

# FORESTALLING STRIKES

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"x x x Our Constitution was adopted in the midst of surging unrest and dissatisfaction resulting from economic and social distress which was threatening the stability of governments the world over. Alive to the social and economic forces at work, the framers of our Constitution boldly met the problems and difficulties which faced them and endeavored to crystallize, with more or less fidelity, the political, social and economic propositions of their age, and this they did, with the consciousness that the political and philosophical aphorism of their generation will, in the language of a great jurist, 'be doubted by the next and perhaps entirely disregarded by the third.' (Chief Justice Winslow in *Gorgnis v. Falk Co.*, 147 Wis., 327; 133 N. W. 209.) Embodying the spirit of the present epoch, general provisions were inserted in the Constitution which are intended to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as the *justitia communis* advocated by Grotius and Leibnits many years ago to be secured through the counter-balancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*. 'The promotion of social justice to insure the well-being and economic security of all the people' was thus inserted as a vital principle in our Constitution. (Sec. 5, Art. II, Constitution). And in order that this declaration of principle may not just be an empty medley of words, the Constitution in various sections thereof has provided the means towards its realization. For instance, section 6 of Article XIII declares that the State 'shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture'." <sup>1</sup>

"The same section also states that 'the State may provide for compulsory arbitration'." <sup>2</sup>

And the State did provide for compulsory arbitration by the

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<sup>1</sup> *Antamok Goldfields Mining Company v. Court of Industrial Relations and National Labor Union, Inc.*, 40 O.G. (8 Supp) 173, 189-191.

<sup>2</sup> *Id.*

creation of the Court of Industrial Relations<sup>3</sup>, which shall take cognizance for purposes of prevention, arbitration, decision and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout, arising from differences as regards wages, shares or compensation, dismissals, lay-offs, or suspensions of employees or laborers, tenants or farm-laborers, hours of labor, or conditions of tenancy or employment, between employers and employees or laborers and between landlords and tenants or farm-laborers, provided the number of employees, laborers or tenants or farm-laborers involved exceeds thirty, and such industrial or agricultural dispute is submitted to the court by the Secretary of Labor, or by any or both of the parties in the controversy.<sup>4</sup>

This power conferred on the Court of Industrial Relations to resolve and decide agricultural and industrial disputes is judicial in nature and not legislative. The procedure for the exercise of such power is neither arbitrary nor capricious. There is a norm of conduct to be followed. The law provides clearly that the procedural rules to be adopted must be inspired by justice and equity and prescribes that the basis of judgment must be the substantial merits of the litigation leaving out of consideration legal technicalities. There is due process.<sup>5</sup>

*The problem.*

For several years, strike-bound companies submitted to or were compelled to submit to the processes of the Court of Industrial Relations. They complied with the judgments promulgated by the latter, judgments which imposed more onerous terms of employment, judgments which impaired their existing contracts of employment but which were legal as products of the proper exercise of the police power of the State. Strikes were ended—but no sooner discovered to have been merely postponed as other strikes followed in the same companies by the same laborers. Companies wondered why they should have been compelled to submit to the processes and judgments of the Court of Industrial Relations in the first place? They began to look at the said court as a vehicle augering instead of forestalling strikes. They began to instruct their lawyers to avoid the Court of Industrial Relations.

For several years also, laborers submitted to or were compelled to submit to the processes of the same court. They looked forward to the settlement of strikes by judgments resolving their disputes.

<sup>3</sup> Commonwealth Act No. 103; *Antamok Goldfields Mining Company v. Court of Industrial Relations and National Labor Union, Inc.*, 40 O.G. (8 Supp) 173, 191-193; *Gosoco v. Court of Industrial Relations et al.*, 39 O.G. 1453.

<sup>4</sup> Commonwealth Act No. 103, sec. 4.

<sup>5</sup> *Antamok Goldfields Mining Company v. Court of Industrial Relations and National Labor Union, Inc.*, supra; Commonwealth Act No. 103, sec. 20.

Judgments were rendered and strikes continued to be declared soon thereafter, strikes so often recurring that they cannot be possibly presumed to be of their liking. They too began to wonder if the Court of Industrial Relations really settle and forestall strikes—strikes which even the most ignorant laborer today realizes to be injurious not only to the enterprise and society but to them. Disagreement, misunderstanding and disputes between labor and management, they know, there will always be. But they wondered if every disagreement, misunderstanding and dispute must be settled by a strike. They began to ask how useful or how useless really is this expensive machinery—once dreamed as the deliberate embodiment of a new social policy, founded on the conception of a society integrated not by independent individuals dealing at arms length, but by interdependent members of a consolidated whole whose interests must be protected against mutual aggression and warfare among and between divers and diverse units which are impelled by counter-vailing and opposite individual and group interests.<sup>6</sup>

Today there has presented itself the problem of the future utility and effectiveness of the Court of Industrial Relations as an adequate instrumentality to forestall strikes.<sup>7</sup> A strike is believed to be a remedy essentially coercive in character and general in its disturbing effects upon the social order and the public interests. Our government is one of laws and not of men. Ours is an orderly system and shall continue to prevail against mob rule. The provision of the Constitution on compulsory arbitration of industrial disputes and all the supplementary legislation enacted in pursuance thereof rest upon the obvious policy of supplying lawful and pacific methods to laborers and employees in the vindication of their legitimate rights and their corresponding avoidance of a resort to strikes.<sup>8</sup> The Court of Industrial Relations can fulfill the mission that was intrusted to it and become what it was conceived and created to be—by the acceptance of the proposition that a strike staged during the effective duration of a judgment of the said court is illegal. If this proposition be accepted, then surely both labor and management will learn to appreciate the processes of the Court of Industrial Relations, submit to them, and achieve a new understanding of each other.

It is respectfully submitted that a strike declared within the effective duration of a judgment of the Court of Industrial Relations is illegal because impliedly prohibited by Commonwealth Act No.

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<sup>6</sup> *Antamok Goldfields Mining Company v. Court of Industrial Relations and National Labor Union, Inc.*, *supra*.

<sup>7</sup> *National Labor Union, Inc. v. Philippine Match Company and Court of Industrial Relations*, S.C.-G.R. No. 47107 June 27, 1940, VIII L. J. 567.

103, because of the use of unlawful means, and because of unlawful object.

### I

A strike declared within the effective duration of a judgment of the Court of Industrial Relations is unlawful because it is impliedly prohibited by section 17 and the other provisions of Commonwealth Act No. 103.

Section 17 of Commonwealth Act No. 103 provides as follows:

**“SEC. 17. Limit of effectiveness of award.** An award, order or decision of the Court shall be valid and effective during the time therein specified. In the absence of such specification, any party or both parties to a controversy may terminate the effectiveness of an award, order or decision after three years have elapsed from the date of said award, order or decision by giving notice to that effect to the Court: **Provided, however,** That at any time during the effectiveness of an award, order or decision, the Court may, on application of an interested party, and after due hearing, alter, modify in whole or in part, or set aside any such award, order or decision, or reopen any question involved therein.”

There is indeed no express prohibition against a strike during the effective duration of a judgment. But it is here insisted that there is an implied prohibition—because necessary to give effect to the legislative intent.

There can be no prejudice against implied prohibitions. Certain express prohibitions exist without known or knowable reason. Other prohibitions are implied because of a known or compelling reason—the necessity to give effect to the legislative intent.

And the compelling reason for an implied prohibition against a strike during the effective duration of a judgment is: that the said court was conceived and created as an adequate instrumentality to forestall strikes. In unmistakable language, the Supreme Court of the Philippines said in the case of *National Labor Union, Inc. v. Philippine Match Company and Court of Industrial Relations*, S.C.-G.R. No. 47107, June 27, 1940, VIII L.J. 567:

“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. 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 No. 103, the creation of the Court of Industrial Relations was aimed to supply an ‘ade-

quate instrumentality to forestall strikes.' The same purpose is no less clearly expressed in section 4 of Commonwealth Act No. 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 office to secure, for both parties, the benefit of 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 this circumstance, 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."

To achieve that purpose of providing an adequate instrumentality to forestall strikes, the legislature created a Court of Industrial Relations with power to promulgate awards, orders or decisions and the legislature made such awards, orders or decisions valid and effective during the time therein specified or, in the absence of such specification, for a period of three years.

How binding and effective a judgment of the court is to be, depends upon the purpose of the State in creating the court which rendered that judgment. A court is only as useful as its judgments are final and binding and effective. If its award, order or judgment is ineffective, ineffective also is the court. If the court is created for a certain purpose, that purpose is to be fulfilled by the effectiveness of its awards, orders or judgments. The Court of Industrial Relations was created as an adequate instrumentality to forestall strikes. Strikes shall therefore be forestalled by the effectiveness of its awards, orders or judgments.

If there be a previous industrial conflict, a strike, and the Court of Industrial Relations considered, investigated, decided and settled that dispute in a judgment, under the law which created the said court, that judgment shall be valid and effective for a period of three years from the date of the promulgation thereof. The State must have conceived an era of industrial peace for at least three years. A period of three years during which no strikes shall occur to impair the enterprise or at least during which no legal strike can be declared—that was the aim of Commonwealth Act No. 103, the reward for a submission to compulsory arbitration and to the processes of the Court of Industrial Relations, and the promise of the State. Nothing less could have been intended because nothing less was the purpose of the State.

During the effective duration of that final judgment, the law considered the possibility of changing conditions which might render the existing conditions of employment contemplated by the judgment to be unsatisfactory. But, during the effective duration of that judgment, the law sought to forestall strikes by providing a pacific means for the modification of the terms of employment contemplated in the judgment. It provided for the modification of the judgment at any time during its effectiveness by the court itself upon application of an interested party and after a hearing thereon.

The implied prohibition against strikes during the effective duration of a judgment is clear, not only from section 17 of Commonwealth Act No. 103 but also from many of its other provisions. Under section 19, laborers may not go on strike during the pendency of an industrial dispute before the Court of Industrial Relations upon an injunction issued by it. After the promulgation of the judgment, may the laborers go on strike? If laborers could have legally gone on strike four and one-half months after the promulgation of a judgment, may not laborers in the future go on strike the very day after the promulgation of the judgment of the court? And if they can, is there any reason why the Court of Industrial Relations should continue to exist?

From a judgment of the Court of Industrial Relations, laborers may file a motion for reconsideration (sec. 1). Why should they—since they can go on strike? From such judgment, laborers may appeal by certiorari to the Supreme Court (sec. 15). Why should they—since they can go on strike? The Court of Industrial Relations is empowered to enforce compulsory arbitration (see title of Com. Act No. 103). Laborers therefore must present their cases in the best possible manner and submit the case for decision for the purposes of settling the dispute, preventing further disputes, and doing justice to the parties.<sup>9</sup> Why should they—since they can go on strike right after a judgment, favorable or adverse?

The Supreme Court shall hear cases arising out of and brought under Commonwealth Act No. 103 in preference to all other cases and decide them as soon as practicable (sec. 16). Management should therefore present its case with the least possible delay. Why should it—when, during the pendency of proceedings, there is an injunction against strikes, but, one day after the termination of such proceedings by the promulgation of a final judgment, the laborers may go on strike? Why should the Supreme Court decide labor cases as soon as practicable—only to usher in a new era of strikes?

The State contemplated an era of industrial peace for both labor and capital. It is the aim of good government to secure that period of three years of industrial peace, a period during which strikes may not impair legitimate enterprise and labor may enjoy a measure of security in tenure. As a reward for a submission to compulsory arbitration and to the processes of the Court of Industrial Relations, the State should secure industrial peace for a period of at least three years. The State therefore created a Court of Industrial Relations. The State gave it the powers and functions of a court of justice.<sup>10</sup> The State gave it the jurisdiction to render judgments.<sup>11</sup> The State made its judgments final and binding for a period of three years.<sup>12</sup> And the State provided a peaceful judicial procedure for obtaining a modification of that judgment at any time during the three years.<sup>13</sup>

Can it really be seriously contended that, during a strike, the judgment is valid and effective?

May the laborers escape the implied prohibition against a strike during the effective duration of a judgment, by presenting to the

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<sup>9</sup> *Northern Luzon Transportation, Inc. v. Court of Industrial Relations, et al.*, 40 O. G. 2075, 2078-9.

<sup>10</sup> *Ang Tibay v. Court of Industrial Relations*, 40 O. G. (7 Supp.) 29, 33-35.

<sup>11</sup> Secs. 1, 4, 13, 14, Commonwealth Act No. 103.

<sup>12</sup> Sec. 17, *id.*

<sup>13</sup> Secs. 17, 18, *id.*

company new demands for modified or additional terms and conditions of employment? With new demands, can the laborers contend that there is a new dispute? It is submitted that the implied prohibition stands to declare illegal a subsequent strike notwithstanding new demands. It is submitted that the finality of the judgment of the Court of Industrial Relations can not be so easily avoided.

First, all terms and conditions of employment necessarily affect the question of wages. On the basis that no such concessions are to be granted to the laborers, the management agreed and submitted to the judgment of the Court of Industrial Relations. If new or added concessions are to be granted by the management, the schedule for wages prevailing and contemplated by the judgment would have to undergo revision. It can be said that all added concessions were necessarily involved in the previous industrial dispute resolved by the judgment. It can be said that a new dispute arising from subsequent demands for added concessions is the same dispute involved and decided by the judgment. The mere addition of other demands can not render legal a strike during the effective duration of a judgment. The policy of the State to forestall strikes can not be so easily defeated. The finality of the judgment of the Court of Industrial Relations cannot be so easily avoided.

Second, the author ventures to say that the law contemplates an absolute ban on strikes during the effective duration of a judgment, whether such strikes be related to, the same as or different from the industrial dispute decided and settled by the judgment. The policy of the State requires such absolute ban against strikes during the effective duration of a judgment. The State conceived and created in the Court of Industrial Relations a truly "adequate instrumentality to forestall strikes" and therefore afforded to labor all the protection that it deserves within the folds of the law and the Court of Industrial Relations.

Society is an evolution of change. Before the age of reason, every change ushered an era of violence. Men fought each other. But, as change was inevitable and desirable because it meant progress—men devised a machinery whereby changes could occur without violence. That machinery is the State and its government and laws—the greatest discovery of man to date.

A late improvement on that machinery is the Court of Industrial Relations—created very frankly to forestall strikes, to render judgment and grant awards in labor disputes to prevent further disputes and do justice to the parties, and to modify such judgment and award should changes in conditions require.

If, however, labor may strike notwithstanding an effective judgment and strike legally—then men should pray against changes in

society for each change means a strike. The Court of Industrial Relations itself would hesitate to grant concessions to labor, no matter how just. For the grant of any one concession in any one company will necessarily prompt other laborers in other companies to demand similar concessions. The result—a new wave of strikes engulfing industry.

But, concessions, if just, should be fearlessly awarded to labor. And there really need be no fear that such concessions will occasion a series of strikes in other companies. There needs only to lay down the rule that a strike during the effective duration of a judgment is impliedly prohibited by law. Having already reaped the rewards from a strike and the intervention of the Court of Industrial Relations, labor must accept its responsibilities to itself, to management, to the government and to the community—by obtaining further redress only by proper petition in court rather than by repeated recourse to strikes.

There will always be differences between management and labor, which after all is simply another human relation. The State may not hope to do away with differences. It may only hope that such differences be adjusted through pacific and peaceful means, rather than through strikes and lockouts. Under a system of compulsory arbitration, the pacific and peaceful adjustment of differences is not only hoped for but enforced.

*Labor unions, the right to strike  
and the regulatory power of the State.*

It might be contended that the right to strike is the right of every man, unless bound by contract to serve for a definite period, to leave at anytime an employment which, for any reason, is distasteful to him.

First, only first-blush validity is possessed by the argument. It is in effect reasoned that a single employee not bound by a term contract of employment may quit his employment without incurring liability, whatever his motives in doing so; that many should be permitted to do in concert what each member of the organization can legally do; that a strike being a concerted quitting of employment, is simply the collective exercise of individual rights. The whole, it is said, is equal to and no greater than the sum of all its parts, and a pattern of illegality should not be spelled out of lawful fragments. Ludwig Teller pointed the fallacy of the reasoning. He said that, "even if it were true that a strike is nothing more than a plural cessation of employment, the argument is made in bland defiance of common law and statutory prohibitions of com-

binations in restraint of trade. The employer's right to a free and open market is the right to a market unrestricted by combination, whether the combination be of producers, consumers, distributors or employees. The assumption has been that legal competition is economic strife carried on by free agents uncombined. We need no longer be reminded, to be sure, that the workability of this assumption has been impaired by individuals and corporations whose size and economic position have made possible monopolistic practices outside the reach of the common law. But we are, or at least profess to be, on the alert for new engines of impairment and destruction of the free economic life which in theory we espouse and in practice we try to protect from depredation."<sup>14</sup>

What one laborer may do, a combination of many laborers may result in restraint of trade—in which case the State may legitimately regulate it—even if the activity of the combination constitutes a strike. So it is that the Court of Industrial Relations has the power to determine the legality of a strike and to regulate the same by enjoining it in appropriate cases.<sup>15</sup>

Second, labor itself takes no such view of a strike as a concerted quitting of employment. On the contrary, labor has argued and the courts have sustained that a strike does not involve renunciation of employment.<sup>16</sup>

As Ludwig Teller said, "the hub of the matter is that a strike is a form of combined action which must be justified by a balancing of social advantages, rather than obscured by such impediments of naivete as spring from the argument that strikes are but legally blameless and presumably fortuitous collective cessation of employment."<sup>17</sup>

Regulation of a strike is feared as an enforcement of involuntary servitude. The Court of Industrial Relations, in declaring a strike illegal as impliedly prohibited by law, does not restrain an employee from quitting his job. Striking employees may still quit their employment. The order is limited against the undue interference with the employer's right to a free market, which in some cases is identified with social and public interest. "Just as courts of equity restrain third party interference with employment contracts, so cease-and-desist orders may be issued in strike cases di-

<sup>14</sup> A Labor Policy for America, pp. 283-294.

<sup>15</sup> *Rex Taxicab Company vs. Court of Industrial Relations et al.*, 40 O. G. (a Supp.) 136, 145-146.

<sup>16</sup> *National Labor Relations Board v. Mackay Radio and Telegraph Company*, 304 U.S. 333; *National Labor Relations Board v. Fransteel Metallurgical Corporation*, 29 Sup. Ct. 490, 83 L. Ed. Adv. Ops. 469, quoted in *National Labor Union, Inc. v. Court of Industrial Relations, et al.*, G. R. No. 46598, October 14, 1939; *Rex Taxi Cab Co. v. Court of Industrial Relations, et al.*, 40 O. G. 9th Sup. pp. 136, 145-146.

<sup>17</sup> A Labor Policy for America, pp. 284-285.

recting labor unions to cease and desist from calling, assisting, persuading, coercing, inciting, or consenting to, the given illegal strike, or doing acts in furtherance of the strikes." <sup>18</sup>

Today, it is universally accepted that there is no such absolute right to strike; that labor unions possess coercive powers and, if unrestrained in their activities, constitute social perils. At one time, it was believed that the liberties of the individual are to be protected against interference and abuses of the State. Today, it is recognized that the same liberties of the individual are subject to abuse by private groups even of his own creation, by labor unions. The State is conceded to possess the power to regulate strikes and other activities of labor unions. To argue against regulation in the form of an implied prohibition of a strike during the effective duration of a judgment of the Court of Industrial Relations on the ground of an alleged absolute right to strike, is to reflect a thought abandoned by current thinking.

As Ludwig Teller says:

"Today we require, rather, a definition of freedom adequately cognizant of the coercive powers possessed by private groups, and of the social perils of unrestrained industrial warfare. The relatively inflexible content of constitutionalism, whether taking the form of the picketing—free speech identification, or the assertion of an absolute right to strike, is inadequate to meet the demands of a dynamic society. The need is not for a regime of constitutional abstractions but for a sociology of law governing free men." <sup>19</sup>

This problem is not to be resolved on the old definition of freedom which considers the right to strike as absolute. Ludwig Teller suggests that a new definition of freedom be adopted adequately cognizant of the coercive powers possessed by labor unions and of the social perils of unrestrained industrial warfare. How many strikes a year can be legally called by labor unions? The resolution of this question will constitute a sociology of law to govern the relations of free men, both of capital and labor.

It is respectfully submitted that the pronouncements of the Supreme Court in previous cases, the policy of the State, the good of both labor and capital, require a judicial interpretation of Commonwealth Act No. 103 which would absolutely ban strikes during the effective duration of a judgment, whether such strikes be related to, the same as or different from the industrial dispute decided and settled by the judgment.

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<sup>18</sup> Ludwig Teller, *A Labor Policy for America*, p. 285.

<sup>19</sup> *A Labor Policy for America*, p. 289.

## II

Even if not impliedly prohibited by law, a strike declared during the effective duration of a judgment is unlawful because of the use of unlawful means, in that—there having been an effective judgment of the Court of Industrial Relations between the same parties, the labor union should have filed an application in the said court for the modification of the same rather than attempt a modification through a strike.

The rule has been stated as follows:

“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 on. 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 improper means, and a strike for an unlawful purpose may not be carried on by means that otherwise would be legal.”<sup>20</sup>

If there be a legitimate trade dispute between the management and the labor union, arising from the demands of the latter for a modification of the terms of employment contemplated in the judgment, the remedy prescribed by section 17 of Commonwealth Act No. 103 is for the labor union to file an application in the Court of Industrial Relations for the modification in whole or in part or the setting aside of the judgment. That remedy was prescribed by Commonwealth Act No. 103 for one singular purpose—to provide a pacific remedy and thereby avoid an injurious strike. *When the laborers resort to a strike instead of filing an application to the court as prescribed by law, they choose a remedy peculiarly their own and outside of the statute and, as such, the strikers must accept all the risks attendant upon their choice.*

Paraphrasing the Supreme Court in the case of National Labor Union v. Philippine Match Company and Court of Industrial Relations, G. R. No. 47107, June 27, 1940, VIII L. J. 567:

“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

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<sup>20</sup> *Rex Taxicab Company v. Court of Industrial Relations and Philippine Taxi Drivers' Union*, G.R. No. 47303, November 25, 1940, IX L. J. 44.

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 office to secure, for both parties, the benefit of 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 hands 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 this circumstance, 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 there-to."

In the *above-cited case*, the strike of the laborers was declared unjustified because the petition of the laborers for the dismissal of the foreman has been accorded the attention it merited, and the company has even sought the reopening of the case in the fiscal's office to secure, for both parties, the benefit of an impartial investigation, but that, before the outcome of the investigation had been announced, and without previously having resorted to any of the pacific means provided by law, the laborers went on strike. In the problem here presented, because there is a previous strike and a previous judgment of the Court of Industrial Relations between the same parties, the *mere refusal* of the management to accede to new demands of the laborers and the reliance by the management instead on the valid and effective judgment can not justify the laborers going on strike and can not justify their failing to resort to the specific means expressly and specifically provided by law, i.e., the filing of a motion for modification of the judgment in pursuance of section 17 of Commonwealth Act No. 103. *Is it unreasonable for the management to rely on the judgment of the court, which is valid and effective for a period of three years according to law? Is it unreasonable for the management to believe that the said judgment, then in force and effective, represented still the fair and just terms and conditions for employment?*

The management having suffered a previous costly strike of the same laborers, having submitted to the compulsory processes of the Court of Industrial Relations, having obeyed its judgment—is it fair and reasonable for the laborers to ignore the pacific means provided by law and disrupt the business of the company anew by another strike? What possible justification can there be in a resort to a strike—in the face of a valid and effective judgment of the Court of Industrial Relations and the availability of a pacific and adequate remedy provided by law, i.e., the filing of a motion for modification of the judgment in the Court of Industrial Relations? Through a previous strike and the consequent judgment, laborers obtained let us say increase in wages. If they desire another increase, they should file a motion to modify the judgment pursuant to the remedy prescribed by law. Why should they go on strike?

The State shall *afford protection to labor* (Constitution, Art. II, Sec. 5). *He who deserves protection acts within the law.* No unlawful act is covered by the protection, even if such act be of labor. The Court of Industrial Relations was not created to foster unlawful acts. It was created to forestall strikes. It was not created to shield wrongdoers or to condone wrongdoing. It is not only to settle a dispute for the sake of settling, irrespective of right or wrong. *It does not prevent further dispute by sanctioning unlawfulness and disregard of its valid and effective judgments.* It was created as a court of justice to do justice to the parties.<sup>21</sup> It need not fear capital. It need not fear labor. It should cater to neither—or it will discover that it will earn contempt, rather than respect, and will encourage rather than discourage a regime of disturbance, disorder and coercion. And the Court of Industrial Relations will then realize that it had rendered nugatory the policy of the State,—that policy which prompted the creation of said court in the first place, that policy of forestalling and discouraging strikes, which are remedies essentially coercive in character and general in their disturbing effects upon the social order and the public interests, by supplying lawful and pacific methods to laborers and employees in the vindication of their legitimate rights—not methods which laborers and employees may or may not resort to, depending upon their whims and caprices, but methods of compulsory arbitration. The era of lawless and irresponsible labor unions and managements has passed in favor of an era, in which labor unions and managements have come to be responsible to their members, to each other, to the government and to the nation.

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<sup>21</sup> Northern Luzon Transportation Inc. vs. Court of Industrial Relations, 40 O. G. 2075, 2078-9.

## III

Even if not impliedly prohibited, a strike declared during the effective duration of a judgment is unlawful because of unlawful object, in that the new demands for new terms of employment must be presumed unjust—the presumption arising from the existence of an effective judgment of the Court of Industrial Relations between the parties.

The legality or illegality of a strike depends, among others, upon the purpose for which it is maintained.<sup>22</sup>

Even if it were considered that a strike during the effective duration of a judgment is not prohibited by Commonwealth Act No. 103 and is not unlawful because of the use of unlawful means (as previously contended), the fact of an effective judgment at the very least creates a presumption that demands for terms of employment different from those set forth in the judgment are unjust. All the terms of employment are determined by the judgment. If a particular term or condition is not granted in a judgment, the omission to grant such concession is not unreasonable. The demand for an additional concession necessarily affects the rate or schedule of wages fixed in the judgment. To grant a concession would require a revision of the judgment, which, during the effective duration thereof, must be presumed legal and reasonable. Any attempt for revision must be presumed unjust during the effectiveness of the judgment. The burden of proof would clearly lie on the party who seeks the revision.

To file a petition in the Court of Industrial Relations for a modification of the judgment after due hearing, is but fair and is provided by law.<sup>23</sup> To go on strike to obtain such modification, is contrary to the provisions of the law and the strike must be presumed as declared for an unjust object.

*In resume*, the fact of a valid and effective judgment of the Court of Industrial Relations renders a strike staged during the effective duration thereof as illegal—because of any of the following reasons:

(1) because impliedly prohibited by section 17 of Commonwealth Act No. 103, which prescribes for an effective duration of three years for the judgment of the Court of Industrial Relations;

(2) because of the use of unlawful means, in that—there having been an effective judgment—the laborers should have

<sup>22</sup> *Rex Taxicab Company v. Court of Industrial Relations and Philippine Taxi Drivers' Union*, SC-G.R. No. 47303, November 25, 1940, IX L. J. 44; 31 Am. Jur. 931 and cases therein cited.

<sup>23</sup> Sec. 17, Commonwealth Act No. 103.

filed an application in the Court for the modification of the said judgment rather than attempt a modification through a strike;

(3) because of unlawful object, in that the new demands of the laborers must be presumed unjust during the effective duration of a judgment—if any validity is to be attached to the latter judgment.

*Consequences of  
unlawful strike*

The first consequence of an unlawful strike is the denial of any and all demands of the laborers. There would be no point to the grant of jurisdiction to the Court of Industrial Relations to determine the legality of a strike, if, notwithstanding a finding of illegality, the striking and erring laborers achieve their demands or some of them. There would be no point to the exercise by the Court of Industrial Relations heretofore of its power to determine the legality of a strike, if, notwithstanding a finding of illegality, the court should proceed to consider and grant the demands or any of them to the striking and erring laborers.

In *Rex Taxicab Company v. Court of Industrial Relations and Philippine Taxicab Drivers Union*, G. R. No. 47303, November 25, 1940, IX L. J. 44, the Supreme Court laid down the rule on the legality of strikes. It said that, "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 on" and it proceeded to state that "the fact that the combination is for a lawful purpose does not render it (the strike) less unlawful where the end is to be attained by the employment of improper means, and that a strike for an unlawful purpose may not be carried by means that otherwise would be legal." Both the purpose and the means employed must be legal. If the means employed are illegal, the strike is illegal even if the purpose for which it is maintained is legal. Upon proof of the illegality of the means employed, the legality or illegality of the purpose becomes immaterial. If the strike is unlawful because prohibited or because of unlawfulness of the means, it matters not whether the purpose for which it is maintained is legal. It must perforce follow that, if the strike is unlawful, not one of the legal purposes for which it is maintained can be upheld—not one of the demands for which the strike was declared can be considered and granted. To adopt a contrary rule is to reject the rule laid down on the legality and illegality of a strike.

No one profits from an infraction of the law, such as an unlawful strike. It is true that the Court of Industrial Relations

was created to afford protection to labor. But the Court of Industrial Relations was most certainly not created to afford protection for unlawful acts, for unlawful strikes and to infractors of the law. It is true that the Court of Industrial Relations was created to decide and settle all questions, matters, controversies, or disputes arising between and/or affecting employers and employees or laborers. But it settles labor disputes not only for the sake of settling. It settles a dispute to prevent further disputes and do justice to the parties.<sup>24</sup>

The second consequence of an unlawful strike is the termination of employment of the striking laborers. Can it be contended that, whether the strike be legal or illegal, the relation of employer and employee is not terminated?

First, this contention contradicts and runs counter to the ruling of the Supreme Court in *National Labor Union v. Philippine Match Company* and Court of Industrial Relations, G. R. No. 47107, June 27, 1940, VIII L. J. 567:

"x x x 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 this 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."

Second, this contention impugns the basic policy underlying the creation of the Court of Industrial Relations. The Court of Industrial Relations was created so that unlawful strikes may not impair legitimate enterprise. It was not created to assure laborers of benefits even for their unlawful conduct. It was not created to afford security to erring laborers and erring unions. As long as the court is conferred the power to determine the legality of strikes, one of the consequences of an unlawful strike is the discharge of erring laborers.

Third, this contention ushers in an era of labor and labor union irresponsibility. The time has come (it should have come much earlier) for labor unions to be responsible to their members, to man-

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<sup>24</sup> *Northern Luzon Transportation Inc. v. Court of Industrial Relations*, 40 O.G. 2075, 2078-2079.

agement, to the government and to the country. On June 27, 1940, the Supreme Court had occasion to announce to both labor and capital—that, “because a strike is a remedy essentially coercive in character and general in its disturbing effects upon the social order and the public interests,” the law grants all the means by which a resort thereto may be avoided and all those means were provided for in the created Court of Industrial Relations. On that date, the Supreme Court ruled the cessation from their employment of the striking laborers as a result of their unjustified strike.<sup>25</sup> The course has been laid. The course is towards the establishment of an orderly system in society, where mob rule, coercion, intimidation and violence inherent in the strike may not prevail. The Court of Industrial Relations may not follow another.

The third consequence of an unlawful strike is civil liability for damages caused by the same.

The liability for damages for an unlawful strike is unquestioned. “A labor union ordering or instigating an unlawful strike is responsible for damages occasioned thereby.”<sup>26</sup> “A union calling a sympathetic strike is liable in damages for the injuries inflicted thereby.”<sup>27</sup>

The liability being clear in law, the only question that precludes or hinders recovery is that of jurisdiction of the Court of Industrial Relations to award such liability for damages. Has the Court of Industrial Relations jurisdiction because no such power is expressly conferred in section 4 of Commonwealth Act No. 103?

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<sup>25</sup> *National Labor Union v. Philippine Match Company and Court of Industrial Relations*, *supra*.

<sup>26</sup> 31 Am. Jur. 982 citing *Wyeman v. Deady*, 79 Conn. 414, 65 A. 129, 118 Am. St. Rep. 152, 8 Ann. Cas. 375; *Bricklayers' M & P. International Union v. Seymour Ruff & Sons*, 160 Md. 483, 154 A. 52, 83 A.L.R. 448; *W. A. Snow Iron Works v. Chadwick*, 227 Mass. 382, 116 N.E. 801, L.R.A. 1917 F. 755; *De Minico v. Craig*, 207 Mass. 593, 94 N.E. 317, 42 L.R.A. (N.S.) 1048; *Carew v. Rutherford*, 106 Mass. 1, 8 Am. Rep. 287; *Mapstrick v. Ramage*, 9 Neb. 390, 2 N.W. 739, 31 Am. Rep. 415; *Erdman v. Mitchell*, 207 Pa. 79, 56 A. 327, 63 L.R.A. 534, 99 Am. St. Rep. 783; *Giblan v. National Amalgamated Laborers' Union* (1903) 2 K.B. (Eng.) 600, 1 B.R.C. 528—C.A.; Anno: 5 B.R.C. 476; 10 B.R.C. 876.

<sup>27</sup> *Bricklayers', M. & P. International Union v. Seymour Ruff & Sons*, 160 Md. 483, 154 A. 52, A.L.R. 448; *Pacific Typesetting Co. v. International Typographical Union*, 125 Wash. 273, 216 P. 358, 32 A.L.R. 767.

First, section 4 of Commonwealth Act No. 103 nowhere provides that the Court of Industrial Relations shall have the power to determine the legality of strikes. And yet the court unquestionably has that power. The obvious reason is that that power is necessarily implied.

Second, as long as the Court of Industrial Relations has jurisdiction to determine the legality of strikes, it has necessarily the jurisdiction to award civil liability for damages by reason of an unlawful strike.

Third, the Court of Industrial Relations has general jurisdiction with respect to labor disputes. It has jurisdiction to consider, investigate, *decide* and settle *all questions, matters, controversies, or disputes* arising between and/or *affecting* employer and employees or laborers (Commonwealth Act No. 103, section 1). It shall take cognizance for purposes of prevention, arbitration, *decision* and settlement of any industrial or agricultural dispute causing or likely to cause a *strike* or lockout.<sup>28</sup> Civil liability for damages arising from an unlawful strike is a matter or question arising between and/or affecting employer and employees or laborers. Such civil liability depends upon the legality of a strike, over which latter question the Court of Industrial Relations has power to decide.

Fourth, if the Court of Industrial Relations may determine the legality of a strike but may not award damages for an unlawful strike, there would be splitting of a cause of action and multiplicity of suits—which all rules of procedure shun. Evidence would be presented on the legality of a strike before the Court of Industrial Relations. The contrary rule will compel the introduction of the same evidence a second time before the Court of First Instance. A possible absurdity may then occur: the Court of Industrial Relations may declare a strike unlawful and the Court of First Instance may declare the same strike lawful, or vice versa. And, worse, either court will delay its proceedings to await the judgment of the other and thereby hope to avoid an embarrassing conflict and contradiction.

It is submitted that the jurisdiction of the Court of Industrial Relations is limited to labor disputes, but, with respect to labor disputes, its jurisdiction is general and complete.

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<sup>28</sup> Commonwealth Act No. 103, section 4.

Consequences there must be to an unlawful strike, and consequences sufficient to forestall unlawful strikes. A bare declaration of the illegality of a strike is meaningless. The Court of Industrial Relations is still conceived to be "an adequate instrumentality to forestall strikes."

To those who may dispute this thesis for a Court of Industrial Relations truly adequate, sufficient and effective to forestall recurrent strikes and to secure industrial peace notwithstanding inevitable disputes, it is asked if they in fact do not believe in compulsory arbitration. And if they do not believe in compulsory arbitration, they are reminded that the Philippine Constitution states that "the State may provide for compulsory arbitration" and the State did so provide.