the employer was neither petitioners' employer nor indirect employer.[91]

The majority opinion written by Madame Justice Ameurfina Melencio-Herrera ruled that the joint and several liability of the employer and the independent contractor is based on Article 107 of the Labor Code which is the applicable law in case of an independent contractor relationship.

Based on the fact that an independent contractor relationship existed between the employer and the contractor the employer qualifies as an "indirect employer"... It entered into a contract with an independent

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[91] *Id.*, at 469.

contractor for the construction of an annex building: a work not directly related to the employers' business of flour and feeds manufacturing. Being an "indirect employer", the employer is solidarily liable with the contractor for any violation of the Labor Code pursuant to Article 109.

The Court, in reply to the position taken by the National Labor Relations said -

> The NLRC submission that Article 107 is not applicable in the instant case for the reason that the coverage thereof is limited to one "not an employer" whereas [the employer] is such an employer as defined in Article 97(b) of the Labor Code, is not well-taken. Under the peculiar set-up herein, [the employer] is, in fact, "not an employer" (in the sense of not being a direct employer) as understood in Article 106 of the Labor Code, but qualifies as an "indirect employer" under Article 107 of said Code.[92]

The distinction between Article 106 and 107 lies in the fact that Article 106 deals with "labor-only" contracting. Here, by operation of law, the contractor is merely considered as an agent of the employer, who is deemed "responsible to the workers to the same extent as if the latter were directly employed by him." On the other hand, Article 107 deals with "job contracting." In the latter situation, while the contractor himself is the direct employer of the employees, the employer is deemed, by operation of law, to be an indirect employer.

> In other words, the phrase "not an employer" found in Article 107 must be read in conjunction with Article 106. A contrary interpretation would render the provisions of Article 107 meaningless considering that every time an employer engages a contractor, the latter is always acting in the interest of the former, whether directly or indirectly, in relation to his employees.[93]
>
> ....As an indirect employer, and for purposes of determining the extent of its civil liability [the employer] is deemed a "direct employer" of his contractor's employees pursuant to the last sentence of Article 109 of the Labor Code. As a consequence, [the employer] cannot escape its joint and solidary liability to petitioners.
>
> Further, Article 108 of the Labor Code requires the posting of a bond to answer for wages that a contractor fails to pay....

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[92] *Id.*, at 471.
[93] *Id.*, at 472.

> Having failed to require [the independent contractor] to post such a bond, [the employer] must answer for whatever liabilities [the independent contractor] may have incurred to his employees. This is without prejudice to its seeking reimbursement from [the independent contractor] for whatever amount it will have to pay petitioners.[94]

Mr. Justice Teodoro Padilla dissented and opined that the liability of an employer in an independent contractor relationship is based on Article 106, and that the majority adopted a "circumspect" view of the same Article by limiting its scope to labor-contracting" relationships only. Analyzing Article 106, the dissent enumerated the three possible juridical relationships possible under Article 106.

> It appears abundantly clear that the juridical relationship envisioned in Article 106 involves an employer, as defined by the Code. It thus applies to the juridical situation involved in this case, where the actors are General Milling Corporation (as the employer), Lupo (as the contractor) and the petitioners (as the employees or workers). Article 106, upon careful examination, deals with three (3) situations in the juridical relationship between employer- contractor-employee. It does not deal solely with "labor-only" contracting.
>
> The first situation in Article 106 is where the employer (project owner) enters into a contract with a contractor for the performance of some job or work; the employees recruited by such contractor shall be paid, according to Article 106, first paragraph, in accordance with the requirements of the Labor Code. Stated in another way, the first paragraph of Article 106, provides the manner by which such employees shall be paid their wages and that is, in compliance with the provisions of the Labor Code. This, therefore, would include the rules on manner of payment, minimum wage, place of payment, etc..
>
> In an employer-contractor-employee relationship, it is clear that the contractor is the real employer, and therefore, responsible to his workers for their wages. However, should such contractor renege on his said obligation, to whom will the unpaid worker have recourse? The second paragraph of Article 106 resolves the seeming dilemma of the workers by providing that the EMPLOYER, (*i.e.* the project owner) shall be solidarily liable to such workers to the extent of the work performed by them, meaning that the EMPLOYER shall solidarily answer for the payment of wages corresponding to the amount of work undertaken by the contractor's employees in the project. This is the second situation contemplated by Article 106.

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[94] *Id.*, at 473.

> The third and final situation treated in Article 106 is contained in the fourth paragraph thereof. It pertains to what the majority perceives (erroneously, in my view) as the sole coverage of Article 106 - that of a "labor-only" contracting and the extent of the rights and liabilities of the parties involved in such a relationship.[95]
>
> From the facts of this case as presented, the second paragraph of Article 106 finds clear application. Because of contractor Lupo's default in the payment of petitioners' wages, owing to his insolvency, the employer (company) must comply with its joint and several obligation to answer for Lupo's accountability to his employees for their unpaid wages. Thereafter, should the company be inclined to do so, it may seek reimbursement from Lupo.
>
> In sum, it is my submission that, the company's solidary liability to the petitioners ought to be predicated on the basis, not of Article 107 of the Labor Code (which applies only to non-employers while the company in this case is an employer) but rather, upon the express declaration of paragraph 2, Article 106 of the Labor Code, which covers employers (not non- employers) as the company in the case at bar.

The Dissenting Opinion also analyzed very well the meaning of the phrase "not being an employer" as provided for in Article 107.

> It is strongly urged by the majority that the phrase "not being an employer" found in said Article 107 be given a circumspect appraisal. However, there is no other interpretation of this provision of the Code than that an indirect employer, to be categorized as such, *must not be an EMPLOYER as this term is defined under the Code.* Article 97 of the same Title of the Labor Code defines an EMPLOYER as -
>
> ART. 97. *Definition.* - As used in this Title:
>
> ...b) 'Employer' includes *any person acting* directly or indirectly in the interest of an employer *in relation to an employee* and shall include the Government and all its branches, subdivision and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations. (emphasis supplied)
>
> From the foregoing basic premises, it is submitted that the company (General Milling Corporation) *is an employer* in every sense of the word. It engages in the primary enterprise of manufacturing flour and feeds; it definitely employs employees and workers in its plant and

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[95] *Id.*, at 476-477.

> outlets to work in various capacities. Therefore, the company cannot, in any way, be considered an *indirect employer*, as the term is defined, for purposes of the petitioner's cause of action against it.
>
> To hold as the majority does, that Article 107 does apply in this case, would render useless the phrase "not being an employer" contained therein. Evidently, the framers of the Labor Code had a purpose in mind in providing for such qualification, which it to give protection to those workers hired or recruited by a contractor to work on some job *for a person who is not himself engaged in any enterprise.* An example is a person who wishes to have a residential house built: He engages an architect or engineer to undertake the project who, in turn, hires laborers, masons and carpenters. Should the architect or engineer renege on his obligations to the workers he recruited, from whom will the latter seek relief? By mandate of Article 107, above-quoted, the owner of the house, *who is not himself an employer as defined by law,* shall be held accountable. This is where, it is submitted in Article 107 properly applies.[97]

Mr. Justice Padilla expressed the clearer and more logical view on the different work relationships possible under Article 106. As pointed out by the Dissenting opinion, [Article 106] "does not deal solely with 'labor only' contracting."[98]

In *Ace Building Care v. Rasago,* the Court ruled that an employer is jointly and severally liable with an independent contractor for unpaid wages of the contractor, because

> 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... 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 wages should the contractor be liable 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 workers ample protection as mandated by the 1987 Constitution.[99]

The Decisions of the Court in all the cases where the liability of an employer and independent contractor were in issue, are all in accord with law. It is notable that the Court is fully aware of the arrangements

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[97] *Id.*, at 474-475.
[98] *Id.*, at 476.
[99] 195 SCRA 463 (1991).

designed by employers with the assistance of their lawyers, to avoid an employer-employee relationship, and is hence, at all times vigilant in protecting the worker. It is a warning to scheming parties that such working arrangements will be carefully scrutinized by the Court.

XI. TENURIAL SECURITY AND TERMINATION OF EMPLOYMENT

A. *Tenurial Security*

Security of tenure, or the right of an employee not to be terminated from employment except for just cause is guaranteed by both the Constitution[100] and the Labor Code.[101]

1. *Coverage*

The guarantee of tenurial security applies to all employees regardless of employee grade or rank, and tenure classification.

In *Cielo v. National Labor Relations Commission,*[102] and *Colegio de San Agustin v. National Labor Relations Commission;*[103] the Court ruled that probationary employees enjoy tenurial security during the period of their probationary employment but not beyond the same.

In *Hellenic Philippine Shipping, Inc. v. Siete;* the Court ruled that managerial employees are also covered by the tenurial security guarantee.[104]

2. *School Teachers and Administrator*

In *La Sallette of Santiago, Inc. v. National Labor Relations Commission,*[105] the Court ruled that school teachers who are assigned non-

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[100]Article XIII, Section 3 of the Constitution provide: [all workers] "shall be entitled to security of tenure."

[101]The LABOR CODE reads:

Art. 279. Security of Tenure. -- In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause authorized by law.

[102]193 SCRA 410 (1991).

[103]201 SCRA 398 (1991).

[104]195 SCRA 179 (1991).

[105]195 SCRA 180 (1991).

teaching functions in addition to their teaching duties do not enjoy tenurial security in their non-teaching duties except when there is a fixed term for the same. The Court said

> A distinction should thus be drawn between the teaching staff of private educational institutions, on the one hand -- teachers, assistant instructors, assistant professors, associate professors, full professors -- and department or administrative heads or officials, on the other -- college or department secretaries, principals, directors, assistant deans, deans. The teaching staff, the faculty members, may and should acquire tenure in accordance with the rules and regulations of the Department of Education and Culture and the school's own rules and standards. On the other hand, teachers appointed to serve as administrative officials do not normally, and should not expect to, acquire a second or additional tenure. The acquisition of such an additional tenure is not normal, is the exception rather than the rule, and should therefore be clearly and specifically provided by law or contract.[106]

3. Term Employment

In *Cielo v. National Labor Relations Commission,* the Court ruled that a term employment is invalid when the same is designed to preclude a worker's constitutional and statutorily guaranteed right to security of tenure. Thus:

> There is no question that the purpose behind these individual contracts was to evade the application of the labor laws by making it appear that the drivers of the trucking company were not its regular employees....[107]

> By this clever scheme, the private respondent could also prevent the drivers from becoming regular employees and thus be entitled to security of tenure and other benefits, such as a minimum wage, cost-of living allowances, vacation and sick leaves, holiday pay, and other statutory requirements.[108]

> In *Brent School, Inc. v. Zamora,* the Court affirmed the general principle that "where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to public policy, morals, *etc.*.[109]

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[106] 195 SCRA 80 (1991), at 85.
[107] 193 SCRA 410 (1991), at 415.
[108] *Id,* at 416.
[109] *Id,* at 417.

> The Court looks with stern disapproval at the contract entered into by the private respondent with the petitioner (and who knows with how many other drivers). The agreement was a clear attempt to exploit the unwitting employee and deprive him of the protection of the Labor Code by making it appear that the stipulations of the parties were governed by the Civil Code as in ordinary private transactions. They were not, to be sure. The agreement was in reality a contract of employment into which were read the provisions of the Labor Code and the social justice policy mandated by the Constitution. It was deceitful agreement cloaked in the habiliments of legality to conceal the selfish desire of the employer to reap undeserved profits at the expense of its employees. The fact that the drivers are on the whole practically unlettered only makes the imposition more censurable and the avarice more execrable.[110]

B. Termination of Employment - Procedural Matters

In *Manggagawa ng Kommunikasyon sa Pilipinas v. National Labor Relations Commission,* the Court cautioned employers against terminating employees without just cause.

> Extreme caution should be exercised in terminating the service of a worker for his job may be the only lifeline on which he and his family depend for his survival in their difficult times. That lifeline should not be cutoff except for a serious, just and lawful cause, for to a worker, the loss of his job may well mean the loss of hope for a decent life for him and his family.[111]

1. Procedural Requirements - Just Cause and Business Cause

In *Wiltshire File Co., Inc. v. National Labor Relations Commission,*[112] the Court explained in detail the procedural requirements that must be complied with in termination of employment for just cause and termination of employment for a business related cause and the rationale for the procedural rules, and the forums for the redress of complaints. The principal distinction between the procedural requirements for these two grounds for termination of employment lies in the fact that in termination for a just cause there is a need for a hearing of the written charges at the

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[110] *Id.*, at 419.

[111] 194 SCRA 573 (1991), at 577.

[112] 193 SCRA 665 (1991).

level of the enterprise prior to termination. Whereas, in the case of termination of employment for business related causes, there is no need for a hearing prior to termination at the level of the enterprise.

Termination of an employee's services because of retrenchment to prevent further losses or redundancy, is governed by Article 283 of the Labor Code which provides as follows:

> Art. 283. *Closure of establishment and reduction of personnel.* - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Termination of services for any of the above-described causes should be distinguished from termination of employment by reason of some blameworthy act or omission on the part of the employee, in which case the applicable provision is Article 282 of the Labor Code which provides:

> Art. 282. *Termination by employer.* - An employer may terminate an employee for any of the following cases:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;

> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by. the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> (e) Other causes analogous to the foregoing.

Sections 2 and 5 of Rule XIV entitled "Termination of Employment" of the "Rules to Implement the Labor Code" read:

> Sec. 2. *Notice of dismissal.* - Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular act or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address....
>
> Sec. 5. *Answer and hearing.* - The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires." (Italics supplied)

We note that Section 2 of Rule XIV quoted above requires the notice to specify "the particular acts or omissions constituting the ground for his dismissal", a requirement which is obviously applicable where the ground for dismissal is the commission of some act or omission falling within Article 282 of the Labor Code. Again, Section 5 gives the employee the right to answer and to defend himself against "the allegations stated against him in the notice of dismissal". It is such allegations by the employer and any counter-allegations that the employee may wish to make that need to be heard before dismissal is effected. Thus, Section 5 may be seen to envisage charges against an employee constituting one or more of the just causes for dismissal listed in Article 282 of the Labor Code. Where, as in the instant case, the ground for dismissal or termination of services does not relate to a blameworthy act or omission on the part of the employee, there appears to us no need for an investigation and hearing to be conducted by the employer who does not, to begin with, allege any malfeasance or non-feasance on the part of the employee. In such case, there are no allegations which the employee should refute and defend himself from. Thus, to require petitioner Wiltshire to hold a hearing, at which private respondent would have had the right to be present, on the business and financial circumstances

compelling retrenchment and resulting in redundancy, would be to impose upon the employer an unnecessary and inutile hearing as a condition for legality of termination.

This is not to say that the employee may not contest the reality or good faith character of the retrenchment or redundancy asserted as grounds for termination of services. The appropriate forum for such controversion would, however, be the Department of Labor and Employment and not an investigation or hearing to be held by the employer itself. It is precisely for this reason that an employer seeking to terminate services of an employee or employees because of "closure of establishment and reduction of personnel", is legally required to give a written notice not only to the employee but also to the Department of Labor and Employment at least one month before effectivity date of the termination."[113]

2. *Substantive and Procedural Requirement - Just Causes*

In *Salaw v. National Labor Relations Commission*,[114] the Court reiterated the above ruling that substantive and procedural due process, which includes the right to counsel, must be complied with; otherwise, the employee's dismissal will be illegal.

> Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee by his employer are two-fold: the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause as provided by law (Articles 279, 281, 282-284, New Labor Code), but the rudimentary requirements of due process -- notice and hearing -- must also be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.[115]

> The inviolability of notice and hearing for a valid dismissal of an employee cannot be over-emphasized. Those twin requirements constitute essential elements of due process in cases of employee dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal; on the other hand, the requirement of hearing affords the employee the opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither one of these two requirements can be

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[113] 193 SCRA 665 (1991), at 674-677.
[114] 202 SCRA 7 (1991), at 11-12.
[115] *Id.*

> dispensed with without running afoul of the due process requirement of the Constitution.
>
> It is true that administrative and quasi-judicial bodies are not bound by the technical rules of procedure in the adjudication of cases. However, the right to counsel, a very basic requirement of substantive due process, has to be observed.
>
> Indeed, the rights to counsel and to due process of law are two of the fundamental rights guaranteed by the 1987 Constitution to any person under investigation, be the proceeding administrative, civil, or criminal.[116]

Thus, Section 12(1), Article III thereof specifically provides:

> Any person under investigation for the commission of an offense shall have the right to ... have competent and independent counsel preferably of his own choice. If the person cannot afford the service of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel." To underscore the inviolability of this provision, the third paragraph of the same section explicitly states that, "any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him....
>
> Significantly, the dismissal of the petitioner from his employment was characterized by undue haste. The law is clear that even in the disposition of labor cases, due process must not be subordinated to expediency or dispatch. Otherwise, the dismissal of the employee will be tainted with illegality. On this point, we have ruled consistently.[117]

In *Puerto Azul Beach Hotel v. Sisayan,*[118] the Court ruled that a Notice to Terminate Employment must be in writing.

> The provisions of the Labor Code on notice and hearing being essential before an employee may be dismissed are too basic for employers to ignore. In the heat of anger, an employer may scold an employee and require him to explain or get out of the firm. This verbal outburst cannot take the place of the mandatory written notice. Employers should have learned by now how to deal with this situation. It does not serve the purposes of labor legislation or the protections of the due process clause if the Court allows verbal notices, flatly refuted or denied by the worker, to take the place of formal notices.

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[116] *Id.* at 12.

[117] *Id.* at 12-13, and 15.

[118] 195 SCRA 179 (1991).

In *Hellenic Philippines Shipping, Inc. v. Siete,* the Court ruled that the investigation of the written charges should be conducted before the dismissal. And, again in Collegio *del Sto. Niño v. National Labor Relations Commission,* the Court correctly ruled that the due process requirements for the termination of employment is not violative of a school's academic freedom.

In *Hellenic,* the Court also explained the effect of a defect of due process at the level of the enterprise. The petitioner argues that whatever defects might have tainted the private respondent's dismissal was subsequently cured when the charges against him were specified and sufficiently discussed in the position papers submitted by the parties to the POEA. That argument is unacceptable. The issue before the POEA was in fact the lack of due process in Siete's dismissal. The law requires that the investigation be conducted before the dismissal, not after. That omission cannot be corrected by the investigation later conducted by the POEA. As the Solicitor General correctly maintained, the due process requirement in the dismissal process is different from the due process requirements in the POEA proceeding. Both requirements must be separately observed.

> While it is true that in *Wenphil Corp. v. NLRC and Rubberworld (Phils.) v. NLRC,* the lack of due process before the dismissal of the employee was deemed corrected by the subsequent administrative proceedings where the dismissal employee was given a chance to be heard, those cases involved dismissals that were later proved to be for a valid cause. The doctrine in those cases is not applicable to the case at bar because our finding here is that the dismissal was not justified.[119]

The distinction made by the Court between due process requirements at the level of the enterprise and at the level of the POEA is rather artificial. The requirements of due process is the same anywhere, be it at the level of the enterprise, or adjudicative agencies.

3. Procedural Requirements - Business Related Causes

The procedural requirements for retrenchment due to business losses was fully explained by the Court in *Villena v. National Labor Relations.*[120]

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[119]195 SCRA 179 (1991), at 185.
[120]193 SCRA 682 (1991), at 692.

These include not only prior notice, but also criteria in selecting employees to be retrenched, and proof of loss.

While the purpose was allegedly to carry out a retrenchment program to cut losses, the legal procedure for the retrenchment of personnel was not followed, to wit: (1) one- month prior notice to the employee as prescribed by law was not given (Art. 283, Labor Code of the Philippines, as amended; Sec. 5, Rule XIV, B.P. 130); (2) no fair and reasonable criteria were used in carrying out the retrenchment program, such as (a) less-preferred status (*i.e.* temporary employees), (b) efficiency rating, and (c) seniority... and (3) no proof of the alleged financial losses suffered by the company was produced... It appears, therefore, that the so-called "compulsory retirement" was a scheme employed by the company to terminate Villena's employment without complying with the due process requirements of the law and without regard for his right to security of tenure.[121]

In *Associated Labor Unions-VIMCONJU v. National Labor Relations Commission,* the Court further detailed or refined the procedural requirements of termination of employment for business related causes.

Under Article 284 above, three (3) requirements must be established with respect to cessation of business operations of an employer company not due to business reverses. Namely:

> (a) service of a written notice to the employees and to the MOLE at least one (1) month before the intended date thereof;
>
> (b) the cessation of or withdrawal from business operations must be bona fide in character; and
>
> (c) payment to the employees of termination pay amounting to at least one-half (1/2) month pay for each year of service or one (1) month pay, whichever is higher.[122]

4. Burden of Proof

In *Samahang Manggagawa Ng Rizal Park v. National Labor Relations Commission,* the Court ruled that:

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[121] *Id.*

[122] G.R. No. 7484, December 2, 1991.

> It is settled that in cases of dismissal, it is the employer who must prove its validity, not the employee who must prove its invalidity.[123]

5. Quantum of Evidence

In *Manila Electric Company v. National Labor Relations Commission,*[124] the Court ruled that substantial evidence is sufficient to prove the lawful dismissal of an employee even if the misconduct amounts to a crime.

> And this Court has ruled that the ground for an employer's dismissal of an employee needs be established only by substantial evidence, it not being required that the former's evidence "be of such degree as is required in criminal cases, *i.e.*, proof beyond reasonable doubt." It is absolutely of no consequence that the misconduct with which an employee may be charged also constitutes a criminal offense: theft, embezzlement, assault on another employee or company officer, arson, malicious mischief, *etc.* the proceedings being administrative, the quantum of proof is governed by the substantial evidence rule and not, as the respondent Commission seems to imagine, by the rule governing judgments in criminal actions.[125]

The Court reiterated the same ruling in *Kwikway Engineering Works v. National Labor Relations Commission.*[126]

6. Effective Exoneration from Criminal Case

In *Golden Farms, Inc. v. Bughao,* the Court ruled:

> that an employee who has been exonerated from a criminal charge based on reasonable doubt, may still be dismissed for loss of confidence arising from his misconduct.[127]

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[123] 198 SCRA 480 (1991), at 485.
[124] *Id.*
[125] 198 SCRA 681 (1991), at 687.
[126] 195 SCRA 526 (1991).
[127] 195 SCRA 322 (1991), at 327.

7. Prescriptive Period

In *Magno v. Philippine National Construction Corporation,*[128] an action for illegal dismissal must be brought within four (4) years from its occurrence pursuant of Article 1146 of the Civil Code.

C. Causes for Termination of Employment

1. Just Cause

The following were held just causes for termination of employment. Loss of confidence in *Kwikway Engineering Works v. NLRC;*[129] breach of confidence in *PNOC-Energy Development Corporation v. National Labor Relations Commission*[130] and *Philippine Airlines, Inc. v. National Labor Relations Commission*[131] and serious misconduct in *Manila Electric Company v. National Labor Relations Commission.*[132]

2. Just Cause - Business Closure

In *Wiltshire File Co., Inc. v. National Labor Relations Commission,*[133] the Court defined the term redundancy to mean the number of workers in excess of business requirement.

> In the second place, we do not believe that redundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to the termination of his services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a

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[128] 198 SCRA 230 (1991).
[129] 195 SCRA 526 (1991).
[130] 201 SCRA 687 (1991).
[131] 198 SCRA 748 (1991).
[132] 198 SCRA 681 (1991).
[133] 193 SCRA 665 (1991).

> position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[134]

In *Coca-Cola Bottlers (Phils.) Inc. v. National Labor Relations Commission,*[135] the Court ruled that an employer may close the whole or part of its business.

> Ordinarily, the closing of a warehouse facility and the termination of the services of employees there assigned is a matter that is left to the determination of the employer in the good faith exercise of its management prerogatives. The applicable law in such a case is Article 283 of the Labor Code which permits "closure or cessation of operation of an establishment or undertaking not due to serious business losses or financial reverses," which, in our reading, includes both the complete cessation of operations and the cessation of only part of a company's activities.[136]

D. Remedies and Sanctions

1. Range and Basis

In *Associated Citizens Bank v. Japson,*[137] the Court ruled that an illegally dismissed employee may claim relief under both the Labor Code and Civil Code.

> For the unlawful termination of employment, this Court in *Primero v. Intermediate Appellate Court, supra,* ruled that the Labor Arbiter had the exclusive and original jurisdiction over claims for moral and other forms of damages, so that the employee in the proceedings before the Labor Arbiter should prosecute his claims not only for reliefs specified under the Labor Code but also for damages under the Civil Code. This is because an illegally dismissed employee has only a single cause of action although the act of dismissal may be a violation not only of the Labor Code but also of the Civil Code. For a single cause of action, the dismissed employee cannot institute a separate action before the Labor Arbiter for backwages and reinstatement and another action before the

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[134]193 SCRA 665 (1991), at 672.
[135]194 SCRA 592 (1991).
[136]*Id.*, at 599.
[137]196 SCRA 404 (1991).

> regular court for the recovery of moral and other damages because splitting a single cause of action is procedurally unsound and obnoxious to the orderly administration of justice.[138]

2. Indemnity

In *Kwikway Engineering Works v. National Labor Relations Commissiong*[139] and *Intercapital Marketing Corporation v. National Labor Relations Commission,*[140] the employers were required to indemnify the employees who were dismissed in violation of the due process requirements.

3. Backwages and Separation Pay

In *Torillo v. Leogardo,*[141] the Court explained in detail the nature of the remedy of payment of backwages, and the three-year maximum period rule and separation pay in lieu of reinstatement. The Court said that backwages are paid to make the employee whole for the loss of income due to illegal dismissal; and the payment of separation pay when reinstatement is no longer feasible, is made to provide the illegally dismissed employee relief while seeking other employment.

> Backwages and reinstatement are two reliefs given to an illegally dismissed employee. They are separate and distinct from each other. However, in the event that reinstatement is no longer possible, separation pay is awarded to the employee. Thus, the award of separation pay is in lieu of reinstatement and not of backwages. In other words, an illegally dismissed employee is entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable and (2) backwages.

The distinction between separation pay and backwages has been exhaustively discussed by this Court in *Santos v. NLRC,*[142] wherein we held:

> The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights

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[138] *Id.*, at 407-408.

[139] 195 SCRA 526 (1991).

[140] 202 SCRA 584 (1991).

[141] G.R. No. 77205, May 27, 1991, 197 SCRA 471.

[142] G.R. No. L-76721, Sept. 21, 1987, 154 SCRA 166.

> and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo* ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies-reinstatement and payment of backwages-make the dismissed employee whole who can then look forward to continued employment. Thus these two remedies give meaning and substance to the constitutional right of labor to security of tenure. The two forms of relief are distinct and separate, one from the other... As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and, as correctly noted by the Solicitor General in his Comment, is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." In the instant case, the grant of separation pay was a substitute for immediate continued reemployment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job....

Again, as we stated in *Lepanto Consolidated Mining Company v. Olegario:*

> The Court serves notice on the National Labor Relations Commission (NLRC), labor arbiters and other responsible officials of the Department of Labor and Employment to take their bearings from this rule that illegally dismissed employees or laborers shall be entitled to reinstatement without loss of seniority (rights) and payment of backwages of not more than three (3) years without any qualification or deduction. Although this policy had been consistently adhered to by the Court even after the passage of the present Labor Code, there are still many instances, as in this case and other cases decided by the Court, where the labor arbiters and/or the NLRC still awarded backwages beyond the 3-year limit set by the Court. The governing principle, which has given consistency and stability to the law, is *stare decisis et no movere* (follow past precedent and do not disturb what has been settled).[143]

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[143]197 SCRA 471 (1991), at 479.

The Court reiterated the three years backpay rule in *Coca-Cola Bottlers (Phils.) Inc. v. National Labor Relations Commission.*[144]

4. *Remedy of No Reinstatement in Case of Antagonism*

In *Employees Association of the Philippine American Life Insurance Company v. National Labor Relations Commission,*[145] the Court ruled that antagonism must be personal, physical, and serious to justify the non-reinstatement of an illegally dismissed employee.

> It is readily noticeable in the case at bar that the differences of *Caparas* with *Philamlife* are neither personal nor physical nor are they of so serious a nature as to preclude his reinstatement. It bears emphasis that not only was *Caparas* reacting merely as an individual employee to the conditions laid down by *Philamlife*; he was expressing the official position and opposition of the EMAPALICO, of which he was the President. In this capacity, he had a right and a duty as well to protest the acts of Philamlife insofar as they affected not only him but also his co-workers.
>
> Caparas was only acting as any responsible union president would when he protested the abolition of the Computer Operations Department, the requirement of Philamlife that the separated employees filed applications for vacancies that might be created, his unsigned probationary appointment of a lower position, and the demand that he sign his unconditional acceptance thereof. No disrespect was intended when he reserved his right to question the validity of his removal and demotion, nor was this done on a personal basis only but on behalf of the entire union membership.
>
> If by doing all these, a union president should be considered to have irremediably strained his relations with management, he can then, following the respondent's theory, be separated for this reason by management, subject only to the grant to him of separation pay. This is a dangerous doctrine that would seriously imperil the cause of unionism.[146]

All the Decisions of the Court on Tenurial Security and Termination of Employment faithfully adhered to the provisions of law. The Court's decisions, however, on the maximum three-year backwages rule are not in

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[144]194 SCRA 592 (1991).

[145]G.R. No. 82976, July 26, 1991, 199 SCRA 628.

[146]*Id.*, at 632-633.

accord with the law because of the amendment of Article 279 of the Labor Code which now provides the specific period for which backwages must be paid in cases of illegal dismissal.

Similarly, the indemnity payments in the amount of P1,000.00 which an erring employer must pay to an aggrieved worker because of his failure to comply with due process requirements is too low to act as a deterrent. It is also depressing to an employee, and not sufficient an amount to recompense for the damage done.

E. Preventive Suspension

In *Kwikway Engineering Works v. National Labor Relations Commission,*[147] the Court ruled that a preventive suspension is limited to only thirty (30) days, and an indefinite suspension amounts to a dismissal.

XII. LABOR DISPUTE

In *Nestle Philippines, Inc. v. National Labor Relations Commission,* the Court ruled that -

> Nestle's demand for payment of the private respondent's amortizations on their car loans, or, in the alternative, the return of the cars to the company is not a labor, but a civil, dispute. It involves debtor-creditor relations, rather than employee-employer relations.[148]

This Decision is in accord with law.

XIII. RIGHT TO SELF ORGANIZATION

A. Effect of Absence of Employer-Employee Relationship

In *Singer Sewing Machine Company v. Drilon,* the Court ruled that workers do not enjoy the right of self-organization for purposes of collective bargaining, absent employer-employee relationship.

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[147]195 SCRA 526 (1991).
[148]195 SCRA 340 (1991), at 343.

> The Court finds that since private respondents are not employees of the Company, they are not entitled to the constitutional right to join or form a labor organization for purposes of collective bargaining.[149]

B. Cooperatives - Employees

In *Central Negros Electric Cooperative, Inc. v. Department of Labor and Employment,* the Court ruled that an employee-member of a cooperative can resign from the cooperative and join a union and exercise his right of self-organization for purposes of collective bargaining.

> The right of the employees to self-organization is a compelling reason why their withdrawal from the cooperative must be allowed. As pointed out by CURE, the resignation of the member-employees is an expression of their preference for union membership over that of membership in the cooperative. The avowed policy of the State to afford full protection to labor and to promote the primacy of free, collective bargaining mandates that the employees' right to form and join unions for purposes of collective bargaining be accorded the highest consideration.
>
> Membership in an electric cooperative which merely vests in the member a right to vote during the annual meeting becomes too trivial and insubstantial *vis-a-vis* the primordial and more important constitutional right of an employee to join a union of his choice.[150]

The workers' right to self-organization is a constitutionally and statutorily guaranteed right, and the Court's decisions have faithfully implemented the same.

C. Security Guards

In *Manila Electric Co., v. Secretary of Labor and Employment,* the Court ruled that by virtue of the amendments of Article 245 of the Code, security personnel now enjoy the right of self-organization. The Court however, ruled that security personnel may join the rank-and-file members

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[149]193 SCRA 270 (1991), at 280.
[150]201 SCRA 584 (1991), at 591.

as Article 245 of the Labor Code does not prohibit security personnel from doing so.[151]

> As will be noted, the second sentence of Art. 245 embodies an amendment disqualifying supervisory employees from membership in a labor organization of the rank-and-file employees. It does not include security guards in the disqualification.
>
> The implementing rules of Rep. Act No. 6715, therefore, insofar as they disqualify security guards from joining a rank-and-file organization are null and void, for being not germane to the object and purposes of Exec. Order No.111 and Rep. Act No. 6715 upon which such rules purportedly derive statutory moorings.[152]

The Court failed to recognize that such a ruling places security guards in a situation of divided loyalty. By allowing them to join same union with rank and file workers, the guards are placed in a very difficult situation. Either they will choose their employers interest which is their sworn duty to protect as against their fellow unionists, or their fellow unionists, in which case they can no longer perform their security function in a neutral manner.

XIV. CERTIFICATION ELECTION

A. Effect Lack of Substantial Support Requirement

In *Western Agusan Workers Union v. Trajano,* the Court ruled that a certification election will be ordered even if the Petition For Certification Election falls short of the substantial support requirement, which is a percentage of all the employees in the proposed bargaining unit, when serious doubt exists whether the union still represents the majority of the workers in the appropriate bargaining unit:

> It has long been settled that the policy of the Labor Code is indisputably partial to the holding of a certification election so as to arrive in a manner definitive and certain concerning the choice of the

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[151] Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. - 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." (emphasis ours)

[152] 197 SCRA 275 (1991), at 286.

> labor organization to represent the workers in a collective bargaining unit.[153]

B. *Effect of Pendency of Proceedings for Cancellation - Union Certificate of Registration*

In *Association of Court of Appeals Employees v. Ferrer-Calleja,* the Court ruled that the pendency of a petition to cancel the Certificate of Registration of a union will not bar the holding of a certification election.

> At any rate, the Court applies the established rule correctly followed by the public respondent that an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing a cancellation.[154]

C. *Certification Election and Direct Certification*

In *Central Negros Electric Cooperative, Inc. v. Secretary of Department of Labor,* the Court ruled that Certification Election is a more superior method compared with a Direct Certification in determining questions involving conflicting claims of majority representation among unions.

> We rule, however, that the direct certification ordered by respondent Secretary is not proper. By virtue of Executive Order No. 111, which became effective on March 4, 1987, the direct certification originally allowed under Article 257 of the Labor Code has apparently been discontinued as a method of selecting the exclusive bargaining agent of the workers. This amendment affirms the superiority of the certification election over the direct certification which is no longer available now under the change in said provision.[155]

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[153]...it has long been settled that the policy of Labor Code is indisputably partial to the holding of a certification election so as to arrive in a manner definitive and certain concerning the choice of the labor organization to represent the workers in a collective bargaining unit. 196 SCRA 622 (1991), at 628.

[154]203 SCRA 596 (1991), at 607.

[155]201 SCRA 584 (1991), at 591-592.

D. *One-Year Bar Rule*

In *Kaisahan Ng Manggagawang Pilipino v. Trajano,* the Court ruled that the one-year-bar-rule or the Certification Year, which bars the holding of a certification election, is reckoned from "the date of issuance of declaration of a final certification election result."[156] All these Decisions on Certification Election issues are in full accord with the law.

XV. COLLECTIVE BARGAINING

A. *CBA Applicability to Third Parties*

In *Associated Labor Union v. National Labor Relations Commission* the Court ruled that a Collective Bargaining Agreement is not enforceable against a transferee of a business, unless the transfer is in bad faith.

> In *Sundowner Development Corp. v. Drilon,* we stated the rule that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being in personam, thus binding only between the parties. As a general rule, there is no law requiring a bona fide purchaser of assets of an on-going concern to absorb in its employ the employees of the latter. However, although the purchaser of the assets or enterprise is not legally bound to absorb in its employ the employees of the seller of such assets or enterprise, the parties are liable to the employees if the transaction between the parties is colored and clothed with bad faith. The sale of disposition must be motivated by good faith as an element of exemption from liability.[157]

B. *Bargaining Issue*

In *Nestle Philippines, Inc. v. National Labor Relations Commission,* the Court ruled that a non-contributory retirement plan is a negotiable issue in collective bargaining. [158]

> The fact that the retirement plan is non-contributory, *i.e.*, that the employees contribute nothing to the operation of the plan, does not

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[156]201 SCRA 453 (1991).
[157]204 SCRA 913 (1991), at 923.
[158]193 SCRA 504 (1991), at 509.

> make it a non-issue in the CBA negotiations. Since the retirement plan has been an integral part of the CBA since 1972, the Union's demand to increase the benefits due the employees under said plan, is a valid CBA issue.

The decision of the Court in the Nestle case is a recognition that a retirement benefit is a form of wages, albeit, in the form of a deferred payment.

XVI. UNFAIR LABOR PRACTICE

A. Refusal to Bargain

In *Balmar Farms, Inc. v. National Labor Relations Commission,* the Court ruled that it is an unfair labor practice for an employer to refuse to negotiate with a duly certified exclusive bargaining representative and that the defense that a majority of the union members have disaffiliated, is unavailing.[159]

B. Business Closing

In *Deferia v. National Labor Relations Commission,* the Court ruled that a sham closing of business while the workers were in the process of affiliating with a union is an act of unfair labor practice.

> Anent the charge against ... unfair labor practice in illegally dismissing the petitioners through the sham closure of the said business, we find the same meritorious. The said act constitutes an interference and restraint on the petitioners in the exercise of their right to self-organization as the latter were then pursuing their union affiliation and membership with CAILO.[160]

These two decisions on unfair labor practice will further strengthen the right of workers to self-organization and collective bargaining.

XVII. STRIKES

A. Test of Legality

In *Philippine Airlines, Inc. v. Secretary of Labor and Employment,* the Court declared a strike illegal because there was an existing Collective

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[159] 202 SCRA 648 (1991), at 653-654.
[160] 194 SCRA 525 (1991), at 533-534.

Bargaining Agreement with a no-strike clause, and that the dispute which was the subject of a Notice of Intention to Strike was deemed by the National Conciliation and Mediation Board as appropriate for preventive mediation.[161]

PALEA's strike on January 20, 1989 was illegal for three (3) reasons:

1. It was premature for there was an existing CBA which still had nine (9) months to run, *i.e.*, up to September 30, 1989. The law expressly provides that neither party to a collective bargaining agreement shall terminate nor modify such agreement during its lifetime. While either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date (known as the "freedom period") it shall nevertheless be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the freedom period and/or until a new agreement is reached by them (Art. 253, Labor Code).

2. It violated the no-strike provision of the CBA, to wit:

> The Association agrees that there shall be no strikes, walkouts, stoppage, or slowdown of work, or any other form of interference with any of the operations of the Company during the period *between the signing of the Agreement up to September 30, 1989.*"

3. The NCMB had declared the notice of strike as "appropriate for preventive mediation." The effect of that declaration... was to drop the case from the docket of notice of strikes...as if there was no notice of strike. During the pendency of preventive mediation proceedings no strike could be legally declared.[162]

B. Limitation and Restrictions of Strike Activity

In *Ilaw at Buklod Ng Manggagawa v. National Labor Relations Commission*[163] the Court ruled that despite the recognition of the right to strike by both the Constitution and statutory law, strike activity can be limited or prohibited by law and contract.

The legislative intent that solution of the problem of wage distortions shall be sought by voluntary negotiation or arbitration, and not

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[161] 193 SCRA 223 (1991).
[162] *Id.*, at 229.
[163] 198 SCRA 586 (1991), at 595.

by strikes, lockouts, or other concerted activities of the employees or management, is made clear in the rules implementing R.A. 6727 issued by the Secretary of Labor and Employment pursuant to the authority granted by Section 13 of the Act. Section 16, Chapter I of these implementing rules, after reiterating the policy that wage distortions be first settled voluntarily by the parties and eventually by compulsory arbitration, declares that, "Any issue involving wage distortion shall not be a ground for a strike/lockout."[164]

Among the rights guaranteed to employees by the Labor Code is that of engaging in concerted activities in order to attain their legitimate objectives. Article 263 of the Labor Code, as amended, declares that in line with "the policy of the State to encourage free trade unionism and free collective bargaining":

> [W]orkers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. A similar right to engage in concerted activities for mutual benefit and protection is tacitly and traditionally recognized in respect of employers.

The more common of these concerted activities as far as employees are concerned are: strikes -- the temporary stoppage of work as a result of an industrial or labor dispute; picketing -- the marching to and from at the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute; and boycotts - the concerted refusal to patronize an employer's goods or services and to persuade others to a like refusal.

On the other hand, the counterpart activity that management may licitly undertake is the lockout -- the temporary refusal to furnish work on account of a labor dispute. In this connection, the same Article 263 provides that the "right of legitimate labor organizations to strike and picket and of employer to lockout, consistent with the national interest, shall continue to be recognized and respected." The legality of these activities is usually dependent on the legality of the purposes sought to be attained and the means employed therefor.

> It goes without saying these joint or coordinated activities may be forbidden or restricted by law or contract.[165]

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[164] *Id.*, at 593-594.
[165] *Id.*, at 598.

C. *Slowdown As Strike*

In the same *Ilaw at Buklod* case the Court ruled that a work slow down is a form of illegal strike activity.

The Court is in substantial agreement with the petitioner's concept of a slowdown to be a strike on installment plan, a willful reduction in the rate of work by concerned action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute; as an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands. The Court also agrees that such a slowdown is generally condemned as inherently illicit and unjustifiable, because while the employees "continue to work and remain at their positions and accept the wages paid to them," they at the same time "select what part of their allotted tasks they care to perform of their own volition or refuse openly or secretly, to the employer's damage, to do other work;" in other words, they "work on their own terms."[166]

D. *Liability - For Strike Activity*

In *Philippine Airlines, Inc. v. Secretary of Labor,*[167] the Court ruled that an employer can take disciplinary action against officers who participated in an illegal strike, and against union members who committed illegal acts during such strike and, that the Secretary of Labor and Employment - even under his authority as a compulsory arbitrator - cannot enjoin an employer from taking such action.

Since the strike was illegal, the company has a right to take disciplinary action against the union officers who participated in it, and against any union member who committed illegal acts during the strike.

Art. 264 of the Labor Code provides:

> Art. 264. *Prohibited activities.* - .... Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. *Any union officer who knowingly*

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[166]193 SCRA 223 (1991), at 230.

[167]193 SCRA 365 (1991).

> *participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status:* Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike." (Emphasis supplied.)

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. The prohibition which the Secretary issued to PAL constitutes an unlawful deprivation of property and denial of due process for it prevents PAL from seeking redress for the huge property losses that it suffered as a result of the union's illegal mass action.[168]

E. Test of Legality

In *Reliance Surety and Insurance Co., Inc. v. National Labor Relations Commission,* the Court ruled that a strike is illegal because of the Union's failure to comply with the procedural requirements, namely: (a) filing of notice of intention to strike; (b) taking of a strike vote; and (c) filing of the strike vote with the Department of Labor and Employment. The Court likewise characterized a defective strike as one "carried out in good faith to offset what petitioners were warranted into believing in good faith to be unfair labor practices [committed by] Management."

The Court further reiterated -

> [T]hat good faith is still a valid defense against claims of illegality of a strike. We do find, however, not a substance of good faith here, but rather, plain arrogance, pride and cynicism"[169]

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[168] *Id.*, at 371-372.

[169] 193 SCRA 365 (1991).

F. Exercise of Management Function

In the same *Reliance* case[170], the Court ruled that a valid and good faith exercise of a management function is not an act of unfair labor practice.

In effecting a change in the seating arrangement in the office of the underwriting department, the petitioner merely exercised a reasonable prerogative employees could not validly question, much less assail as an act of unfair labor practice.[171]

The right of workers to engage in strike activity is always subject to the same form of regulation. The Court decisions correctly recognized the right of the State, and of the private parties to regulate or prohibit by contract the use of strike action.

XVIII. LABOR INJUNCTION

In *Ilaw at Buklod Ng Manggagawa v. National Labor Relations Commission*, the Court outlined in detail the grounds, and the procedural requirements for the issuance of a Labor Injunction, and Temporary Restraining Order *ex parte*.[172]

> Article 254 of the Code provides that "No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Article 218 and 264." Article 264 lists down specific "prohibited activities" which may be enjoined by a restraining order or injunction. Article 218 *inter alia* enumerates the powers of the National Labor Relations Commission and lays down the conditions under which a restraining order or preliminary injunction may issue, and the procedure to be followed in issuing the same.
>
> Among the powers expressly conferred on the Commission by Article 218 is the power to "enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any part or render ineffectual any decision in favor of such party."

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[170] *Id.*

[171] *Id.*, at 370.

[172] 198 SCRA 586 (1991), at 599-600.

As a rule such restraining orders or injunctions do not issue *ex parte*, but only after compliance with the following requisites, to wit:

a) a hearing held "after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property."

b) reception at the hearing of "testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath," as well as "testimony in opposition thereto, if offered;"

c) "a finding of fact by the Commission, to the effect:

> (1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
>
> (2) That substantial and irreparable injury to complainant's property will follow;
>
> (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
>
> (4) That complainant has no adequate remedy at law; and
>
> (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

However, a temporary restraining order may be issued *ex parte* under the following conditions:

a) the complainant "shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable;"

b) there is "testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice;"

> c) the "complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission;" and
>
> d) the "temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days."
>
> The reception of evidence "for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as they may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission."

The decision of the Court affirmed that in the area of labor law, there is a restricted and limited use of an injunction as a remedy to redress specified illegal acts, that the procedural requirements for its issuance must be strictly and fully complied with.

XIX. NATIONAL INTEREST DISPUTES

A. *Extent of Arbitral Authority - Secretary of labor and Employment*

In *Philippine Airlines, Inc. v. Secretary of Labor,* the Court ruled that the Secretary of Labor, in the exercise of his compulsory arbitration authority, can decide only the issues submitted for compulsory arbitration; hence, the issue of the legality or illegality of the strike which was not submitted for arbitration is not within the Secretary's arbitral authority.

The Court ruled that "the jurisdiction to decide the legality or illegality of strikes and lock-outs is vested in the Labor Arbiters, not in the Secretary of Labor as provided for in Art. 217, par. (a,) subpar. (5) of the Labor Code."[173]

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[173]193 SCRA 223 (1991).

This is a very narrow interpretation by the Court of the compulsory arbitration authority of the Secretary of Labor to settle a dispute. The Secretary of Labor must be given broad authority to fully settle through compulsory arbitration all aspects of the labor dispute in an industry indispensable to the national interest; after all,the nature of such dispute would not be the ordinary type of labor dispute. The decision in effect splits the issues, one, on the issue of legality or illegality of the strike, and two, all other related issues, which issues will be decided separately in two different forums. The end result will be a long and circuitous procedure entailing time and expense, and the continuing wrangling between the parties, which, are all disruptive to industrial peace.[174]

B. National Interest Dispute

In *GTE Directories Corporations v. Sanchez,* the Court, questioned the judgment or appreciation by the Secretary of Labor that the labor dispute subject of compulsory arbitration, was "affecting the national interest."[175]

> The production and publication of telephone directories, which is the principal activity of GTE, can scarcely be described as an industry affecting the national interest. GTE is a publishing firm chiefly dependent on the marketing and sale of advertising space for its not inconsiderable revenues. Its services, while of value, cannot be deemed to be in the same category of such essential activities as "the generation or distribution of energy" or those undertaken by "banks, hospitals, and export-oriented industries." It cannot be regarded as playing as vital a role in communication as other mass media. The small number of employees involved in the dispute, the employer's payment of "P10 million in income tax alone to the Philippine government," and the fact that the "top officers of the union were dismissed during the conciliation process" obviously do not suffice to make the dispute in the case at bar one "adversely affecting the national interest."

This is the first case where the Court correct the appreciation of facts or judgment of the Secretary of Labor in certifying a case for compulsory arbitration. It must be noted however, that the law grants the Secretary of Labor and Employment broad discretionary powers to certify a dispute for compulsory arbitration as the phrase "adversely affecting the national interest" is not accompanied by any "determinative standards".

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[174] *Id.*, at 228.

[175] 197 SCRA 452 (1991), at 470-471.

XX. CONCLUDING OBSERVATIONS

Did the Court in balancing and adjudicating the conflicting and contentious issues between the employer and the worker, accord the parties substantial justice according to law?

The cases analyzed in this Survey on the Law on Labor Standards and Labor Relations involving parties in the private sector show that the Court succeeded in a large measure in according substantial justice to the parties. The Court has judiciously performed its tasks and gained the respect and confidence of both parties. Its decisions contributed in promoting the cause of industrial peace. The Court did not blaze new trails, reverse existing doctrines, nor promulgate landmark decisions during the year under review. Rather, the Court reiterated or further amplified existing doctrines. As Justice Ramon Aquino, writing the Introductory Note to Volume 154 of the SCRA wrote:

> Judicial reports seem to indicate that, generally, the life of the law has been the logic of experience, the adherence to precedent, *stare decisis et non quieta.*

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