

# NOTES and COMMENT

## The Legality Of Strikes In The Philippines

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THE accelerated industrialization of the Philippines has brought into sharp relief the conflict between labor and capital over wages, working conditions, and employers' methods. With the growth in number of laborers in factories, labor unions accordingly assumed greater importance. It is through the medium of the labor union that the laborer employs most effectively his means of offense and defense against capital. In case of workers who belong to a labor union, the adjustments of conflicts and disputes between them and their employers have always been through their union. The employers have generally recognized the unions and traded with them. As to their standing under our laws, there can be no question. These unions are in the form of associations and are protected by our Constitution in Art. III, Sec. 6 which provides as follows: "The right to form associations for purposes not contrary to law shall not be abridged." There can be no question that the right of laborers to organize is a vital right that cannot be arbitrarily infringed. "Labor has as much a right to organize as have capital and stockholders in a corporation." (*Ames vs. Union Pacific Ry.*, 62 F. 7; *Franklin Union Co. vs.*

*People*, 77 N. E. 76). Not only are trade unions lawful but, because their purpose is to improve the living conditions of a large part of the body politic, they are considered a necessary part of the social structure and recognized as a useful part of the industrial system. (*Hitchman Coal and Coke Co. vs. Mitchell*, 214 F. 685; *Iron Works vs. Brennan*, 105 NYS 865).

In the Philippines today, labor disputes have increased in number in spite of the efforts of the administration to minimize them. Relations between capital and labor have been such that the National Assembly found it necessary to enact Commonwealth Act No. 103, creating a Court of Industrial Relations.

It is worthy of note that in the Philippines, the laborers—both in factories and in agricultural farms—commonly use the strike to make their employer or landlord come to terms. In the case of *Farmers' Loan and Trust Co. vs. Northern Pacific Ry. Co.*, 60 F. 903, a strike has been defined as "a combined effort among workmen to compel the master to a concession of a certain demand by preventing the conduct of his business until compliance with the demand." It is popularly defined as "a simultaneous cessation of

work on the part of the workmen, and its legality or illegality must depend upon the means by which it is enforced and upon its objects."

What is the status of strikes before the law? The Courts of the United States generally recognize the legality of strikes. A strike is not necessarily unlawful and does not necessarily engender breach of the peace. (*Longshore Printing Co. vs. Howell*, 38 Pac. 457). A strike by laborers is merely a combination to quit work and is not of itself illegal. Workmen as individuals have a right to work for and with whom they please so long as they do not violate an express contract or statute; what laborers may do singly they may do collectively. The right to strike is recognized so long as the strikers violate no express statute or contract and their object is not the mere gratification of personal malice or the injuring of others. (*Albro J. Neuton Co. vs. Erickson*, 126 NY Supplement 949; *Cohn and Roth Electric vs. Bricklayer's Labor Union*, 6 ALF 887; *Maisel vs. Sigman* 205 NY Supplement 807). The Courts laid down the general rule, however, that the right to strike is subject to certain limitations besides those imposed by statutes or contracts, and its legality is affected by the purpose and object as well as the means used in the conduct of the strike. A strike must, of course, be for a lawful purpose. It is legal for workers by means of strikes to secure the discharge of objectionable persons, to obtain some benefit for the workers, to assert a supposed right or to obtain an economic advantage without violence or intimidation.

(*Picket vs. Walsh*, 78 NE 853; *Birmingham Trust and Savings Co. vs. Atlanta B & A Ry. Co.*, 271 F. 743).

The Congress of the United States, in an important legislation called the "Wagner Act" which created the National Labor Relations Board, defined the rights and obligations of the laborer and his employer. Even while recognizing the right of the employer to discharge for unfair strike it provided in Section 13 that "nothing in this Act shall be so construed as to interfere with, or impede, or in any way diminish the right to strike." The Supreme Court of the United States in the cases of *Fansteel Metallurgical Corp. vs. NLRB*, 306 US 240 and *NLRB vs. Mackay Radio and Telegraph Co.*, 304 U. S. 333, held: "The intent of Congress to protect the employee's right to self-organization is clear.

Congress also recognized the right to strike because of failure of the employers to meet their demands, if men strike, their action is not to be construed as a renunciation of employment."

Bearing in mind this most significant holding of the United States' Supreme Court, we shall now turn to the latest pronouncement of our Supreme Court on the legal status of strikes, made in its decision in the case of *National Labor Inc. et al vs. Philippine Match Co. and Court of Industrial Relations*, G. R. 47107, June 27, 1940. Answering the plaintiffs' contention that their right to strike is recognized by law, our Supreme Court held: "The recognition at all of the right to strike is at most, a negative one, and in the last analysis nugatory. The pro-

vision of the Constitution on compulsory arbitration of industrial disputes and all the supplementary legislation enacted in pursuance thereof, rest upon the obvious policy of supplying the lawful and pacific methods to laborers and employers in the vindication of their legitimate rights and the corresponding avoidance of a resort to strike.

The creation of the Court of Industrial Relations was aimed to supply an adequate instrumentality to forestall strikes.

It is therefore obvious that, while the law recognizes, in a negative way, the laborers' right to strike, it also creates all the means by which a resort thereto may be avoided. This is so because a strike is a remedy essentially coercive in character and general in its disturbing effects upon the social order and the public interests. A situation is thus created where a remedy is not in plain terms, outlawed, but by all means, discouraged.

What the law in spirit condemns man must abstain from. Accordingly as *the strike is an economic weapon at war with the policy of the Constitution and the law*, a resort thereto by laborers shall be deemed a choice of a remedy peculiarly their own and outside of the statute and as such, the strikers must accept all the risks attendant upon their choice. But if they fail, they cannot thereafter invoke the protection of the law from the consequences of their conduct, unless the right they wished vindicated is one which the law will, by all means, protect and enforce."

In broad and sweeping terms, this decision annuls the recognition that it admits the law accords the right to strike. In sup-

port of its decision the Court cites the Constitution and Commonwealth Act No. 103. Sec. 6 of Art. III of our Constitution provides: "The State shall afford protection to labor, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and agriculture. The State may provide for compulsory arbitration." Nowhere in the terms of the provision is there any basis for the holding that "the strike is an economic weapon at war with the policy of the Constitution . . . a choice of a remedy particularly their (the laborers') own and outside of the statute." The provision for compulsory arbitration cannot be held to negate the laborers' right to strike in vindication of a right they assert. While compulsory arbitration may have been primarily intended to forestall strikes, it is still available as a means to settle disputes that have led to the strikes. Though the laborer has chosen to resort to a strike to secure compliance with his demand, the way is still left open to him to seek the intervention of the agencies of the law in the enforcement of his demands. Section 4 of Commonwealth Act No. 103 provides in part: "The Court shall take cognizance for purposes of prevention, arbitration, decision and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout arising from differences. . . ." This section recognizes that there may be situations where although a strike is in progress, the court may take cognizance thereof if the dispute is submitted to it. By declaring a strike, the strikers cannot be said to have placed themselves outside the pale of the law and estopped thereafter to bring suit to enforce

their rights so long as they have not violated any contract or statute. Sec. 19 of Commonwealth Act No. 103 provides that "In every contract of employment . . . it is an implied condition that when any dispute has been submitted to the court for settlement or arbitration and pending award or decision by it, the employee, tenant or laborer shall not strike or walk out of his employment when so enjoined by the court, after hearing and when public interest so requires and if he has done so, he shall forthwith return to it upon order of the court which shall be issued only after hearing with public interest so requires." This is a recognition of the right of the laborer to strike or walk out *unless enjoined by the court after hearing* when public interest so requires; nor can he be compelled to return *except upon order of the court* issued under certain specified circumstances. It is, therefore, clear that in the absence of an injunction, the laborer may strike without necessarily later losing to himself the rights to seek redress in court. Sec. 19 further provides that "a condition shall be further implied that while such dispute is pending in court, the employer or landlord shall refrain from accepting other employees, laborers, . . . and shall permit the continuation in service of his employees under the last terms and conditions existing before the dispute arose: *Provided, that within 15 days after the declaration of the strike, employers will not be allowed to engage the services of strike breakers.* A violation . . . of such an order or the implied contractual condition set forth shall constitute contempt of the Court and shall be punishable as in all other cases of contempt of court of First Instance."

In such unmistakable terms, the National Assembly has not only sanctioned but protected the right of the laborer to strike, subjecting any employer who violates the provisions of Section 19 to liability.

With due respect to our Supreme Court, it is submitted that the right to strike is a legitimate industrial weapon of the laborer, recognized not only by long usage but also by law. Nor is the recognition merely negative. The law recognizes that the laborer may enforce any right that he honestly believes he has by means of a strike, and thereafter present his case for the determination of the Court of Industrial Relations if he so desires, or he fails to reach, after such a strike, an agreement with his employer. It is of course understood that the success of his claim before any court must always depend upon its legality and reasonableness as well as its enforceability. We believe that the general principles regarding the status and limits of a strike enunciated by the Courts of the United States are applicable in the Philippines. The protection impliedly accorded by Constitution to labor associations or unions formed in accordance with law must be deemed to include the sufficient legal means by which their lawful purposes may be attained. The working effectiveness of the labor union would be greatly hampered if not nullified by a denial to it of one of its most effective weapons. Neither Sec. 6 of Art. III of our Constitution nor Commonwealth Act No. 103 should be so construed beyond their express terms to have impaired or diminished the right to strike when such strike is carried on lawfully and without violence.