NOTES AND COMMENTS

Do Sections 47, Second Paragraph, and 184(b) of the Insurance Act, as Amended by Republic Act 171 Extend to Disability Benefit Contracts Sometimes Attached to Life Insurance Policies?

The second paragraph of section 47 of the Insurance Act as amended by Republic Act 171 provides that "after a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of two years, the insurer cannot prove that the policy is void *ab initio* or rescindable by reason of fraudulent concealment or misrepresentations of the insured or his agent."

Section 184(b) of the same Act as amended by Republic Act No. 171 provides that "in case of life or endowment Insurance, the policy to be issued shall contain the following provisions:

"(b) A provision that the policy shall be incontestable after it shall have been in force during the lifetime of the insured for a period of two years from its date of issue except for nonpayment of premiums and for violation of the conditions of the policy relating to military or naval service in time of war."

The question arises as to whether the incontestable clause above quoted should be made applicable to disability benefits provided for in conjunction with life insurance by means of a supplementary contract attached to the basic policy. It is generally admitted that the disability benefits should not be held subject to the provision of the incontestability clause for the reason that the clause in the life contract is predicated upon the presumption that the deceased policy holder would not be present to defend his position if his policy were contested following his death. The situation is not the same when the insured himself during his life makes a claim for disability.

A Tennessee statute similar to that cited above was interpreted by the Tennessee Supreme Court that "Life insurance includes all policies of insurance in which payment of insurance is contingent upon loss of life. Insurance against disability includes policies only in which payment of insurance money terminates with loss of life.[1]

[1] Smith vs. Equible Life Asur. Soc. (1936) 169 Ten. 447.

There is eminent authority that a statute of this kind does not relate to accident insurance.[2] Health Insurance which does not provide indemnity in case of death from sickness is not life insurance and does not become so merely because it is provided for in a combined health and accident policy of the type under consideration. A strict construction of the statute will disclose that it does not apply to any other than a life policy, in no place referring to a disability, health, or other form of insurance.[3] State statute providing for incontestability of life policy after receipt of premiums for a space of two years does not render policy incontestable as to disability features because of receipt of premiums for two years.[4] Incontestability clause in life policy is inapplicable to supplementary disability agreement which specifically provide that no other provision of said policy shall be deemed to apply to this agreement.[5]

However, in a similar case decided in the State of California, the State Supreme Court held the opposite view which prompted the legislature of that state to expressly exclude disability benefits from the operation of the California incontestable clause. Hence, to our courts in a proper case is left the decision whether or not such supplementary contracts are subject to the provision of Sec. 184(b) of the Insurance Law.

There is a long line of decisions in support of the view that a statute which provides for an incontestable clause in a life endowment policy does not preclude the insurance companies from expressly exempting disability benefits from the effects of the clause. Insurance policy provisions which in general terms except disability benefit provisions of the contract from the operation of the incontestable clauses therein have in most of the recent decisions, been held to remove such benefit provisions from the operation of the incontestable clause provided for by the statute.[6]

A provision of a policy that it should be incontestable after it had been in force during the lifetime of the insured for two years from the date of its issue except for non-payment of premiums, and except as to provisions and conditions relating to benefits in the event of total and permanent disability, does not prevent the main-

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2 Bauman vs. Preferred Accident Ins. Co., 225 N. Y. 48.

3 Love vs. Predential Ins. Co., 176 S. E. 338.

4 New York Life Ins. Co. vs. Truesdale vs. New York Life Ins. Co. 79 F. 9d (486).
Penn. Mutual Life Ins. Co. vs. Lindquist (1936) 226 N. W. 600.

5 Penn. Mutual Life Ins. Co.vs. Lindquist (1936) 226 .N. W. 600.

6 "No reason appears to doubt the power of the insurer to except from the ordinary Incontestability Clause of all policy provisions relating to Disability Benefits." New York Life Ins. Co. vs. Bonasco, W. Va. 2 S. E. (2d) 260 Equitable Life Assurer. Soc. vs. Deen (1937), 91 F (2d) 569.

tenance of a suit by an insurance company to cancel total and permanent disability provisions therein upon the ground that insured on his application for insurance had made materially false and fraudulent answers to questions asked by the insurance medical examiner.[7]

In those cases where it had been held that the incontestable clause also applied to supplementary contracts, the insurance companies were denied the right to contest the validity of the contract of insurance because the insurer failed to insert an exempting clause, or if there was an exempting clause, the same was ambiguous.

The rule is settled that in case of ambiguity that construction of the policy will be adopted which is most favorable to the insured.[8] The language employed is that of the company and it is consistent with both justice and reason that any fair doubt as to the meaning of its own words should be resolved against it.[9]

Where a life policy contained a supplemental agreement for disability benefits, but did not except such provisions from the incontestable clause it was assumed that such clause applied to the provisions for disability benefits, but the plaintiff was allowed to prove that the cause of the insured's disability was a risk covered by the policy.[10] Where a disability benefit agreement was issued as a part of a life insurance policy, and on a single application, the incontestable clause in the policy applied with equal force and effect to both the life and disability provisions, so that the insurer was precluded from raising the question of fraud when sued for disability benefits after the incontestable period had expired.[11]

Chapter V of our Insurance Law under which falls Sec. 184(b), was taken largely from the law of New York. Accordingly, we should follow in fundamental points at least, the construction placed by New York Courts on a New York Law. The New York Courts have consistently held that an insurance company is not barred by

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[7] Ness vs. Mutual Life Ins. Co. (1934) 70F (2d) 59. Stroehmann vs. Mutual Life Ins. Co., 300 U. S. 435.

"No intent is shown to except disability benefits from an incontestable clause of a life insurance policy where the clause merely provides that "except for the restrictions and provisions applying to the double indemnity and disability benefits" the policy shall be incontestable after one year from each date of issue."

[8] Mutual Life Ins. Co. vs. Hurni Packing Co., 263 U. S. 167.

[9] Royal Ins. Co. vs. Martin, 192 U. S. 149.

[10] John Hancock Mut. L. Ins. Co. U. Hicks (1931) 43 Ohio App. 242, 183 N. E. 93.

[11] Young vs. Home L. Ins. Co. (1934) W. Va. 173.

incontestability-clause from rescinding the double indemnity and stability provisions.[12]

An "executive construction of the statute by the insurance commissioner would be proper and leave to the court in a proper case, to decide whether or not such supplementary contracts are subject to the provisions of Sec. 184(b). For even in those states whose courts have made the incontestability clause in a life and endowment policy apply to disability benefits as well, it is held that the insurers, may, by express provision in their policy, exempt supplementary contracts regarding disability and accidental benefits from the scope of said clause.

[12] Steinberge vs. New York Life Insurance Co. 263 N. Y. 45; Manhattan Life Insurance Co. vs. Sechwartz, 274 N. Y. 374; Equitable Life Assurance Society vs. Rushman, 276 N. Y. 178; Mutual Life Insurance Co. vs. Union Trent Co., 244 App. Did 764.

—Rizalina S. Bonifacio

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Reason is the life of the law; nay, the common law itself is nothing else but reason. The law which is perfection of reason.

—SIR EDWARD COKE

On the Legality of Strikes Against the Government Proper

"Have the laborers in the service of a government office or agency lost their fundamental right to air grievances before the competent authorities?

"Are the laborers of an office or agency of government to be discriminated against and deprived of the essential rights recognized by the Constitution and the laws in laborers working in the service of private persons or companies?

"Have such laborers, because they are serving an official agency, lost their human personality, to become voiceless serfs or slaves or simple beasts of burden?"

—PERFECTO.

The years following the end of the last World War have brought about many changes in the lives of the Filipino people. New concepts and ideals have arisen, and old ones have acquired new meanings. The guaranties of our Bill of Rights have been broadened in scope to meet the ever-widening sphere of activity and interests of man. In the face of these, one is, therefore, taken aback when the Supreme Court issues a dictum that no remedy can be granted to laborers because they are employed in the service of a government agency, which can not be sued. Such was the decision in the case of Metran v. Paredes et al. (reported in the Lawyer's Journal, Vol. XIII, No. 3, March 31, 1948).

This case dealt with a petition filed before the Court of Industrial Relations in the case entitled "National Labor Union, versus Metropolitan Transportation Service (Metran)", wherein petitioner prayed that its nine demands set forth in said petition be granted. Petitioner alleged that it was a legitimate labor organization, thirty of whose affiliated members were working and under the employ of the respondent; and that the respondent is a semi-governmental transportation entity popularly known as "Metran". Respondent made an oral petition for dismissal of the case "on the ground that the respondent belongs to the Republic of the Philippines and as such, it cannot be sued". The Court of Industrial Relations denied the motion to dismiss, and likewise denied a motion for reconsideration, after which this case was brought to the Supreme Court on appeal.

The Supreme Court, speaking through Justice Hilado, upheld the contention of the herein petitioner and ruled that since it appeared that the Metran was not a corporation nor any of the juridical entities enumerated in Article 35 of the Civil Code, it could not be sued in the Court of Industrial Relations. Moreover, Justice Hilado said, the Metran was an office created by Executive Order No. 59 and operated under the direct supervision and control of the Department of Public Works and Communications. "The said office not being a juridical person, any suit, action or proceeding against it, if it were to produce any effect, would in practice be a suit, action or proceeding against the Government itself, of which the said Metran is a mere office or agency. Any award, order or decision granting any of the Union's demands, if attempted to be executed, would necessarily operate against the government which is really the entity rendering the services and performing the activities in question thru its office or agency called Metran." No consent of the government to suit having been shown, therefore, the Metran could not be sued, since it is a well-settled rule that the government can not be sued without its consent (Merritt v. Government of the Philippine Islands, 34 Phil. 311).

To this decision, Justice Perfecto voiced a vigorous dissent. He refused to nullify the rights of these laborers upon the proposition that an agency of the government is equivalent to the government itself, and, therefore, is immune from suit. He refused to support what he believed to be "a dissolvent and destructive political philosophy." Questioning the motives of the Metran in denying the power of the Court of Industrial Relations to hear and decide the labor dispute between itself and its employees, he said: "Instead of the orderly settlement of the dispute by the Court of Industrial Relations, does it want to drive its laborers into declaring a strike, into resorting to picketting, or into taking violent and desperate measures, whatever hopelessness may suggest to persons struggling for personal dignity, for fundamental rights, for the opportunity of enjoying a decent living?" To the reasoning of the majority of the Supreme Court, he replied: "While the people, as the sovereign, and the state representing that sovereignty, or the government as a whole, representing the supreme authority of the state, cannot be sued in any court, no individual officer of government and no single office or agency of the government can claim such exemption. No official or agency of the government is above the law and everybody who is under the law is amenable to be sued in court."

What Is A Strike?

A "strike" has been defined as "the concerted refusal by workers to continue working as a method of persuading or coercing the employer to comply with their demands" (1 Teller Labor Disputes and Collective Bargaining, pp. 236-237; cited in Carlos and Fernando, Labor, Industrial and Tenancy Laws, p. 24). It is a weapon through the use of which the workers can with reasonable certainty expect compliance with their demands. It is a potent weapon; but it is an expensive one, and for this reason, the strike is generally labor's last resort.

When workers go on a strike, they do not abandon their employment. The relationship of employer and employee is not terminated by the strike, for although the striking workers have ceased from their labor, they are ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree (Iron Molders Union v. Allis Chalmers, 166 F 45, 91 CCA 631, 20 LRA (NS) 315 (CCA 7, 1908); Keith Theatre v. Vachon, 134 Me. 392, 187 A 692 (1936).

When Is It Valid?

Because they distrub the industrial peace, strikes are not encouraged by the government. However, realizing the necessity of employing them in certain instances, the courts have laid down a rule whereby strikes are tested and their legality or illegality decided upon. In the case of Rex Taxicab Company v. Court of Industrial Relations (40 O.G., 9th Sup., p. 136), the Supreme Court stated that "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." Provided that the strike conforms with these two conditions, i.e., that its purpose be legal, and that lawful means be employed in carrying it on, the right of labor to strike cannot be denied.

Status of the Right to Strike in the Philippines

Included within the constitutional guaranties of free speech and free press and the right peaceably to assemble and petition for redress of grievances is the right to strike. Whenever the right to form associations is recognized, the right to employ all lawful means

to accomplish the purposes of such associations is impliedly recognized with it. Thus, when the law grants to laborers the right to organize themselves into labor unions and other such associations, it also grants to them the right to strike as a lawful and effective means of achieving their goal—the betterment of labor conditions.

Section 4 of Commonwealth Act No. 103, (as amended by Commonwealth Acts Nos. 254 and 559) in enumerating the powers and duties of the Court of Industrial Relations, recognizes the right to strike when it provides that "the Court shall take cognizance for purposes of prevention, arbitration, decision, and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout between employers and employees or laborers and between landlords and tenants or farm-laborers provided that 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."

Although the Supreme Court, speaking through Justice Moran (now Chief Justice), has said that "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" (National Labor Union v. Philippine Match Factory, 40 O.G., 8th Sup., p. 134), in the light of present conditions, such a view cannot be considered as a correct statement of the status of the right to strike in the Philippines. The growing tendency to enlarge the scope of individual rights as opposed to the powers of the State cannot be made to stop short of the right of laborers to carry out their purposes by means of a strike. To support such a proposition would be to open the way to tyranny and oppression—tyranny by the few who happen to possess money and influence resulting in the oppression of the far greater number who must labor for their daily bread by the sweat of their brow.

The Government as an Employer

The Philippine Government performs numerous and varied functions in the discharge of each of which an efficient working staff is required. Distributed among the eleven Departments and circa sixty government offices and agencies is a large number of employees and laborers. Outside of these, there are thirty-three government enterprises with their own staffs of workers.

The salaries of these employees and laborers range from ₱600 to ₱6,000 annually,[1] with the majority receiving about ₱1,000 per year. On the basis of this last amount, the ordinary government employee receives less than ₱90 monthly or about ₱3 per day. Considering the conditions obtaining at the present time, it is indisputable that ₱3 per day is sadly insufficient to provide the employee with the necessities required to maintain a semblance of a respectable standard of living. And in many cases, these low-salaried employees have large families depending entirely on their small incomes. Such a situation forces the employee to resort to other means in order to cover up the deficiency, either outside the government service or unofficially within it.

More and more the government is going into business. In such enterprises as the Cebu Portland Cement Company, the Insular Sugar Refining Corporation, the Manila Railroad Company, the Metropolitan Water District, the Nacoco, the NDC, the RFC, and the Surplus Property Commission are employed numerous workers. On various occasions when they have been called upon to settle controversies between these government entities and their laborers, the courts have upheld the right of the latter to strike in order to obtain compliance with their demands—the Metran case being a unique exception. However, a distinction is made between strikes against these government-owned or controlled corporations and strikes against the government proper.

Associations of Government Employees

So far, there exist only two associations of government employees in the Philippines—that Philippine Government Employees' Association, otherwise known as the PGEA, and the National Teachers' Association.

The PGEA is an association composed mostly of civil service eligibles. It has a membership of about 15,000 in 200 chapters distributed all over the Islands. Seventy-eight of these chapters are located in Manila, counting about 10,000 members. Dedicated to the tasks of promoting the welfare of government employees and of cooperating with the Government in the maintenance of a high standard of efficiency in the public service, the PGEA has done the public in general, and the government employees in particular, considerable service since its organization in 1945. Not the least among its accomplishments are the creation of the Council of Personnel Administration (CPA) to take care of recommendations for pro-

[1] From the Annual Budget of the Philippines for 1949.

motion of government employees, and the providing of housing facilities for low-salaried employees. Under the direction of its able leaders, the PGEA is today an influential and respected association.

The National Teachers' Association, however, has a more restricted field, confining itself to that body of men and women upon whom is laid the charge of molding the characters of the youth into those of loyal and civic-spirited citizens.

Effect of Strikes Against the Government

The main objection to a strike against an agency of the government is the resultant inconvenience to the public. The government and its various agencies function primarily for the convenience of the public. Necessarily, a strike by the employees of the government or any of its agencies would result in the cessation of service rendered to the public. "Public offices are created chiefly and primarily for the purpose of effecting the ends of government, 'which are the common good, and not the profit, honor, or private interest of any one man, family, or class of men'." (Brown v. Russell, 166 Mass. 14; Att. Gen. v. Jochim, 58 NW 611; cited in Sinco, Philippine Government and Political Law, p. 559). However, this cannot be made the basis for outlawing strikes against the Government.

The United States Circuit Court of Appeals in the case of Arthur v. Oakes [(CCA 7th) 63 F 310, 25 LRA 414] ruled that the employees "having taken service under a general contract of employment which did not limit the exercise of the right to quit the service, their peaceable co-operation, as a result of friendly argument, persuasion, or conference among themselves, in asserting the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal or criminal, although they may have so acted in the firm belief and expectation that a simultaneous quitting without notice would temporarily inconvenience the public. If in good faith and peaceably they exercise their right of quitting the service, intending thereby only to better their condition by securing such wages as they deem just, but not to injure or interfere with the free action of others, they cannot be legally charged with any loss to the property resulting from their cessation of work." This case stands for the proposition that in the absence of legislation to the contrary, the right to cease work in a body for a lawful purpose of those engaged in the service of a quasi-public corporation cannot be interfered with by a court of equity.

As Affected by Article 238 of the Revised Penal Code

Title Seven of Act No. 3815, known as the Revised Penal Code, refers to crimes committed by public officers. Article 203 defines who are public officers thus:

> "Art. 203. Who are public officers.—For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer."

Under this Title, Article 238 provides that: "Any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service shall suffer the penalty of *arresto mayor*." A higher penalty is imposed if such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting or punishing the crimes against national security and the law of nations, such as treason and espionage, or those against public order—rebellion, sedition and disloyalty.

However, a valid strike, although directed against the government, does not violate this provision. The striking employee does not abandon his office. He has no intention of doing so. He does not relinquish the right to such office acquired by means of an election or appointment. He makes no tender of resignation. He merely stops working for the time being.

In testimony of the exclusion of strikes from this penal provision, a bill was presented to Congress in 1947 sponsored by Congressmen Villareal and Eco entitled, "AN ACT TO PROHIBIT STRIKES BY GOVERNMENT OFFICERS, EMPLOYEES AND LABORERS, BY AMENDING THE REVISED PENAL CODE." (House Bill No. 827). The bill was intended to penalize strikes by officers, employees, or laborers of the National Government, including those of Government-owned or controlled corporations, or of any provincial, city, municipal, or municipal district government. It was never passed by Congress, and it is doubtful, if it had been enacted into law, whether the courts would have upheld it. Such a statute could have been effectively attacked on the ground of undue deprivation of liberty and thus secure its pronouncement as unconstitutional.

As Affected by the Police Power

The most forceful weapon of the State is its police power. The sphere within which it operates is practically illimitable. It may, in the interest of the public, interfere with personal liberty, with private property, with business and occupations; and it may be made to stop only when it clashes with the prohibitions of the Constitution, excluding the impairment clause (Malcolm, Philippine Constitutional Law, pp. 346-347; 6 RCL 198). Congress may easily say that public interest requires that strikes against the Government be outlawed, and through the exercise of the police power may as easily proceed to so outlaw it.

But the measure of public interest should not merely be the number of persons affected favorably at the time by such action on the one hand, and unfavorably on the other, but also the extents of the different effects and their durations. So that the temporary inconvenience of the general public may not render nugatory the rights of its servants.

It must be admitted that in certain cases the exercise of the police power in order to forestall strikes against the government may not only be justified, but may even be necessary. Thus, if the members of the Fire Department should call a strike, the Government can step in and by the use of its police power prevent them from striking, or if they have already walked out, it can compel them to return. For clearly, the interest in public safety outweighs the right of the firemen to strike.

Likewise, if the police force should threaten to strike, the Government is not only justified in exercising its police power, it is imperative that it do so. For the security of the people is at stake—the security of their lives, of their property, and of all their rights.

If the garbage-collectors should go on a strike, would the exercise of the police power be proper? The answer must be qualified. It is true that in the maintenance of the public health, sanitation is an important factor. And that proper garbage disposal is necessary to the interest of sanitation. Therefore, if *all* the garbage -collectors were to go on a strike, the exercise of the police power in order to forestall such strike would be justified and proper. But, if before carrying out such a strike, these laborers were to agree to allow a skeleton force to remain and continue its work of collecting the garbage and disposing of it, so that the country may not be totally devoid of sanitation, the prejudice to the people would be negligible and interference from the Government by the use of its police power cannot be deemed as proper.

However, if there should be a strike by the census-takers, the police power cannot rightly be exercised, provided such strike conforms with the requisites of a valid strike. Such a strike cannot do the public any real and lasting harm. Whereas, if their right to strike should be curtailed, damage would certainly result not only to their liberty but also to their lives.

A strike during a national emergency, such as war, presents a horse of a different color. At a time when many liberties must give way for the preservation of the State, to deny the Government the right to use its police power would be to weaken its defenses against aggression from without by allowing aggression from within, and would be going against the principle of the Constitution that "The defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service." (Sec. 2, Art. II, Philippine Constitution).

Conclusion

There is about this matter of strikes against the Government an aspect of far greater import than the purely legal one. It presents a challenge which the Government cannot ignore. Government exists for the people of which these employees and laborers form an integral part. It cannot deny these employees and laborers any right without denying at the same time this right to the people.

The Government imposes certain restrictions on private employers in order to safeguard the rights of their employees. It cannot refuse to grant the same safeguard to those in its employ. The Government should be the example not the exception.

A strike does not undermine the government. Workers do not resort to strikes unless they are necessary, and when such a situation comes to pass, the government can stand the change and will emerge a stronger and better government.

It the Government employees should go on a strike in order to demand a living wage, and they go about it in a peaceful manner, the Government cannot simply say, "Take it and like it, or go to jail!" Think of the impracticability of such a course. The result would be a government of misfits and unfits—and disgruntled at that. Or that the prison-houses would be packed to overflowing, with the urgent demand for additional guards causing a run on the market for government positions.

This stands therefore, for the theory that strikes against the Government proper, provided they conform with the two requisites

—that of a lawful purpose and of peaceful and legal means—are valid and legal. It is true that strikes always cause disturbances in the peace and order of a community, perhaps not a disastrous one, but a disturbance all the same. Thus, some form of restraint is necessary.

But the remedy is not to outlaw strikes. Every effort must be made in order to prevent strikes. Every method of arriving at an amicable settlement must be employed before resorting to a strike. But the right to strike, even against the Government, must not be curtailed.

—Yolanda Quisumbing

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Written laws are like spiders' webs, and will like them only entangle and hold the poor and weak, while the rich and powerful will easily break through them.

—ANACHRASIS TO SOLON