NOTES *and* COMMENT

Limiting The Hours Of Labor In The Philippines

By RAUL O. DEL CASTILLO

AMONG the results of the struggle by labor for more wages, more freedom and less working hours, Commonwealth Act No. 444, otherwise known as the Eight-Hour Labor Law, was passed by the National Assembly on June 3, 1939. Since its approval, however, serious doubts have been expressed whether the law really served its purpose and whether undesignedly the law wrought pernicious and even disastrous effects to employee, employer and industry in general. As early as September 30, 1939, the National Assembly, as an emergency measure, approved Commonwealth Act No. 494: "An Act To Authorize The President Of The Philippines To Suspend, Until The Date Of Adjournment Of The Next Regular Session Of The National Assembly Either Wholly Or Partially, The Operation Of Commonwealth Act No. 444, Commonly Known As The Eight-Hour Labor Law." While the Eight-Hour Labor Law may not now be effectively enforced by virtue of Bill No. 2031 (Approved by the National Assembly on August 1, 1940) which extends temporarily the operation of Commonwealth Act No. 494, yet the law, enforceable after the period provided for in Bill No. 2031, presents, on the one hand, the vital question whether the legislature exceeded its authority in enacting it in the first place; whether Commonwealth Act No. 444 penetrates the constitutional barriers of the equal protection and due process clauses. On the other hand, an interesting inquiry on various points may be raised in connection with its legal application, *viz:* whether the employee stands to gain or lose by bargaining away his freedom of contract for "protection"; whether these laws, designed to curb the greed and selfishness of the employer, really affect him; and lastly, the effects of maximum-hour legislation on Philippine industry.

Its Constitutionality

While it is true that "the very highest judicial duties is to give effect to the legislative will," (*Wilson vs. New, 243 U.S. 332*), it is no less imperative that that legislative will must be expressed in terms that can stand the constitutional crucible. Outside of the objection that our Eight-hour Labor Law infringes the freedom of contract, to be considered later, a strong argument against it is its lack of a reasonable classification. When a law grants "undue favor to anyone, special privilege for any individual or class, or hostile discrimination against any party" (*Truax vs. Corrigan, 257 U. S. 312*), it denies the equal protection of laws. Likewise, when one

inflexible law is applied indiscriminately to persons differently circumstanced, such law suffers from the same constitutional objection. The scope and meaning of the equal protection clause, according to the case of *Barbier vs. Connolly, 113 U. S. 27*, is "that all persons should be equally entitled to pursue their happiness that no impediment should be interposed to the pursuits of anyand acquire and enjoy property one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition."

Let us first examine the cases in the United States involving social legislation and find out the subjects of their laws, whether they applied to men, women and children indiscriminately; whether they covered all industries and occupations *in one blanket legislation* as our Commonwealth Act No. 444 which purports to protect "all persons employed in any industry or occupation whether public or private" with some obvious exceptions.

The case of *Holden vs. Hardy, 169 U. S. 766*, upheld the validity of a law restricting the hours of labor in underground mines or in the smelting, reduction, or refining of ores or metals. In *Muller vs. Oregon, 208 U. S. 412*, a statute providing that no female shall be employed in any mechanical establishment or factory or laundry for more than ten hours during any one day, was considered a legitimate exercise of police power. In *Sturges vs. Beauchamp, 231 U. S. 320*, the United States Supreme Court declared that the restriction by the Illinois laws of employment of children under the age of sixteen years in various hazardous employments does not take liberty or property without due process of law, nor does it contravene the equal protection of laws. The case of *Miller vs. Wilson, 236 U. S. 373* involved a California statute forbidding the employment of women in certain specified establishments for more than eight hours in any one day or forty-eight hours in one week, and was held as applied to women employed in hotels, not violative of the Fourteenth Amendment as infringing the freedom of contract. Then again, in *Wilson vs. New, 243 U. S. 332*, the Federal Supreme Court sustained the power of Congress to pass an act to establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce. Finally, the celebrated case of *Bunting vs. Oregon, 243 U. S. 426*, upheld the constitutionality of an Oregon statute providing that "no person (male or female) shall be employed in any mill, factory or manufacturing establishment in this state for more than ten hours in any one day, except " Whether the case of Bunting overruled that of *Lochner vs. New York* (" *an open question,*" *Wages and Hours. Laws in the Courts, Andrew K. Black III, Univ. of Pittsburg Law Review, May, 1939*) we do not have to decide. It must be seen, however, that the Bunting case was more or less definitely circumscribed in its coverage: "any mill, factory or manufacturing establishment" as compared to Sec. 2 of our Commonwealth Act No. 444 which applies to "all persons employed in any industry or occupation." Moreover, decisions after the Bunting case have been hopelessly conflicting (*State vs. Henry, 37 N. M. 536, 25 P. [2d] 204, 90 A. R. L. 805 [1933]*;

Gasque Inc. vs. Nates 2 SE [2d] 36 [1936]).

From a close study of these cases and the various legislations they involve, two things are significant: first, the solicitude of the Federal Supreme Court and the State legislatures over minors and women and their common condemnation of long and continuous exposure to dangerous and unhealthful occupations; secondly, the definite and specific coverage of their maximum-hour laws, i.e. distinct laws for different callings and industries.

Let us now turn to our Commonwealth Act No. 444. It suffers from lack of classification as to PERSONS. It is obvious that minors and women, as a class, need governmental protection. Justice Brewer, in answer to the objection that a statute limiting female labor in mechanical establishments, factories or laundries, was not a valid exercise of police power, said: "But this assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor . . woman's physical structure and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she is permitted to toil . . . That woman's physical structure and performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious . . . as healthy mothers are essential to vigorous offsprings, the physical well-being of women becomes an object of public interest and care in order to preserve the strength and vigor of the race." (*Muller vs. Oregon, supra*).

Analyzing the provisions of our Constitution which provides: "The State shall afford protection to labor, *especially to working women and minors* . . ." (Art. XIII, Sec. 6), it is apparent that the framers of our fundamental law also contemplated a more guarded and protected legislation for women and minors than for men. Sec. 2 of Commonwealth Act No. 444, therefore, finds no support in the Constitution which places minors and women in a class separate and distinct from men, to be guided by different rules and governed by different laws.

Our law also suffers from a lack of classification as to INDUSTRIES and OCCUPATIONS. The State legislations and Federal statutes have always been careful to regulate the hours of work as to certain specified industries (See cases previously discussed.). The Fair Labor Standards Act of 1938 (Act of Congress of June 25, 1938, 676 sec. 1, 52 Stat. 1060, 29 USCA) although including within its coverage not only employees engaged in interstate commerce but also those engaged in the production of goods for interstate commerce (Secs. 6 and 7 of FLSA of 1938) is not comprehensive. Our law covers "any industry or occupation, whether public or private . . ." with the result that a laborer in an underground mine or one engaged in the smelting, reduction or refining of ores and metals has the same maximum hours of work as a waitress in a second-class café; that the legal working day for a woman employed in a match factory or in a firecracker manufacturing company is the same as the salesman in a curio store.

Effects Upon the Employee

At first glance, limiting the hours of labor of the employee seems to be for his protection and

benefit. Undoubtedly, if the laborer works less and earns just as much and employs his workless hours to some advantage, it stands to reason that the Eight-Hour Labor Law is a blessing. We shall not go into the social and economic reasons why in the Philippines the logic does not hold true. We shall only delve into the possibility that the legislature, in attempting to equip the employee for bargaining with the employer and preventing the former's freedom of contract from becoming a legal fiction, has on the contrary, infringed that freedom.

It is a well-settled doctrine that the right to make employment contracts is not only a personal liberty but a property right (*Coppage vs. Kansas, 236 U. S. 1*). Although the Supreme Court of the United States established the mode of enjoying this liberty in *West Coast Hotel Co. vs. Parrish, 300 U. S. 379*, and declared that this liberty is not unrestrained; the State cannot, on the pretext of police power, prejudice precisely those for whom the exercise of the power is justified. In the case of *Bunting vs. Oregon* (*supra*) the Attorney General in his brief said: "We are not here concerned with the proposition as to whether or not the statute in question deprives the employee of property without due process of law, or whether or not it is class legislation from the employee's viewpoint, for the employee is not questioning the constitutionality of the act." But our analysis here is concerned with those very propositions from the employee's viewpoint, so that "the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked" (*Adams vs. Tanner, 244 U. S. 590*).

A simple illustration will bring to light an unintended boomerang. Our law provides: "The legal working day for any person employed by another shall be of not more than eight hours daily" (Sec. 1, Commonwealth Act No. 444). The wording of the law seems to impose a restriction upon both the employer from employing anyone for more than eight hours and upon the employee himself from being employed more than eight hours. A question may be asked: Suppose the employee desires to work for more than eight hours *under the same employer*, and he does not fall under any of the exemptions provided in the act, may he do so? The logical answer is: NO. Assuming that the restriction operates only upon the employer, even if the employee wants to work more than eight hours, the employer will be compelled to discharge him after the maximum hours in order to abide by the law. So, to an employee who desires to work more than eight hours under the same employer, the law does not only operate to deprive him of his freedom of contract, as any agreement contrary to the act is void (See Sec. 6, Commonwealth Act No. 444), but the law also works to his disadvantage.

Effects Upon the Employer

Among the reasons advanced in justification of maximum-hour legislation is the protection of health and safety, and that the peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom of oppression (*Northern Pacific Railway Co. vs. Washington, 222 U. S. 370*). By restricting the em-

ployer and imposing upon his liberty the employee may deal with him at arms-length. But it does not necessarily follow that the rights of the laborer are secured. The truth is that maximum-hour laws do not only fail in their purpose in the Philippines but are in a great measure unenforceable. For instance, laws restricting the hours of work must go hand in hand with minimum wage laws. "A law forbidding work to continue beyond a given number of hours leaves the parties free to contract about wages and thereby equalizes whatever additional burdens may be imposed upon the employer as a result of the restrictions as to hours, by an adjustment in respect of the amount of wages," said the United States Supreme Court of maximum-hour laws in *Adkins vs. Children's Hospital, 261 U. S. 525.* But it is precisely this characteristic of maximum-hours legislation without the corresponding minimum wage imposition that makes the former useless. If the employer is limited to so many number of hours but is free to evaluate the value of services rendered for those hours, the limitation becomes illusory. It is a fact that there are no minimum wage laws in force in the Philippines applicable to private industries and occupations. It may be interesting to note here, that the original bill as proposed (Bill No. 37) contained a Sec. 9 providing that: "The taking effect of this Act shall not be a valid ground for a reduction in the existing wages." For some reason or other, this provision is not incorporated in the law.

The employer, it must be remembered, is in a position to employ 'expert' lawyers who thrive and prosper by the loopholes and gaps of legislation. Our law provides, for example, for exemption to be granted by the Secretary of Labor in certain cases (Sec. 5, Commonwealth Act No. 444), provided the laborers and employees will be paid at least 25 per cent in addition to their regular salaries or wages for the time in excess of eight hours. But the employer does not have to resort to this provision of the law at all. In an industry not calling for special skill, if he employs a different bunch of laborers after the maximum eight hours, he does not violate the law and he does not have to pay the additional 25 per cent, because the section in question contemplates the hiring of the *same set* of employees beyond eight hours.

Effects Upon Industry

Of more vital concern to the State than the bearing of these laws upon the parties directly affected, are their effects upon industry. "In the last analysis, the full acceptance of wage and hour legislation by the courts as well as by the legislatures will probably depend upon whether or not laws of this kind prove to be successful in the attainment of their broad economic and social objectives" (*Wages and Hours Laws in The Courts, supra.*) Among the proofs that indicate the unworkability of maximum hour legislation here is Bill No. 2013 introduced in the Fourth Special Session of the National Assembly: "To Annul And Abrogate The Provisions Of Commonwealth Act No. 443." That this kind of laws are a frustration of the first duty of the State, is evidenced by the request by the President of the Commonwealth on July 16, 1940 (Presidential Message to the National Assembly) for emergency powers to carry out national poli-

cies stressing the need of insuring the continuance of agricultural and industrial production by utilizing the maximum productive capacity of our people. In his message, the President observed that we have nothing to fear, except our own lack of foresight or unwillingness to engage in productive toil. But the most eloquent confession of the fact that these laws are incompatible with prompt and efficient administration, especially in emergency and grave crisis, is Commonwealth Act No. 494 which provides: "In order to avoid unnecessary injury to labor and industry by the *Inflexible Application* of the provisions of the Eight-Hour Labor Law which may ultimately prove detrimental to the public interest, the present state of emergency requires that the government be given authority to suspend the operation of said law if and when such action becomes necessary."

In order to really protect the employee without infringing any of the employer's constitutional rights, and in order to safeguard the interests of the State, a more carefully drafted maximum-hour law seems to be needed.