# Labor Management Legislation In The Philippines

By
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*(Continued from last Issue)*

## SETTLEMENT OF INDUSTRIAL DISPUTES

### MEDIATION AND CONCILIATION BY THE COURT OF INDUSTRIAL RELATIONS.

Upon the submission of the dispute to the Court of Industrial Relations by any or all of the parties or by the Secretary of Labor, the court, before proceeding to hear the dispute, is required to endeavor to reconcile the parties and assist them in reaching an amicable agreement.[100] This is done by summoning both parties to what is known by usage as a "preliminary conference" at which session each party makes demands and seeks concessions from the other, with the court, as represented by one judge, lending its good offices and giving advice. Stenographic notes are taken by a court stenographer at these preliminary conferences as they have the nature of a pre-trial, and concessions are made, agreements arrived at, and unnecessary or unimportant points are set aside, leaving only important questions for the court's decision, if the case is to proceed to trial. The taking of stenographic notes has been found advantageous, as no questions can arise in the future as to what was actually agreed upon, or as to the statements of either party.

If the parties are able to arrive at any agreement as to the whole or part of the dispute, the terms of the agreement are put in writing, signed by the parties, and duly acknowledged before a judge of the Court of Industrial Relations, clerk of court, or any notarial authority. A copy of the agreement is then filed with the clerk of court

[100] Sec. 4, Commonwealth Act 103. The government has sought to provide ample opportunity to the parties for independently reaching an agreement without compulsory arbitration. The parties are first required to appear before the mediators of the Department of Labor. Failing to reach an agreement therein, the case is endorsed to the Court of Industrial Relations which also endeavors to mediate for the parties. These functions of the Court of Industrial Relations and the Department of Labor correspond to the functions of the Federal Mediation and Conciliation Service in this jurisdiction. (Title II, Sec. 202, Labor-Management Relations Act, 1947.

upon order of the judge, and shall have the same effect as, and be considered a decision or award with reference to the matters covered therein. By these preliminary conferences the disputes between the parties are at times either wholly or partially settled, and in any case the real issues between them are brought to the surface so that a decision may be arrived at by the court within the shortest possible time.

Since the agreement arrived at by the parties partakes, by provision of law, of the nature of a decision or award, said agreement, in the absence of any specification as to the length of time during which it shall be in force, shall be valid and effective for a period of three years from the date it was arrived at, after which time, either party may terminate the agreement by giving notice thereof to the court and to the other party.[101] The parties may, at any time, mutually agree to a change in the terms of the written agreement previously filed with the court, upon notification to the court of the new terms arrived at. Either party may also raise any question concerning said agreement or the modification or setting aside thereof before the court for settlement by way of final arbitration.[102]

The functions and role of the court in labor relations have been succinctly stated as follows: "In fine, it may appeal to voluntary arbitration in the settlement of industrial disputes, may employ mediation or conciliation for that purpose, or recur to the more effective system of official investigation and compulsory arbitration in order to determine specific controversies between labor and capital in industry and in agriculture. There is in reality here a mingling of executive and judicial functions, which is a departure from the rigid doctrine of the separation of governmental powers.[103]

### ANTI-STRIKE AND ANTI-LOCKOUT INJUNCTIONS.

In cases where the parties to the dispute cannot arrive at an agreement in spite of the efforts of the Court of Industrial Relations at mediation and conciliation as required by law, the dispute is docketed as a case, forthwith set for hearing and thus enters the phase of compulsory arbitration. The court, in the course of the hearing, which is more or less formal, receives evidence on the points in dispute with the end in view of arriving at a decision on these matters.

The statute providing for compulsory arbitration binds both management and labor by imposing a condition in every contract

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101 Section 17, Commonwealth Act 103.
102 Idem, supra.
103 *Ang Tibay vs. Court of Industrial Relations*, 40 Official Gazette, 7th Supplement, 29.

of employment. The provision of law [104] declares that in every contract of employment or tenancy, whether verbal or written, it is an implied condition that upon the submission of any dispute between employer and employee and landlord and tenant, to the Court of Industrial Relations, or during the pendency of an investigation as ordered by the President, for the fixing of minimum wages or of maximum rentals, the employee or tenant shall not strike or walk out of his employment when he has been enjoined by the court from doing so, after hearing and when public interest so requires. The employer or landlord, on the other hand, by way of an implied condition to the contract, is prohibited during the pendency of the dispute or of the investigation above referred to from accepting other employees or tenants except upon authority of the court previously given, and said employer or landlord must permit the continuation in service of his employees or tenants under the last terms of employment as existed prior to the dispute. With reference to the employment of substitutes in place of the striking employees in case no injunction against a strike or a walk-out had been issued or in the event that the striking employees had been ordered to return and had failed to do so, an employer is prohibited from hiring substitutes until the lapse of fifteen days from the declaration of the strike. The fifteen-day rule, however, would not apply to employers engaged in the operation of public services.[105] These limitations on the freedom of the employer, unlike the no-strike duty of the employees, requires no injunctive order from the court, being expressly provided for by statute.

As stated above, the employee or tenant may not strike or walk out "when so enjoined by the court after hearing and when public interest so requires." The term "hearing" has not been too strictly construed in the procedural sense—for example, the presentation of witnesses, direct and cross examinations, and all the other formalities that are supposed to accompany a regular trial before a court of law are not required. It is sufficient if the parties interested are given the opportunity to present their case, albeit informally. As quoted with approval from Morgan vs. United States, 304 U. S. 1, 82 L. Ed. 1129, "The liberty and the property of the citizen shall be protected by the rudimentary requirements of fair play." [106] A few questions asked by a judge, with the opportunity given to both parties to make their representations during the course of a preliminary conference for mediation or conciliation has been deemed a sufficient hearing. The purpose of the hearing is the fulfillment of the requirement of

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[104] Section 19, Commonwealth Act 103.

[105] *Id.*, supra; *National Labor Union v. Court*, 40 Official Gazette, 3rd Supplement at 37.

[106] *Ang Tibay vs. Court of Industrial Relations*, 40 Official Gazette, 7th Supplement, 29.

due process, as hardly anything new is brought to light. Management insists on the injunction against a strike, or on its right to hire substitutes and gives the usual and obvious reasons therefor; labor insists on the right to strike, and at the same time, retain its jobs or the right to return to employment. The question of public interest comes in as provided for by law, although whatever representations either management or labor has to make on the matter of public welfare is usually quite superfluous, as the court can easily inform itself, as it frequently does [107] or can arrive rather uninhibitedly at its own preferences on the matter.

The term "public interest" or "when public interest so requires" has been construed by the Court of Industrial Relations with the end in view of minimizing strikes, and to permit the widest latitude possible for government intervention in industrial disputes. Unlike the construction given the phrase in the American jurisdiction in which public interest refers to a "business affected with a public interest" in which "a peculiarly close relation between the public and those engaged in it" exists and "implications of an affirmative obligation on their part to be reasonable with the public" [108] must be presented, the Court of Industrial Relations has enjoined not only strikes in utilities performing essential public services, but also in industries in which the interest of the public is indirectly and remotely affected. Its orders in this regard have been generally sustained by the Philippine Supreme Court. Thus strikes have been enjoined in companies exporting coconut oil, in companies producing footwear and furniture, in mining companies and the like, on the ground that strikes would adversely affect the general prosperity, national progress or recovery. The interpretation so far given the phrase "public interest" would seem to indicate the public interest argument has been run into the ground and any strike, because of its effect on industrial peace per se affects public interest, thus ren-

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[107] Section 20, Commonwealth Act 103.

[108] *The United States Supreme Court in the Wolff Packing Co. v. Industrial Court* case, 262 U.S. 522, classified businesses clothed with a public interest sufficient to justify some public regulation into three groups: (1) those which are carried on under the authority of a public grant of privileges which either expressly or impliedly imposes the affirmative duty of rendering a public service demanded by any member of the public. Such are the railroads, other common carriers and public utilities. (2) Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, has survived the period of arbitrary laws by Parliament or Colonial legislatures for regulating all trades and callings. Such are those of the keepers of inns, cabs and grist mills . . (3) Businesses which though not public at their inception may be fairly said to have risen to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest although the property continues to belong to its private owner and to be entitled to protection accordingly."

dering an injunction necessary. In post war years, especially, due to the policy of the government towards economic recovery and the rebuilding of the export trade, the term "public interest" has been used to cover practically every situation, resulting in the frequent issuance of no-strike injunctions.

An appeal from an order of the court enjoining a strike would be rather impracticable not only because of the delay incident to raising an appeal but also because, by statutory provision [109] the findings of the court on questions of fact are final,[110] in the absence of proof that the court has acted with grave abuse of discretion.[111]

The foregoing discussion deals with a situation in which the employees have not gone on strike at the time the Court of Industrial Relations takes cognizance of the case. If the laborers have already gone on strike at the time the case is brought to the Court of Industrial Relations, and this is the more usual situation, the Court is empowered to order them to return to work, said order to be issued "only after hearing when public interest so requires, or when the dispute cannot, in its opinion be promptly decided or settled." [112] According to practical interpretation and the very phraseology of said provision, a hearing is not required as a prerequisite to an injunction against continuing with a strike or an order requiring the laborers to return to work, when said order is founded on the court's opinion that the "dispute, cannot . . . be promptly decided or settled." This construction, referred to a number of times by litigants in past years, was not clearly set forth by the Philippine Supreme Court until recently, when in a case in which the validity of the Court of Industrial Relations' order to return to work was assailed on the ground that no hearing had been held on the question of public interest, the Supreme Court stated:

> "In other words, the order to return, if the dispute can be promptly decided or settled, may be issued only after hearing when public interest so requires, but if in the courts' opinion the dispute cannot be promptly decided or settled, then it is also authorized to issue the order. We construe the provision to mean that the very impossibility of prompt decision or settlement of the dispute confers upon the court the power to issue the order for the reason

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109 Section 15, Commonwealth Act 103 and Section 2, Rule 44 of the Rules of Court; *Bardwell Brothers vs. Philippine Labor Union* 39 Official Gazette 1032; *Pasumil Workers' Union vs. Court* 40 Official Gazette 6th Supplement p. 71; *Central Azucarera de Tarlac et al. vs. Court of Industrial Relations General Records* 46843.

110 Similar to Section 10 (e) of the Labor-Management Relations Act, 1947, to the effect that "the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

111 Section 1, Rule 67, Rules of Court.

112 Section 19, Commonwealth Act 103.

> that the public has an interest in preventing the undue stoppage or paralyzation of the wheels of industry . . ." [113]

From the above it is evident that the Court of Industrial Relations is given practically unlimited power and discretion in the issuance of an order to return to work, when it can do so on the ground that in its opinion the dispute will continue for some time. The non-stoppage of work per se during the pendency of the case is therefore considered a matter of public interest. The word "promptly" as used in the statute [114] has not been definitively interpreted. The court's power to issue an injunction would seem to have greater opportunity of coming into play or would require less of a justification in cases where the laborers have already gone on strike than in cases in which the strike has not yet been staged. In the former instance, the mere opinion of the court as to the length of time required to decide or settle a particular case would be sufficient basis for the issuance of an injunction, and public interest does not necessarily have to be considered; in the latter instance, some apologies or obeisances have to be given to the high level abstraction "public interest."

By way of enforcement or sanction with reference to the employer's duty to maintain the status quo in employment conditions and personnel and the employees' observance of the non-strike injunction of the court, the statute provides that any violation of the implied contractual condition set forth or of the orders of the court shall be punished by the court in the same manner and with the same penalties as a case of contempt of a Court of First Instance. If the violation shall have been committed by a corporation the manager and the directors thereof who have authorized the violation shall be held liable; if the violation shall have been committed by an organized union or by a group of employees, liability shall fall on the union officers or on the leaders of the employees concerned.[115] In actual practice, however, violation of non-strike injunctions by the employees or their refusal to return to work on being ordered to do so have been penalized not by contempt suits but by the court's authorizing the employer to hire whomever he desires, thus empowering him to cull out particular employees or leaders and break the union as far as its activities in his plant are concerned. In the light of existing employment (or unemployment) conditions in the Phil-

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[113] *Kaisahan ng Mga Manggagawa sa Kahoy sa Filipinas vs. Gotamco Sawmill*, G. R. No. L-1573, (1948). The doctrine set forth in this case was quoted with approval in the case of *Philippine Refining Company Workers' Union (CLO) vs. Philippine Refining Co., Inc.* G. R. No. L-1668, March 29, 1948.

[114] Section 19, Commonwealth Act 103.

[115] Section 19, Commonwealth Act 103. In violations of the orders of the court under this provision the parties responsible are not only liable in contempt but also criminally liable. See Section 24, Commonwealth Act 103.

ippines, it being an employer's market, and the fact that labor as a whole is insufficiently organized, the sanction referred to is sufficiently persuasive—perhaps more convincing than the mere imprisonment of a few leaders or officers for contempt. In case of violations by the employer, which happen rarely, due to the well-known hesitancy of corporations everywhere, especially when they are foreign, to avoid direct violations of statutes or obvious brushes with the government, the displeasure of the court is evidenced by eventual decisions or awards that impose particularly heavy burdens or require painful concessions with reference to the dispute then pending. Contempt charges against corporation managers and directorates are seldom brought.

As an added protection to labor and to insure that employees shall have free access to the Court of Industrial Relations, the employer or landlord is prohibited from suspending, laying off, or dismissing any employee or tenant without just cause from the time a union or group of laborers has presented a petition or complaint likely to cause a strike or lockout to the employer, and a copy thereof has been filed with the Department of Labor, or while a dispute between the parties is pending before the court. A violation of this prohibition if the dispute has been proven to be without just cause may result in an order issuing from the court directing the employee's reinstatement and the payment of his salary or wages during the time of his suspension or dismissal or of any amount he would have received had he not been suspended or dismissed, without prejudice to the employer's criminal liability.[116]

As stated above, the employee cannot be dismissed or laid off without "just cause." What constitutes "just cause" has been set forth in a number of Supreme Court decisions. In the case of Manila Trading and Supply Company vs. Judge of the Court of Industrial Relations Zandueta [117] one of the employees of the company was suspended for breach of duty during the pendency of a case in the Court of Industrial Relations. The Philippine Labor Union of which the employee was a member brought the matter to the attention of the court which ordered the reinstatement of the employee with payment of his salary during the time of suspension. The order was excepted to by the employer and raised by certiorari to the Philippine Supreme Court which granted the writ and reversed the order of the Court of Industrial Relations. The decision of the Supreme Court ran in part as follows:

> "The breach consisted in that as gatekeeper of the petitioner he permitted, contrary to instructions, one of the customers to

[116] Sections 19 and 24, Commonwealth Act 103.
[117] 40 Official Gazette, 6th Supplement, p. 182.

pass through the exit gate without paying for the work done on the car. Before this, it is also alleged that he refused to work in the setting-up department of the company when ordered by his superior. The Philippine Labor Union submitted a petition requesting the reinstatement of the suspended laborer, to which an answer was filed by the company. In its order . . . the respondent court found that the laborer was guilty of the breach imputed to him, but, deciding that his suspension from June 30 to July 28 was a sufficient punishment, ordered his immediate reinstatement. The petitioner moved for reconsideration, but the respondent Court of Industrial Relations, sitting in banc, denied the motion. Hence this petition for certiorari.

"The whole controversy is centered around the right of the Court of Industrial Relations to order the readmission of a laborer who, it is admitted, had been found derelict in the performance of his duties toward his employer. We concede that the right of an employer to freely select or discharge his employees, is subject to regulation by the State basically in the exercise of its paramount police power. (Commonwealth Acts Nos. 103 and 213) .But much as we should expand beyond economic orthodoxy, we hold that an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. There may, of course, be cases where the suspension or dismissal of an employee is whimsical or unjustified or otherwise illegal in which case he will be protected. Each case will be scrutinized carefully and the proper authorities will go to the core of the controversy and not close their eyes to the real situation. This is not however the case here. The writ of certiorari prayed for is hereby granted and the order of the Court of Industrial Relations reversed."

In another case [118] conviction in a criminal case was held not necessary to justify discharge. The Philippine Supreme Court in its decision stated:

"The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer. If the Court of Industrial Relations finds that there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that his employer has ample reason to distrust him, it cannot justly deny to the employer the authority to dismiss such employee. All that is incumbent upon the Court of Industrial Relations to determine is whether the proposed dismissal is for a just cause, or is on account of the employee's union activities. It is not necessary for said court to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal.

"We cannot say from the record before us that the alleged union activities of the employees in question were the determinative cause

[118] *National Labor Union vs. Standard Vacuum Oil Co.*, 40 Official Gazette 3503.

of their dismissal by the respondent company. They may have been active unionists, as petitioner alleges; but if, as found by the Court of Industrial Relations from the evidence, they were to blame for the loss of merchandise entrusted to them by their employer, their alleged union activities are of no controlling effect in the determination of the cause of their dismissal.

"Petitioner further argues 'that it is a well settled rule in criminal law that a person not criminally liable is also not civilly liable.' Such argument is beside the point, because the employees in question are not being sued civilly for the value of the lost property. Their dismissal from the service is being sought, not because they are civilly liable for the loss of merchandise entrusted to them, but because on account of that loss it is not safe for their employer to continue trusting its properties to them."

The following acts by employees or union members have been held by the Supreme Court to constitute "just cause" for their dismissal during the pendency of a dispute in the Court of Industrial Relations: Dismissal of a chauffeur of a for-hire vehicle for having allowed other persons to operate the company's vehicle during its regular run, in violation of company rules;[119] of a laborer who was responsible for accidents due to negligence, who was inattentive to his work and was convicted of slander by deed;[120] of drivers guilty of such derelictions of duty as forgetting gasoline, not stopping at crossings, racing with other busses and not helping passengers with baggage;[121] or of fighting with a co-driver.[122] The above instances have been mentioned due to the fact that they have served as precedents in cases involving the dismissal of employees due to union activity, as invariably alleged by unions, or for other and valid reasons, as maintained by employers. The validity of a dismissal or discharge hinges upon whether the employee was dismissed solely or principally because of union activity or on other grounds sufficiently serious to warrant his dismissal.

On the other hand, the Supreme Court has upheld the authority of the Court of Industrial Relations to reinstate employees even if the cause of their dismissal was not union activity, the purpose of the law being to preserve the status quo during the pendency of an industrial dispute, in so far as possible. In the case of Manila Trading and Supply Co. vs. Philippine Labor Union,[123] the Supreme Court concluded:

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119 *Manila Chauffeurs League vs. Bachrach Motor Company*, 40 Official Gazette, 5th Supplement, 109.

120 *Jacinto vs Standard Vacuum Oil Co.*, 40 Official Gazette, 9th Supplement, 20.

121 *Batangas Transportation Company vs. Bagong Pagkakaisa*, 40 Official Gazette, 9th Supplement, 51.

122 *Dy Pac vs. Katipunan*, 40 Official Gazette, 13th Supplement, 82.

123 40 Official Gazette 123, 9th Supplement, page 57.

"It is contended in the third and last assignment of error that the petitioner could discharge Andres Dimapiles for any cause except for his union affiliation or activities. This contention is without merit. It appears that the discharge of Dimapiles was ordered while the main industrial dispute was pending decision before the Court of Industrial Relations. Under the provisions of Section 19 of Commonwealth Act 103 as amended, the said court is authorized to require his continuation in the service under the last terms and conditions existing before the dispute arose. The purpose of this requirement is to maintain the status quo during the pendency of the dispute in order to safeguard the public interest and to enable the court to settle such dispute effectively. It is to be noted that under the same section, the Court of Industrial Relations is also empowered to enjoin the employee or laborer not to strike or walk out of his employment, or if he has already done so, to require him forthwith to return to it, when public interest so requires.

"It is admitted however, that an employer cannot legally be compelled to continue an employee or laborer in the service when a justifiable cause for his discharge exists, but since under Section 19 of Commonwealth Act 103 the authority of the Court of Industrial Relations to require his continuance in the service is incidental to the pendency of an industrial dispute before it, it necessarily follows that the said court has the power to determine whether such causes exist. In the instant case, the Court of Industrial Relations having reached the conclusion that the dismissal of Andres Dimapiles is groundless and unjustified, the doctrine in Manila Trading and Supply Co. vs. Judge Zulueta et al. G. R. No. 46853, is not applicable. On the other hand, and as was observed in the case of Ang Tibay vs. The Court of Industrial Relations, G. R. No. 46496, the policy of laissez faire has to some extent given way to the assumption by the government of the right of intervention even in contractual relations affected with public interest."

In another case [124] the employer during the pendency of a case before the court filed a petition asking for authority to dismiss a number of employees for allegedly having maliciously accused their foreman and assistant foreman of theft of company properties. In support of the petition it was urged that if these laborers were allowed to continue in the service, harmony in the relations of the workers in the garage department would be disrupted and the efficiency of the men impaired. The union on the other hand filed an application to the petition maintaining that the actual reason for the company's intended dismissal was the union affiliation of the three employees concerned. The court denied the petition of the employer which then brought the case to the Philippine Supreme Court by certiorari. The Supreme Court, in affirming the order of denial of the Court of Industrial Relations stated:

"The main question to be determined in the present proceeding is, whether the Court of Industrial Relations has the right and

[124] *Manila Electric Company vs. National Labor Union*, 40 Official Gazette, 9th Supplement, p. 132.

> authority, under Section 19, Commonwealth Act 103 to order the readmission of the laborers concerned for the reasons stated in the resolution complained of. The right of an employer to freely select or discharge his employees is subject to regulation by the state basically in the exercise of its paramount police power. (Commonwealth Act 213) . . and in cases where the suspension or dismissal of an employee is whimsical or unjustified or is otherwise illegal, the employee will be protected. (Manila Trading and Supply Company vs. Zulueta, G. R. No. 46853). In the present case the Court of Industrial Relations has found that there is no justifiable cause for the dismissal of the laborers . . . The Court further found that the actuations of the petitioner in the whole controversy were motivated by a carefully laid out plan to get rid of these laborers and to discriminate against them as union members. The findings of fact of said court are conclusive and will not be disturbed in the absence of a showing that it has abused its discretion."

The Supreme Court has also held that for a dismissal to be declared unjustified, it is not necessary that said dismissal take place during the actual pendency of proceedings before the Court of Industrial Relations and that a dismissal at any time, if effected due to the employee's union activities, would be regarded as contrary to law and result in an order for reinstatement, with criminal liability on the part of the employer.[125] In a case involving a petition for reinstatement on behalf of an employee and union member, ostensibly dismissed on the ground of inefficiency or inattention to duty, but claiming that he had actually been dismissed due to union activity, the Supreme Court held that the burden of proof as to the fact of unjustified dismissal rested on the union.[126]

## STRIKES

With the enforcement of compulsory arbitration and the usual injunction against strikes in the Philippines, it would seem that strikes would not or could not take place. Curiously enough, however, the passage of Commonwealth Act 103 (which provides for compulsory arbitration) and the launching of the Social Justice program gave labor an impetus to better its lot, and more strikes occurred. It was a strange fact, alluded to by Senator Wagner, that after the passage of the National Labor Relations Act and the launching of the pro-labor policy of the New Deal, that there was increased labor unrest in the United States. In the Philippines, as in the United States, the same phenomenon took place. Philippine labor became bolder and more aggressive not in spite of, but because of the pro-

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125 *Bohol Land Transportation Co. vs. B. L. T. Employees Union*, 40 Official Gazette, 13th Supplement 88.

126 *Olaivar vs. Manila Electric Co.*, 40 Official Gazette, 14th Supplement 79.

labor policy of the Quezon administration.[127] Strikes furthermore were better organized and the number of organized strikes in relation to that of spontaneous strikes steadily increased.[128] Since in practically all cases the laborers are enjoined from striking upon the filing of a case in which labor-management relations are strained, or are ordered to return to work if they had already struck prior to the court's exercising jurisdiction over the dispute, the question arises as to what benefits might result from staging a strike in the first place. In spite of the aforementioned restrictions, there are obvious advantages to be gained by staging a strike, and these are duly appreciated by Philippine labor organizations. The calling of a strike increases unity within the particular union concerned and within the labor movement in general. This is particularly true when labor is just beginning to feel its way, as in the Philippines. The union that stages a strike gains added prestige among the masses since strikes in former years, even during the twenties, occurred rarely, and up to now the staging of a strike is not a common occurrence and therefore has the attraction of the unusual. A number of strikes or threats to strike, moreover, have been successful in the sense that they have shaken concessions from employers and the making of agreements before the dispute has reached the Court of Industrial Relations or during the conciliation and mediation phase before said court. The court, furthermore, upon the occurrence of a strike is made cognizant of the urgency of the situation and is more prone to promulgate decisions granting significant gains to labor.

It is to be emphasized that strikes, while being injurious to capital and therefore a convincing argument, is a step that labor in the Philippines is hesitant to take. The labor organizations have no funds to speak of, and the working class lives a literally hand-to-mouth existence so that the striking employee finds it well-nigh impossible to support his family while a strike is going on. There have always been more workers than jobs available in the Philippines resulting in acute unemployment and the weakness of labor's bargaining power. This fact is significant in that (a) it is of persuasive effect to the Court in the sense that the staging of a strike by workers who are caused undue hardship thereby indicates the gravity and the difficulties of the conditions under which they are employed. (b) No sanctions are required for an anti-strike injunction or an order to return to work under the terms existing previous to the walk-out than the threat of an authorization from the court

[127] In 1939, two years after the launching of the social justice program, industrial labor disputes increased by 400%. See Kurihara, op. cit. supra note 2 at 64.

[128] Statistics on this point appear in the Manila Bulletin, Feb. 20, 1939.

giving the employer full liberty to hire whomsoever he pleases.

Since the staging of strikes may be enjoined by order of the Court of Industrial Relations, a curtailment of the constitutional and inviolable right of a citizen in a democracy, it should be of interest to examine the rulings of the Supreme Court on the right to strike, anti-strike injunctions and compulsory arbitration, all of which are merely phases of one issue—the freedom of the laborer to hire his services when, to whom and under whatever conditions he pleases. The first definitive ruling dealing squarely with this question was promulgated, characteristically enough, in connection with a case in which the union was seeking reemployment for its members at the employer's plant after having called a strike fifteen days before, during the pendency of a dispute before the Court of Industrial Relations. The court, however, had not, previous to the strike, issued a no-strike injunction. The Court of Industrial Relations refused to order the employer to reinstate the strikers and the case was brought on appeal to the Philippine Supreme Court, which stated: [129]

> "Petitioner's claim for readmission rests (1) upon the implied condition in a contract of employment provided for in Section 19 of Commonwealth Act 103,[130] and (2) upon the broad proposition that the right to strike is recognized by law. There is nothing in the law invoked that supports the petitioner's contention.
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> "The recognition, if at all, by law, of the laborers' right to strike is, at most, a negative one, and, in the last analysis, nugatory.[131] The provision of the Constitution on compulsory arbitration of industrial disputes and all the suppletory legislation enacted in pursuance thereof rest upon the obvious policy of supplying lawful and pacific methods to laborers and employees in the vindication of their legitimate rights and the corresponding avoidance of a resort to strike. Thus, according to the explanatory note to Assembly Bill No. 700, which later became the present Commonwealth Act 103, the creation of the Court of Industrial Relations was aimed to supply an 'adequate instrumentality to forestall strikers.' The same purpose is no less clearly expressed in Section 4 of Common-

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[129] *National Labor Union v. Philippine Match Factory*, 40 Official Gazette, 8th Supplement, 104.

[130] Section 19, Commonwealth Act 103 provides: "A condition shall further be implied that while such dispute or investigation is pending, the employer or landlord shall refrain from accepting other employees, unless with the express authority of the Court, and shall permit the continuation in the service of his employees, tenants, or laborers under the last terms and conditions existing before the dispute arose."

[131] Contrast this dictum, still the doctrine in the Philippines, with Section 13 of the Labor-Management Relations Act, 1947: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

wealth Act 103. It is thus 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 is, by all means, discouraged. And, to the extent that our government is one of laws and not of men, what the law, at least in spirit, condemns, man must abstain from, if our orderly system is to prevail against the intrusion of mob rule. 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 to be a choice of a remedy peculiarly their own, and outside of the statute, and as such, the strikers must accept all the risks attendant upon their choice. If they succeed and the employer succumbs, the law will not stand in their way in the enjoyment of the lawful fruits of their victory. But if they fail, they cannot thereafter invoke the protection of the law from the consequences of their conduct, unless the right they wished vindicated is one which the law will, by all means, protect and enforce.

"In the instant case the strike was clearly unjustified. The petition to the respondent company for the dismissal of its foreman has been accorded the attention that it merited. In fact, the company has even taken a measure beyond what may be expected of it, when it sought the reopening of the case in the fiscal's [132] office to secure, for both parties, an impartial investigation. When the petitioners, therefore, declared a strike even before the outcome of the investigation had been announced, and without previously having resorted to any of the pacific means provided by law, they have acted unreasonably, and, as such, the law cannot interpose its hand to protect them from the consequences of their behavior. Their cessation from their employment as a result of such an unjustified strike is one of such consequences which they must take by the choice of a remedy of their own, outside of the statute. To compel the respondent company, under the circumstances to readmit the petitioners to their employment would be to lend countenance to what the Constitution and the law seek to avoid, and give protection to those who, by their conduct, have forfeited their rights thereto."

In another leading case,[133] however, the court upheld the right to strike as a general rule, and declared that the "employee, tenant or laborer is inhibited from striking or walking out of his employment only when so enjoined by the Court of Industrial Relations and after a dispute has been submitted thereto and pending award or decision by the Court of such dispute." The facts of the case are as follows: The petitioner, Rex Taxicab Company, issued a new set of regulations and instituted a system of fines for violations of said

[132] A "fiscal" is a public prosecutor or district attorney.

[133] *Rex Taxicab Co. vs. Court*, 40 Official Gazette, 9th Supplement, p. 136.

regulations by employees. The Philippine Taxi Drivers Union protested against these regulations and fines in a letter addressed to the company, making a number of demands therein. Copy of the letter was filed with the Secretary of Labor. Various conferences were held between the parties under the auspices of the mediation service of the Department of Labor, by virtue of which a settlement was reached with regard to most of the demands. Another conference before the Department of Labor's Mediation Service was scheduled, but before said conference could take place the union went on strike. The Department of Labor thereupon forwarded the case to the Court of Industrial Relations for trial as an industrial dispute cognizable thereby. At the commencement of the trial of said case the Taxi Drivers Union petitioned the court to order the company to reinstate its striking drivers, to which petition the management objected on the ground that the strike was unjustified and that: (a) the strikers were guilty of violence and sabotage by unlawfully and feloniously assaulting, injuring, threatening or coercing the petitioner, its employees and laborers, and damaging its property and business; (b) they were not permanent employees as they worked only when they pleased, had no fixed salaries or wages, and worked only on commission basis; (c) they had already voluntarily left petitioner's service before the case reached the Court of Industrial Relations and the petitioner had already admitted a sufficient number of drivers in its service; and (d) the public service was not in the least affected by such change of drivers. The Court of Industrial Relations, after hearing, found that the strike was justified and ordered the petitioner, Rex Taxicab Company, to reinstate all the strikers to their respective positions. The management brought the case up to the Supreme Court by certiorari. The Supreme Court, affirming the decision of the court, stated:

> "While it is apparent that the policy of the State is, in the first place, to appeal to voluntary arbitration in the settlement of industrial or agricultural disputes, and, in the second place, to employ mediation or conciliation for that purpose, and lastly, to recur to the more effective system of official investigation and compulsory arbitration in order to determine specific controversies between labor and capital in industry and in agriculture, it cannot be said that strikes are under no condition or circumstance justified. (National Labor Union, Inc. v. Court of Industrial Relations and Manila Gas Co., G. R. No. 46598; but cf. National Labor Union Inc. v. Philippine Match Co., G. R. No. 47107.)
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> "Independently of the right to organization and collective bargaining, which, according to some authorities, connotes the right to strike in the event that such a course is deemed advisable by the employees for their mutual aid or protection, Commonwealth Act No. 103, for instance provides that when any dispute has been submitted to the Court of Industrial Relations for settlement or arbitra-

tion, and pending award or decision by the Court of such dispute, 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, upon order of the Court which shall be issued only after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled. (Commonwealth Act 103, Section 19, as amended by Commonwealth Act No. 559). In other words, the employee, tenant or laborer is inhibited from striking or walking out of his employment only when so enjoined by the Court of Industrial Relations and after a dispute has been submitted thereto and pending award or decision by the court of such dispute . . .

"We are here concerned with a definite and well-marked policy of the legislature and not with the extent to which the policy would go. If the legislature should decide to prohibit or abolish strikes absolutely, as it has attempted to do in the past, this is its prerogative, not ours. In this case, we cannot supply what we might conceive to be the defects of the law and interpolate into it what in our opinion, ought to have been put there by the lawmakers. We can neither mar nor change a clear legislative policy.

"In cases not falling within the prohibition, the legality or illegality of a strike depends, first upon the purpose for which it is maintained, and second, upon the means employed in carrying it out. The fact that the combination is for a lawful purpose does not render it less unlawful where the end is to be attained by the employment of proper means, and a strike for an unlawful purpose may not be carried out by means that otherwise would not be legal. The Court of Industrial Relations has recognized the right to strike here and concluded that the same was for justifiable purposes, was conducted in an orderly and peaceful manner, and that considering the public interest and the particular circumstances of the case. and for the sake of justice and equity, the strikers would be reinstated. This conclusion, based upon facts set forth in the appealed order and hereinabove quoted at length, should not be disturbed. (Section 2, Rule 44 of the Rules of Court, similar to Section 2 of the old Rules for the Review of Orders of Judgments of the Court of Industrial Relations, Section 14, Commonwealth Act 103.)

"With reference to the contention that the drivers in question, by declaring a strike either voluntarily ceased to be employees of the petitioner or gave just cause for their separation, it need only be stated that the declaration of a strike does not amount to a renunciation of the employment relation. (National Labor Rela tions Board v. Fansteel Metallurgical Corporation, 59 Sup. Ct. 490, 83 L. Ed. Adv. Ops. 469, quoted in National Labor Union Inc. vs. Court of Industrial Relations et al., G.R. No. 46598, October 14, 1939) and that, at any rate, the Court of Industrial Relations is empowered to reinstate the strikers under Section 19 of Commonwealth Act No. 103."

The ruling of the Supreme Court in the above cited case expresses a limitation on the policy of the government, as stated in

the case of National Labor Union vs. Philippine Match Factory,[134] discouraging strikes and regarding the right to strike as at most a negative one. It is to be noted that both cases were brought to the Supreme Court as a result of petitions for reinstatement by the very unions that staged the strike. In the light of these two cases, the rule on strikes existent in the Philippine jurisdiction may be stated as follows: While the right to strike is a negative right, the exercise of which is discouraged by government policy, laborers do have the right to strike and will be safeguarded therein if the strike is justified. Whether the strike is justifiable or not depends in each particular case on the finding of the Court of Industrial Relations.

ENFORCEMENT OF AWARDS, ORDERS AND DECISIONS.

The latitude of the court's powers, already demonstrated by its authority to issue anti-strike and anti-lockout injunctions during the pendency of disputes before it, and to act according to justice and equity and the substantial merits of the case without regard to technicalities and legal forms is further stressed by the fact that in making an award, order or decision the Court of Industrial Relations is not restricted to the specific relief claimed or demands made by the parties, but may include in the award any matter which may be deemed necessary or expedient for the purpose of settling the dispute at bar and promoting industrial peace by the prevention of further industrial disputes.[135] The constitutionality of this provision on the grounds of deprivation of procedural due process, the court being authorized to decide on questions not squarely brought before it, has not been directly challenged, probably because its validity can be upheld on the ground of the social justice policy set forth in the Constitution.

Judgment is entered upon the expiration of ten days from the date of the award, order or decision, unless during said period of time a motion for reconsideration[136] or an appeal by certiorari to the Supreme Court is filed. The law establishing the Court of Industrial Relations further provides that the "institution of an appeal shall not stay the execution of an award, order or decision sought to be reviewed, unless the court order that it be stayed, for special

[134] 40 Official Gazette, 8th Supplement, p. 131.

[135] Section 13, Commonwealth Act 103.

[136] A motion for reconsideration must be filed within five days from the date the movant receives notice of the resolution, award, decision or order appealed from.The adverse party may file an answer within five days from the time he receives copy of the motion for reconsideration. Allegations of fact in both motion and answer must be sworn to. Motions for reconsideration, unlike ordinary cases or disputes are heard in banc, all the judges taking part, the purpose of this practice being to effect a review by the other members of the court of the resolution pending reconsideration, as penned by one judge.

reasons." [137] During the pendency of an appeal the court may require the employer [138] to deposit with the Clerk of the Court such amounts of salaries or wages due the employees concerned, or to post a bond covering the said amount in order to insure compliance with the order in case it is affirmed. The appellant or employer, these being synonymous in this instance, may also be required to deposit every week during the time an appeal is pending, on a day to be designated by the court, an amount equivalent to the salaries to be earned by the employees whose readmission or reinstatement had been ordered by the Court of Industrial Relations. Failure on the part of employers to make such deposits shall vacate the order for stay of execution. It is to be noted that no provision is made in the statute for deposits to be made or bonds to be filed by labor in case of a stay of execution due to an appeal by the employees. Other than the fact that a stay of execution will seldom cause appreciable damage to the employer, the lack of funds on the part of Philippine Labor organization would make such a requirement ineffectual.

Appeals from an award, order or decision of the Court of Industrial Relations may be raised by certiorari to the Supreme Court provided that the case involves "a question of law." On questions of fact in the absence of proof of grave abuse of discretion, as has already been stated, the decision of the Court of Industrial Relations is final. For all practical purposes, however, the dividing line between questions of law and fact in the raising of labor cases to the Supreme Court is rather tenuous, as cases actually involving questions of fact may be raised and submitted for redetermination by challenging the constitutionality of particular provisions in the law which by mere perusal is seen to present limitless possibilities for discussion from that viewpoint.

Appeals to the Supreme Court are effected by a petition for the issuance of a writ of certiorari within ten days from the date the party appealing has been notified of the decision.[139] Although not

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[137] Section 14, Commonwealth Act 103 as amended by Commonwealth Act 559. However, the Rules of Court as promulgated by the Philippine Supreme Court (Section 7, Rule 44) provide that the appeal shall stay the award, order or decision. The conflict between these provisions was resolved by the Supreme Court when it held Section 14, Commonwealth Act 103 as amended by the Commonwealth Act 559 providing for a non-stay of execution pending appeal as controlling, Commonwealth Act 559 having been approved six months after the Rules of Court although made effective before said Rules, and "leges posteriores priores contrarias abrogant." *Manila Trading and Supply Co. vs. Philippine Labor Union*, 40 Official Gazette, 14th Supplement, 179.

[138] Section 14, idem supra. The provision uses the word "appellant" even if it obviously refers to "employer," as no employee can deposit payroll funds. The law thus takes it for granted that the employer will be the appellant, or implies that no deposit will be required of appealing employees or unions. This provision, among others, frankly demonstrates the purpose behind the enactment of Commonwealth Act 103.

[139] Section 14, Commonwealth Act 103, allows a period of ten days within

strictly required by law, it is the usual practice to file a motion for reconsideration within five days from the date of notification of the award or decision.[140] The time within which an appeal must be perfected ceases to run during pendency of the motion for reconsideration. When the Supreme Court has made a final determination of the issues raised on appeal, the Clerk of said Court shall immediately transmit a copy of its decision to the Clerk of the Court of Industrial Relations, said decision being final and executory upon the receipt by the clerk of the court below.[141] If exceptions to an award or decision are sustained by the Supreme Court, judgment may be entered setting aside the award in whole or in part, but in such a case the parties may reach an agreement disposing of the subject matter of the controversy, which shall have the same effect as a judgment. The Supreme Court shall hear cases involving industrial disputes and labor relations as appealed from the Court of Industrial Relations in preference to all other cases, and render decisions on them as soon as possible.

### COMPULSORY ARBITRATION.

As explained in the foregoing pages, the settlement of industrial disputes in the Philippines is based on compulsory arbitration. It may, therefore, be of interest to look further into this system of labor-management dispute settlement, which is in force in a great number of democratic countries,[142] and has been proposed more than once as a solution to certain labor-management problems existing in the United States. The word "certain" is used advisedly as compulsory arbitration has never been advocated for the settlement of all labor management disputes in the United States.

Compulsory arbitration [143] has been broadly defined as that system of labor-management dispute settlement under which the government, whether directly or indirectly "brings pressure to bear

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which to raise an appeal, while Section 1, Rule 44, of the Rules of Court allows fifteen days. Between these two provisions the former would seem to be controlling, although in actual practice the Supreme Court has allowed a fifteen day period. See note 137 supra.

[140] Par. 15, Rules of the Court of Industrial Relations, effective October 1, 1945.

[141] Section 15, Commonwealth Act 103.

[142] See "Settlement of Industrial Disputes in Seven Foreign Countries" by the Foreign Labor Conditions Staff, U.S. Department of Labor, Vol. 63, Monthly Labor Review (July 1946) at 224; Studies and Reports, International Labor Office, Geneva, No. 34, Series A; Schoenfield, Industrial Relations Machinery in Democratic Foreign Countries (1939).

[143] For a general orientation on compulsory arbitration see Hamilton, Compulsory Arbitration in Labor Disputes (1913); Mote, Industrial Arbitration, A World-Wide Survey of National and Political Agencies for Social Justice and Industrial Peace, 1916); Higgins, A New Province for Law and Order (1922); Hobson, The Conditions of Industrial Peace (1927); Labor Co[illegible]

upon the parties to a dispute, and compels them to submit their differences to an outside, impartial body for adjudication and award." [144] It is to be pointed out that in countries where compulsory arbitration is used to settle labor-management disputes, the contending parties are required by law to submit disputes not otherwise resolved to the jurisdiction of a court or labor board, accepting the award or decision of said court or board as binding.[145] Compulsory arbitration may be exercised by one-party, two-party or tripartite panels at the option of either or both of the parties, or of the government; within the jurisdiction of the judiciary, subject to court review, or outside the jurisdiction of the courts; and with a variety of sanctions ranging from fact finding and publicity through loss of statutory protection to criminal indictment for conspiracy.[146] The machinery for carrying out this system of settlement varies with different jurisdictions and policy makers in each jurisdiction have the problem of "matching the sanction to the gravity of the violation." [147]

In the field of arbitration in general, which usually involves commercial arbitration, arbitration has been classified as either voluntary or compulsory, the former being defined as "the investigation and determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties and called "arbitrators," [148] and the latter as "that which occurs when the consent of one of the parties is enforced by statutory provisions." [149] Compulsory arbitration is most commonly used in the settlement of labor-management disputes. Due to the fact that the American Arbitration Association [150] and most commercial arbitrators in the United States are opposed to compulsory arbitration the statement has been made that this type of arbitration is not arbitration at all and therefore should not travel under that name. Witness the following:

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Labor Office Reports, Geneva (1938); Starnes, *A Survey of the Methods for the Promotion of Industrial Peace* (1939); Morse *The Scope of Arbitration in Labor Disputes*, Commonwealth Review, Vol. 23 at 1, (March, 1941); Hotchkiss, *Arbitration—An Analysis, Society for the Advancement of Management Journal*, Vol. 4, at 45 (March, 1939).

[144] *Labor Problems*, Watkins and Dodd, (1940) at 850.

[145] See Sanders, "Types of Labor Disputes and Approaches to their Settlement," in Law and Contemporary Problems, Duke University, Vol. XII, No. 2, at 216.

[146] Phelps, *Public Policy in Labor Disputes*, Journal of Political Economy, Vol. 55 at 189.

[147] Phelps, idem, supra; see also Reports, International Labor Office, Series A, No. 40 (1938).

[148] *Temple vs. Riverland*, 228 S. W. 605, 608.

[149] *Wood vs. City of Seattle*, 62 Pac. 135.

[150] "The Association believes now as it always has that arbitration, being a persuasive process and opposed to all forms of force, is arbitration only to the

> "My second point is one of semantics. Arbitration throughout the thousands of years of its development, has depended upon the agreement of the disputants to submit to arbitration by a judge of their own choosing. If you make it compulsory, it isn't arbitration. Lacking the essentials of arbitration a compulsory procedure shouldn't borrow the label. Let's call it by its proper name—definitive and free from the confusion-breeding hyphenation of two irreconcilable contradictions—compulsion and arbitration. Perhaps the phrase 'compulsory adjudication' of labor disputes will do for the present purpose." [151]

The above observation would not appear to be devoid of reason. It would seem from the above, however, that the author of the statement does not give an accurate description of compulsory arbitration. What makes it compulsory is not the fact that the disputants cannot submit their disagreement to a judge of their own choosing, as compulsory arbitration may be effected even if the judge were chosen by the parties. It is, rather, the fact that the parties are required by law to submit the matter in dispute to a third party, his award or decision being accepted as binding. It is not the purpose of the present discussion to enter the realm of semantics, but besides demonstrating by the above quotation how compulsory arbitration departs from the classical view of arbitration, the point may be made that the term "compulsory arbitration" has long been an emotionally-charged term in the United States and has generally been regarded as the bete-noir of all means of settling labor disputes. The suggestion has even been advanced that using the term "labor courts" in place of "compulsory arbitration" would serve to avoid the emotional connotations of the term, although it is obvious that such variations in terminology present more psychological advantages.[152] Be that as it may, "compulsory arbitration" is a term of such wide use that it will be applied in the remainder of this discussion.

COMPULSORY ARBITRATION IN OTHER DEMOCRACIES.

The manner and system under which compulsory arbitration is carried out in the Philippines has already been given in detail in the preceding pages. Two other democratic countries rely on compul-

degree to which it remains voluntary. When the will of one party is imposed upon another it ceases to be arbitration. When the will of an arbitrator or outside intervener is imposed upon another, it ceases to be arbitration. When a person not agreed to by the parties is named arbitrator that person is not a person chosen by the parties, as the tradition and law of arbitration decree. Whenever arbitration is ordered by directive or duress in any form, at that instant it ceases to be arbitration as men understand it, believe in it and trust it as an act of their own free will." Policy of the American Arbitration Association on Compulsory Arbitration, New York, December 4, 1944.

[151] R. Emerson Swart, President, American Arbitration Association, in Modern Industry, Vol. XII, at 127.

[152] Sanders, op. cit. supra note 145. The use of the term "labor court" when referring to a court or body acting as arbitrators in compulsory arbitra-

sory arbitration for the ultimate settlement of all labor-management disputes, namely, Australia [153] and New Zealand.[154] Great Britain, Canada, Denmark, Norway and Sweden also have compulsory arbitration systems, although compulsory arbitration is resorted to only under extraordinary circumstances or in certain specified types of disputes.[155] It may not be amiss at this juncture to point out briefly the similarities and differences between compulsory arbitration in the Philippines, Australia and New Zealand. The systems in use in these respective countries are similar in most respects for the simple reason that the original legislation on compulsory arbitration was first proposed in Australia, was enacted shortly after in New Zealand,[156] and much later, was adopted by the Philippines after voluntary arbitration had failed. There is good reason to believe that the attention of Filipino leaders was first drawn to compulsory arbitration through the creation and subsequent activities of the Kansas Industrial Court as established in 1920.[157] As already stated in foregoing pages, compulsory arbitration in the Philippines was especially provided for in the Philippine Constitution, thus safeguarding the Philippine Court of Industrial Relations from suffering the same fate as that of the Kansas Industrial Court.[158] The law providing for

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tion has resulted in no little confusion, a fact alluded to by Ludwig Teller in his testimony before the U. S. Senate, Jan. 31, 1947. By "labor court" is not necessarily meant a compulsory arbitration tribunal with powers to decide on conditions of employment, as the functions of labor courts may very often be limited to mere jurisdictional questions and have nothing to do with other matters ordinarily dealt with in compulsory arbitration. See testimony of Ludwig Teller, Hearings before the Committee on Labor and Public Welfare, United States Senate, Eightieth Congress, first session of S. 55 and S. J. Res. 22, (1947) at 263.

[153] On the subject of compulsory arbitration in Australia, see Foenander, Industrial Regulation in Australia (1947); Solving Labor Problems in Australia (1941); and Towards Industrial Peace in Australia (1937); Anderson, Fixation of Wages in Australia (1929); Higgins, New Province for Law and Order (1922).

[154] Information on compulsory arbitration in New Zealand is available in: Annual Reports, Department of Labor, New Zealand; Broadhead, State Regulation of Labour and Labour Disputes in New Zealand; Hamilton, Compulsory Arbitration in Industrial Disputes.

[155] "Settlement of Industrial Disputes in Seven Foreign Countries," supra note 142.

[156] The original basis for subsequent legislation on compulsory arbitration was an Industrial Disputes Settlement Bill introduced by Mr. Charles Cameron Kingston into the South Australian Parliament in 1890. The bill did not then become law. In 1894 an Industrial Conciliation and Arbitration Act based on Kingston's Bill became a statute in New Zealand and its success in that country encouraged the passage of a similar law in Australia. By May, 1896, compulsory arbitration had become a part of the platform of the Victoria United Labor and Liberal Party and before long was adapted by the entire Australian Labor Party. In 1904 the Australian Court of Conciliation and Arbitration was legislated into existence. See Studies and Reports, International Labor Office, Geneva, No. 34 Series A, at 609.

[157] Act of the Kansas State Legislature approved January 23, 1920. See Gagliardo, the Kansas Industrial Court (1941) at 47.

[158] Compulsory arbitration of disputes in individual plants in industries producing fuel and preparing food in Kansas was declared unconstitutional by

compulsory arbitration in the Philippines, however, more closely resembles compulsory arbitration legislation in Australia and New Zealand, with the modifications necessary to suit the exigencies of local situations. It is a noteworthy fact that compulsory arbitration was adopted by these three countries with the enthusiastic support of organized labor.[159]

COMPOSITION OF INDUSTRIAL COURTS, COMPARED.

The Australian Commonwealth Court,[160] as created by the Commonwealth Conciliation and Arbitration Act, consists of a Chief Judge and five other judges as appointed by the Governor General in Council. The judges are selected from lawyers entitled to practice before the High Court and cannot be removed from office except by the Governor General in Council on an address from both houses of Parliament on the ground of proved misbehavior or incapacity. The decision of the Court, when composed of more than one judge, is by a majority vote. In the event of the members being equally divided, the matter is settled according to the opinion of the Chief Judge. The New Zealand Court of Arbitration consists of three members appointed by the Governor General. Of these three members, one is a judge having the qualifications of a judge of the Supreme Court,[161] one is a member appointed on the recommendation of industrial unions of employers, and one a member appointed on the recommendation of industrial unions of employees. The first mentioned is a permanent member, the second and the third members, as appointed upon the recommendations of the unions of employers and the unions of employees respectively, hold office for a term of three years and are eligible for reappointment.[162] A quorum of the court consists of the judge and one other member. The decision of the majority, or in case of a tie vote, the decision of the judge is a decision of the court.[163] In comparison with the Australian and New Zealand courts, the Philippine Court of Industrial Relations, consisting of a presiding judge and four judges, all of whom must be eligible for membership in the Supreme Court, would seem to have the edge from the standpoint of qualifications and prestige. The New Zealand Court, however, with two members representing capital and labor respectively, presents a panel closer to the parties and in all

the United States Supreme Court in *Dorchy v. Kansas*, 264 U.S. 286; *Wolff Packing Co. v. Court of Industrial Relations*, 267 U. S. 552.

159 See "Settlement of Industrial Disputes in Seven Foreign Countries," note 142 supra.

160 The unofficial source on legislation used was Foenander, Industrial Regulation in Australia (1947).

161 Section 64, New Zealand Industrial Conciliation and Arbitration Act, 1925, as amended.

162 Section 65, idem. supra.

163 Section 83, idem. supra.

likelihood better versed in the particular problems of the interests they represent. The judges of the Australian court have the greatest security of tenure, since their removal can be effected only by a procedure that in reality constitutes impeachment.

JURISDICTION OF INDUSTRIAL COURTS.

The jurisdiction of the Australian Commonwealth Court to make a binding award is limited to an industrial dispute that extends beyond the limits of any one state.[164] It is not necessary that the dispute should have previously reached the stage of a strike or lockout. The exercise of jurisdiction must be preceded by the possession of cognizance, and the court takes cognizance of a particular dispute in the following instances: (1) upon certification by the Registrar of the Court that the dispute is proper to be dealt with as a matter of public interest; (2) when an industrial organization, whether of employers or employees, has submitted an industrial dispute to the court by plaint; (3) when a State Industrial Authority, or, there being no state industrial authority, the Governor in Council requests the court to intervene in an industrial dispute; (4) when a judge of the court, or a conciliation commissioner attached to the Court refers the case to the Court after no agreement in conciliation proceedings has been reached.[165] The New Zealand Court of Arbitration has jurisdiction to settle any industrial dispute referred to it by a Council of Conciliation which latter had previously been created to deal with a particular industrial dispute. The Philippine Court of Industrial Relations, as has been stated, differs from the above mentioned courts in that it has jurisdiction over both industrial and agricultural disputes and can take cognizance of cases referred to it by the Secretary of Labor or by either or both of the parties.[166]

It is to be noted that all three courts have set up rather elaborate machinery for the conciliation and mediation of disputes in an attempt at exhausting all means of settlement before invoking the jurisdiction of the arbitration tribunals. Australia has Conciliation Commissioners attached to its Industrial Court and before proceeding to compulsory arbitration the judge of the Court attempts to make the disputants reach an agreement by calling them to a compulsory conciliation conference.[167] New Zealand has councils of conciliation composed of a conciliation commissioner and assessors and no dis-

[164] The states of Australia, namely, New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania each have their own industrial courts or boards for the settlement of disputes within the state. See International Labor Office, Studies and Reports Series A, No. 34 at 611.

[165] Foenander, Industrial Regulation in Australian (1947) at 3.

[166] Sections 1 and 4, Commonwealth Act 103.

[167] Section 16A, Commonwealth Arbitration and Conciliation Act, 1904-1934.

pute can be referred to the Court of Arbitration until it has first been referred to a council of conciliation.[168] The Philippines has a conciliation and mediation service maintained by the Department of Labor and the judges of its court of industrial relations, as in Australia, are required to summon the parties to a preliminary conference before acting as arbitrators to the dispute, in an attempt at bringing about complete or partial settlement through conciliation.[169] In all three countries, matters agreed on in the course of these conciliation conferences are enforceable before the arbitration courts.

### PROCEDURE, COMPARED.

Except for a few minor details, the rules of procedure of the arbitration courts in these countries are substantially the same. Proceedings are characterized by informality and a none too strict adherence to the rules of evidence. The arbitration courts are enjoined to act "according to equity, good conscience and the substantial merits of the case, without regard to technicalities or other legal forms," the judges being authorized to inform their minds in any manner they think just.[170] "The courts are authorized, at any stage of the proceedings, to dismiss any matter or part of a matter, or refrain from further hearing or from determining the dispute or part thereof, if it appears that the dispute is trivial in nature or that further proceedings are not necessary or desirable." [171] They may refer any matter to experts and accept their reports as evidence.[172] The courts are also empowered to appoint assessors for the purpose of advising the judges on matters connected with any particular dispute.[173] With reference to the appearance of advocates before the courts, the Australian Arbitration and Conciliation Act provides that "a legally qualified person or other paid agent is not permitted to represent a party where the proceeding is a hearing or determination of an industrial dispute except by leave of the court and the consent of all other parties to the dispute." [174] There is nothing in the Act, however, to prevent the court, in spite of objection by the other parties, from hearing counsel or other paid agent in proceedings not in the nature of a hearing or determination of an industrial dispute, for example, on questions involving the jurisdiction of the court or in connection with the interpretation of

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[168] Section 57, par. (5), New Zealand Industrial Arbitration and Conciliation Act, 1925.

[169] Section 4, par. 2, Commonwealth Act 103.

[170] Section 23, Commonwealth Conciliation and Arbitration Act, 1904-1934.

[171] Section 38 (h), idem, supra.

[172] Section 38 (n), idem.

[173] Section 35, idem.

[174] Section 27, idem.

an award.[175] In New Zealand, barristers or solicitors can only appear before the court with the consent of all parties, and in no case can their costs be allowed.[176] The Philippine Court of Industrial Relations, on the other hand, requires, except in isolated instances, that only members of the bar appear before it. This is because it is administratively a court of record within the Philippine Judicial system.

AWARDS.

The Arbitration Court of Australia was empowered to declare, by an award or order, "that any practice, regulation, rule, customs, term of agreement, condition of employment or dealing whatsoever determined by an award in relation to any industrial matter shall be a common rule of any industry in connection with which the dispute arises." [177] Subsequently, however, in a case (F) brought before it, the Australian High Court held that the jurisdiction of the Arbitration Court was limited to the persons named in the proceedings and to specific matters in dispute at the time when cognizance was obtained.[178] In New Zealand, an award binds not only the parties before the court but also any party, whether capital or labor, in the same district, which, while the award is in force, is engaged in the same industry to which the award relates.[179] In the Philippines, an award of the Court of Industrial Relations binds only the parties to the dispute. An award of the Australian Arbitration Court, subject to any amendment or appeal,[180] continues in force for the period specified, said period not to exceed five years. After the period so nominated, the award nevertheless remains in force until a new award has been made, unless the court or a conciliation commissioner orders otherwise. In New Zealand, an award, although its terms cannot exceed three years, continues in force until a new award has been made.[181] An award of the Philippine Court of Industrial Relations is effective for the time specified in the award itself, and in the absence of such a specification, any party or both parties to a controversy are empowered to terminate its effectiveness by giving notice to the court, after three years have elapsed from the date of the award.[182]

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175 See Foenander, op. cit. supra note 160, at 12.

176 Section 79, New Zealand Industrial Conciliation and Arbitration Act, 1925, as amended.

177 Section 38, Commonwealth Conciliation and Arbitration Act.

178 *Australian Beef Trade Employees Fed. v. Whybrow and Co.* and others, 11 C. L. R., p. 311.

179 Studies and Reports, International Labor Office, No. 34, Series A, at 643.

180 Section 31A, Commonwealth Conciliation and Arbitration Act.

181 Section 89, New Zealand Industrial Conciliation and Arbitration Act, 1925.

182 Section 17, Commonwealth Act 103.

## STRIKES AND LOCKOUTS.

Under the Australian statutes,[183] it is provided that when a dispute has arisen which may be expected to lead to a strike or lockout, the parties, or either of them, shall notify the Conciliation Commissioner, who thereupon takes the necessary action. The Commissioner may act on his own initiative in the event of a possible strike or lockout, even if he has not been notified. Neither party to the dispute may effect, directly or indirectly, anything in the nature of a strike or lockout, until the dispute has finally been disposed of by the Conciliation Commissioner or by the courts. Any violation of this provision is punishable by a fine not to exceed 1,000 pounds in case the violator is an employer, and by the suspension of the award in operation in case the violation has been committed by an employees' union. In New Zealand the parties to a dispute are forbidden to do anything, directly or indirectly, in the nature of a strike or lockout, during the pendency of the dispute before the Council of Conciliation and the Court of Arbitration. Violations of the above provision are punishable by a fine not exceeding ten pounds in the case of individual workers who have gone on strike and by a fine not exceeding 500 pounds in the case of a lockout by employers.[184] In certain essential industries in which the public interest is involved, a strike or lockout is forbidden unless the employee or employer gives to his employer or employee respectively, not less than fourteen days' notice of the intention to strike or lockout. Violations of this provision are also punishable by fine. As has already been stated, the statutes in the Philippines with reference to strikes and lockouts are less repressive and penalties for violation, while consisting in fine or imprisonment, as in cases of contempt, are seldom enforced.

## APPEALS.

The arbitral orders of the Australian Industrial Court are not subject to appeal to any court whatsoever.[185] An appeal, however, may be filed with the Full Arbitration Court or the court sitting in banc against any provision in the award affecting wages, hours of work or any condition of employment, which, in the court's opinion, might affect public interest. The provision granting this right, however is strictly construed against the party attempting to raise the appeal. Distinct from arbitral determinations embodied

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[183] Section 86, Commonwealth Conciliation and Arbitration Act.

[184] Section 109, New Zealand Industrial Conciliation and Arbitration Act, 1925.

[185] Section 1, Commonwealth Conciliation and Arbitration Act; *Boilermakers Society of Australia v. The Broken Hill Pty. Co. Ltd.* Argus Law Reports, Vol. II, p. 201.

in an industrial award, appeals may be raised to the High Court of Australia with reference to any judgment, decree, order or sentence of the Arbitration Court in the exercise of its judicial functions. As expected, questions immediately arise as to what constitutes an "exercise of judicial functions" by the Arbitration Court.[186] The awards and decisions of the New Zealand Arbitration Court are final.[187] The finality of awards promulgated by the arbitration tribunals of Australia and New Zealand differs from the procedure established in the Philippines, where appeals by certiorari may be taken to the Supreme Court,[188] except in cases involving purely questions of fact, where the pronouncements of the Court of Industrial Relations are final.[189]

### COMPULSORY ARBITRATION VERSUS VOLUNTARY MEANS OF SETTLEMENT.

It is important not to lose sight of the purpose behind all methods of regulation of labor-management relations, whether it be conciliation, mediation or voluntary arbitration on the one hand, or compulsory arbitration on the other. The principal end in view is to institute a form of procedure through which that level regulation necessary for the maintenance of peaceful relations between the two parties to industry may be effected, thus resulting in the minimizing of open conflicts that may interrupt production and cause other serious damage. Necessarily, that procedure must differ in accordance with existing conditions and circumstances in a given country, so that it would be rash to say that a system of labor-management dispute settlement having been successful in one country, should be adopted in another. Conditions of trade and economics and the balance of political power within a particular country are also subject to change so that a system found suitable at one time may prove a failure at some other time. With these consid-

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[186] The following explanation may be of assistance with reference to this point:

"The character of an arbitrator depends upon the nature of the duties which he is appointed to perform. If he is appointed to determine as between contesting parties a dispute or question as to the nature or extent of their already existing legal rights or duties inter se, not only is he subject to a legal duty to act judicially, but he is to perform what is essentially the function of a court of justice. If he is appointed to determine as between contesting parties, not a dispute as to their existing legal rights, but a difference as to the conditions which are to prevail between them if they enter into legal relations with one another, then, although he is still subject to a legal duty to act judicially, he is to perform or implement an act which is arbitral in the sense of legislative, and is not one of the functions of a court in the proper sense of the term. (Mr. Justice Rich in *Jack v. Lewis*, Argus Law Reports, Vol. L, at 113; Foenander, op. cit. supra note 160.)

[187] See Studies and Reports, International Labor Office, No. 34, Series A.

[188] See note 139, supra.

[189] *Bardwell Bross. vs. Philippine Labor Union*, 39 Official Gazette 1032.

erations in mind, the discussion shall proceed to consider the advantages and disadvantages of compulsory arbitration in the settlement of labor-management disputes. The question has been a subject for debate for some time in the United States between those who would have nothing to do whatsoever [190] with any form of compulsory arbitration and those who propose it for the settlement of certain types of disputes and as a solution to destructive strikes in industries in which the public interest is involved.[191] An attempt will be made to deal with the question from a broad or general standpoint, to consider the intrinsic merits and demerits of compulsory arbitration.

The point is made that compulsory arbitration is a violation of the principle of laissez faire in the field of economics, and that society will derive the greatest advantage from a system in which all forces are given free play in open competition. The determination of wages by the State, therefore, especially when the fixing of wages by the government will not satisfy all parties concerned, is looked upon as an undue interference by the State with the natural operation of economic forces. The reply advanced against this is that free play of economic forces has suffered a great deal of limitation through the creation of economic cartels, price-fixing arrangements, and the like, and that the laissez faire theory finds no opportunity for operation in many industries. Those who oppose compulsory arbitration then aver that at any rate all these limitations on the range given to free competition have been imposed by the competing forces themselves—by employers agreeing to pay certain prices for labor, and by labor unions also agreeing among themselves to demand certain amounts for their services, and that the state should by no means intervene. State intervention is op-

[190] For a statement of the case against compulsory arbitration as a matter of policy, the following articles may be of interest: Whitney, Should Compulsory Arbitration of Labor Disputes be Instituted in the Defense Industries, 1 Modern Industry 56 (February 15, 1941); Davis, How to Insure Industrial Peace, 58 Rotarian 27 (June, 1941); Pressman, The Right to Strike and Compulsory Arbitration, 1 Lawyers' Guild Review 40 (June, 1941); Keating, Compulsory Arbitration of Labor Disputes?, 58 Rotarian 15 (March, 1941); Dich, Economic Enquiries as a Basis for Democratic Adjustment of Labor Disputes, 38 International Labor Review 575 (November, 1938); Seidman, Shall Strikes be Outlawed?, (1938); Stassen, Count Ten First, 58 Rotarian 29 (June, 1941); Witherow, Labor Arbitration in Wartime, 6 Arbitration Journal 16 (1942); Teller, Brief Submitted to the Senate Committee on Labor and Public Welfare, Jan. 30, 1947.

[191] On the advantages of compulsory arbitration, see Cox, Should Compulsory Arbitration of Labor Disputes be Instituted in the Defense Industries? 1 Modern Industry 57 (February, 1941); Gagliardo, Strikes in a Democracy, 31 American Economic Review 47 (March, 1941); Riches, Restoration of Compulsory Arbitration in New Zealand, 34 International Labour Review 733 (1936); Kaltenborn, The Adjustment of Labor Dispute in Wartime, in Governmental Adjustment of Labor Disputes at 221 (1943); Knox, We Can and Must Have Industrial Peace, Commercial and Financial Chronicle (Jan. 1947); Tillinghast, Public Necessity Abrogates the Right to Strike, Engineering and Mining Journal (March, 1947).

posed on the ground that political considerations enter the picture, thus destroying economic balance and clouding the true economic position of the parties. The proponents of compulsory arbitration counter that compulsory arbitration is to be regarded as an administrative function, and political considerations and influence can by no means be avoided since the state naturally acts on political grounds in other matters—public utilities, taxation, tariffs, utilization of natural resources, and social policy.

The question is really one of governmental policy with regard to social and economic matters. A national policy that stresses individualism and private rights will naturally seek to prevent government intervention in any sphere; a national policy that aims towards government control of social and economic policies is naturally inclined towards measures providing for compulsory arbitration. The present discussion presupposes that all the measures taken will be accomplished within the democratic framework.

The charge is made that compulsory arbitration is calculated to endanger the existence of trade organizations by depriving them of, and transferring to the state one of their principal objectives, the achievement of favorable conditions by their own efforts, through the exercise of the right to strike. It may be pointed out that in most countries the progress of labor has been brought about through government intervention through favorable legislation, calculated to compensate labor for its disadvantageous position and thus equalize its position vis a vis capital. It cannot be denied, moreover, that in the struggles between labor and capital the interests of the public are at times in jeopardy. The measures taken by both parties in the course of negotiation can, under certain circumstances, impose a burden on the general public much heavier than that on the parties involved. Under a system of voluntary arbitration, mediation or conciliation, there would seem to be no restriction on the destructive conflict between management and labor other than the limit of public endurance.[192] The situation has been aptly described by one labor lawyer who stated, in objection to the proposal that the right of utility workers to strike be limited: "Injury to the public, while regrettable, is as much a necessary by-product in industrial warfare as it is in wars among nations." It is safe to conclude that the public referred to has not been in entire agreement with this view.[193] As an example, the tendency in the United States, one of the so-called

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[192] On this point, see Phelps, Public Policy in Labor Disputes, 55 Journal of Political Economy 189 (June, 1947).

[193] A Gallup public opinion survey conducted in April, 1946, found that 60% of those polled approved laws to forbid all strikes in public service industries, such as gas, electric, telephone and local transportation companies. In May, 1946, the percentage of those favoring prohibition of utility strikes had gone up to 64%, with union members in agreement 49-44%.

laissez faire countries and perhaps the greatest stronghold of those who are opposed to compulsory arbitration, is towards compulsory arbitration in certain cases.[194] The reasons for this phenomenon have been stated as follows:

> "The direction in which labor-dispute policy in this country appears destined to move is toward substitution of some other method of dispute settlement than economic warfare in public utilities, basic industries, jurisdictional disputes, and perhaps disputes over the interpretation of agreements. The method will center around compulsory arbitration for several reasons. The first is its flexibility—in application, composition of tribunal and above all, in severity of sanction. Second, it promises certainty in cases in which suspensions of service would be catastrophic—which can not be said of cooling off, mediation or voluntary arbitration; and it is less harsh than the only alternative of equal certainty—prohibition without provision for compromise. In the third place this country had had wide experience with compulsory arbitration which is only another name for the judicial process, and it is in good repute for impartial determination of the interests of the parties on the basis of evidence. Fourth, it is regarded with distaste by both management and organized labor, which permits its use as a sanction in itself, to be imposed where the parties cannot compromise the issues between them. It thus might contribute to more earnest efforts on both sides in the bargaining process." [195]

The argument is made that compulsory arbitration destroys the sense of responsibility of the parties concerned, and that, relying on settlement or adjudication by the arbitration court the disputants make no serious effort to solve their own difficulties. It cannot be denied that there is a certain amount of truth in this observation. It is to be pointed out, however that in all democratic countries where a system of compulsory arbitration is in force, full opportunity is given for the parties to reach an agreement independently, before the arbitral tribunal takes charge of the case. Legislation in some countries,[196] in order to promote and preserve this sense of responsibility on the part of capital and labor respectively, provides for a sharp differentiation between the conciliation and the arbitration phases of the dispute, so that once the parties have failed to reach an agreement as a result of mediation and conciliation, the dispute is left within the absolute control, and depends entirely on the decision of the arbitration court.[197] The establishment of a clear dividing line between the conciliation and arbitration phases of the

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[194] On compulsory arbitration as provided for in the Taft-Hartley Bill, see note 75, supra.

[195] Phelps, op. cit., supra note 192.

[196] In Finland, Netherlands and Sweden, to cite a few examples, permanent arbitrators are forbidden to act as arbitrators.

[197] A policy very similar to that observed by the American Arbitration Association which frowns upon any form of conciliation or mediation by the arbitrator.

dispute, thus making for a satisfactory transition from arbitration to conciliation, is one of the more difficult practical problems facing legislators on labor-management dispute problems.

The general proposition can be made, however, that whatever the relative advantages and disadvantages of compulsory arbitration, that system of labor-management dispute settlement will tend to be most successful in any particular country if it is in keeping with the general legal system of that country. In a country whose legal system stresses individualism, compulsory arbitration will be unwelcome and will be roundly criticized, so that if it is to be instituted at all, it will have to be introduced gradually. In Australia, for example, the fact that the government has amended its arbitration provisions very many times over a relatively short span of years,[198] is explained as being due to the fact that the legal and industrial systems of that country are not yet fully compatible with compulsory arbitration. The legal means established for the settlement of labor-capital disputes in any country represent on a smaller scale the struggle that is going on in most countries of the world today between individualism and collectivism.[199] As adjustments occur towards one or the other of these policies, so will changes take place in the machinery and manner employed to handle the disputes between the contending forces in production and industry.

## FINALLY

The attempt has been made in this brief work to present an introductory to the labor-management legislation in the Philippines. Important phases and points of labor management relations and the law pertinent thereto have been discussed and should lead to further investigation on the part of one desiring a more complete knowledge and insight into the subject matter. The following fundamental observations may be made:

1. Philippine labor-management legislation, in keeping with the policies set forth in the Constitution, is characterized by the underlying determination to decide industrial and agricultural disputes as far as possible by the application of principles of equity and social justice, rather than by bargaining strength.

2. The present status of labor-management legislation, entailing compulsory arbitration, is noteworthy in the sense that while very little criticism is heard from both capital and labor on the

[198] The Commonwealth Conciliation and Arbitration Act as originally passed in 1904, was amended in 1909, 1910, 1911, 1914 (twice), 1915, 1918, 1927, 1928, 1930, and 1934.

[199] With a small 'c,' of course.

methods of dispute, settlement provided for by law, there is no effective nor active movement in Congress and among the parties themselves for a radical change in the present legislation and towards the abolition of compulsory arbitration.

3. Developments in labor-management relations in the United States are watched with interest and have an influence on both labor and capital in the Philippines; on the official level the decisions of the United States Supreme Court in matters pertaining to labor are of strong persuasive force in the decisions of the Court of Industrial Relations and Supreme Court.

4. The system of compulsory arbitration at present in force is by no means perfect and amendments tending towards improvement may be proposed with reference to the following matters:

(a) The creation, under the administrative supervision of the Department of Labor, of ad hoc panels for conciliation and mediation in which both labor and management are represented. Under the present system of conciliation and mediation are carried on by officials of the Department of Labor and by the Judges of the Court of Industrial Relations who are required to attempt conciliation before commencing with arbitration.

(b) Enactment of statutes to govern and clarify functions of the Department of Labor in matters involving provisions against multiplicity of unions; cancellation of registration, whether of defunct unions, in cases of voluntary dissolution of unions or in cases of violations of conditions for the issuance of permits; employee representation for purposes of collective bargaining.

(c) Establishment of procedure and machinery by Department of Labor for settlement of grievance disputes; for promotion of collective bargaining and assistance in drafting procedure of collective bargaining contracts between employers and employees, these facilities being readily available to all parties in industry and agriculture.

(d) Closer supervision by the Department of Labor with reference to the finances and accounts of labor organizations so as to insure against misuse of contributions.

(e) Reference of cases to the Court of Industrial Relations to be placed exclusively under the control of the Secretary of Labor so as to obviate (1) too easy recourse on the part of both capital and labor to the Court, thus removing a sense of responsibility towards exerting all efforts in an attempt at arriving independently at a settlement of their differences; (2) the bringing of trivial matters to the attention of the court, thus depriving it of the time that could more profitably be spent on more important questions; (3) the forcing of the Department of Labor into an embarrassing position due to the fact that said Department requires that notice be given before a strike or lockout is staged, a requirement that

cannot be enforced due to direct recourse of the parties to the Court of Industrial Relations after a strike or lockout has already commenced.

(f) Prohibition of strikes by the Court of Industrial Relations only when public interest so requires after due hearing on said question, in each individual dispute.

(g) Provision for the taking of secret ballots among employees by the Court of Industrial Relations with reference to their willingness to continue with strikes that do not directly involve the public interest.

5. The fact that establishment of the Court of Industrial Relations may not have succeeded in appreciably reducing the number of strikes is of secondary consequence, as the stated and actual objective in the setting up of said tribunal was and is, primarily, the promotion of the social justice program of the government which is gradually being achieved.

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