

NOTES AND COMMENT

Strikes and Civil Liberties

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THE recent case of Lino vs. Fugoso et al (G.R. No. L-1159 January 30, 1947) involved a petition for a writ of habeas corpus filed by Cecilio Lino, the president of the City Employees' and Workers' Union Congress of Labor Organization (CLO), on behalf of twelve persons alleged to be unlawfully detained by the respondents mayor, chief of police, and officer in charge of the municipal jail of the City of Manila. The twelve detainees joined the workers' strike and tried to enlist public support in the pursuit of their right to a living wage by posting and distributing handbills explaining the plight of the city laborers on strike and appealing for public sympathy. They were arrested and detained on the ground of inciting to sedition. Ten of them were subsequently released but the other two were held in custody on charges of unjust vexation and disobedience to police orders. These latter two were confined for three or four days without warrants and without charges formally filed in court. The Supreme Court adjudged the detention illegal and ordered the release of the petitioners. It was held that the court could acquire jurisdiction over said prisoners only by the issuance of a warrant of arrest, an order of commitment, or a writ of summons.

In view of the constitutional questions raised and necessarily involved in the case, touching as they do our civil liberties, it is regrettable that our Supreme Court has not shown greater awareness of the importance of the issues involved. However, Justice Perfecto in his concurring opinion reveals his attachment to civil liberties and the dangers to which they may be exposed, thus:

"It seems paradoxical that here, in Manila, in the very heart of our country, in the nucleus of our national culture, twelve humble, peaceful and law-abiding citizens, while in the peaceful exercise of their constitutional rights of freedom of expression and to peacefully assemble, the right to enlist public support in the pursuit of their right to a decent living wage, and the right to petition their own Government for the redress of their grievances, are abruptly interrupted in the exercise of their rights and violently hauled into prison as dangerous criminals . . . There was absolutely no legal ground to disturb or obstruct the twelve detainees in their absolutely lawful and peaceful activities, and much less to deprive them of their personal freedom and then keep them in jail. . ."

In the Philippines and in the United States strikes are not in-

frequent occurrences and have occasioned difficulty and hardship on the part of both labor and capital and the public in general. They present a grave and delicate problem which must be handled wisely.

In the United States at the time their Constitution and Bill of Rights were being framed, organized labor was practically nonexistent. The attitude of the law, then, discouraged organization, for it had long been considered criminal for workmen to "conspire" together to better their lot. This view lasted well into the nineteenth century. However, labor managed to achieve legal recognition of rights without the benefit of any special constitutional guarantees. The expanding notion given to freedom of speech and of assembly in non-labor cases redounded to labor's benefit. Today the Constitution no longer stands in labor's way and at least certain rights cherished by labor, such as peaceful picketing, have received some measure of constitutional protection (Osmond Fraenkel, *Our Civil Liberties*, p. 220).

The dissemination of information concerning the facts of a labor dispute must be regarded as within the area of free discussion that is guaranteed by the Constitution. Free discussion concerning the conditions in industry and the causes of labor disputes is indispensable to the effective and intelligent uses of popular government to shape the destiny of modern industrial society (*Thornhill v. Alabama*, 310 U. S. 88). Members of a union can make known the facts of a labor dispute, for freedom of speech is guaranteed by the Constitution (*Senn v. Tile La-*

yers Protective Union, 301 U.S. 468; *American Federation of Labor v. Swing*; 312 U.S. 321; *Cafeteria Employees Union v. Angeles*, 320 U.S. 293). This development from conspiracy to protected right took about a century (*Texas and N.O.R. Co. v. Brotherhood of Ry and S.S. Clerk*, 281 U.S. 548).

In the Philippines with the growing importance of labor in our scheme of life, labor should be accorded some degree of freedom. Only through unionization can labor bargain effectively. An inseparable part of the collective bargaining process is the right to exert pressure by striking or picketing. The right to strike is fundamental to the functioning of organized labor.

The right of labor to assemble and petition the Government for redress of grievances cannot be proscribed. Like any other civic group labor enjoys the same constitutional rights of free speech and press, of assembly and petition. Our Supreme Court characterizes these rights as necessary consequences of our republican and democratic institutions (*U.S. v. Apurdo*, 7 Phil. 422; *U.S. v. Bustos*, 37 Phil. 731; *U.S. v. Perfecto*, 43 Phil. 581).

As long as labor does not exceed the limits of permissible expression and conduct, labor is protected by the Constitution. To define these limits, once again the "dangerous tendency" rule and the "clear and present danger" rule clash. The "clear and present danger" rule has been recognized in the United States as the proper test in freedom of speech and of the press cases (*Schenck v. U.S.*, 249 U.S. 47; *Whitney v. California*, 274 U.S. 357, *Bridges v. California*,

314 U.S. 252; *Taylor v. Mississippi*, 319 U.S. 357). The "dangerous tendency" rule seems to prevail in this jurisdiction (*People v. Perez*, 45 Phil. 599; *In re Lozano and Quevedo*, 54 Phil. 89; *People v. Evangelista*, 57 Phil. 254; *People v. Felco*, 57 Phil. 451; *People v. Nabong*, 57 Phil. 455; *People v. Dava*, 40 O.G. 5th Supp., 79). There was reason to believe that the *Lino v. Fugoso* case would mark the departure from the "dangerous tendency" rule and the recognition of the "clear and present danger" rule in the Philippines.

The "dangerous tendency" test is so vague in its contours as to spread a "dragnet which may enmesh anyone" who ventures to utter a few imprudent words, who dares to publish a few strong comments, who endeavors to secure a few concessions. To sanction such a nebulous standard as a measure of power is to effectively gag and silence men's minds and lips and to coerce men into submission. It sets up a system of intellectual tyranny which chokes and crushes truth.

The "clear and present danger" rule is the extent to which the government may under the Constitution interfere with free speech and press, assembly and petition. This is a rule of reason. Correctly applied, it will

preserve these rights both from suppression by tyrannous, well-meaning majorities and from abuse by irresponsible, fanatical minorities. It is the best available guaranty of decency.

Freedom of speech and of the press along with freedom of assembly, petition, and religion occupy a preferred position under our constitutional scheme. Freedom is the rule, restraint the exception. There must be no restriction then of the freedom to think one's thoughts and speak them, except possibly at those extreme borders where thought merges into action—and then only when the words, printed or spoken, so gravely and imminently threaten interests the state is bound to protect. There is to be no compromise here, for "thought freely communicated", in the words of Justice Cardozo, "is the indispensable condition of intelligent experimentation, the one test of its validity. There is no freedom without choice, and there is no choice without Knowledge—or none that is not illusory." This is as it should be; this is the democratic way.

Freedom of conscience, freedom of speech, freedom of the person, freedom of economic opportunity must ever be present. Only then can we have freedom to live.

