THE PHILIPPINE SOCIAL SECURITY LAW: AN APPRAISAL

By SULPICIO GUEVARA*

Social Security: A National Policy

The "Social Security Act of 1954",[1] as amended[2] will soon be enforced,[2a] and it is claimed, will benefit millions of employees in private firms throughout the Philippines. The law gives protection to these employees against the risks of "disability, sickness, old age and death", which is the declared policy of the Republic of the Philippines.[3]

The idea of giving disability, sickness, old age, and death benefits to employees in private employment[4] is long overdue,[5] but the system through which such benefits are administered must be a real security system and not a mere security for the System.

Social Security Commission

The Social Security System, established by the law, shall be directed and administered by a Social Security Commission composed of seven members: The Secretary of Labor, the Secretary of Health, the Social Welfare Administrator, the General Manager of the Government Service Insurance System, and "three other members, one of whom shall represent the Labor Group and another the Management Group, to be appointed by the President of the Philippines".[6] The law is silent as whom the third appointee shall represent; the law should have required that he represent the general public. But, as the present law stands, that third appointee may be any one; he may even be another government official, at the discretion of the President of the Philippines. The Chairman of the Commission shall be designated by the President of the Philippines. The term of the appointive members shall be three years, except that the first three to be appointed shall hold office for one, two, and three years, respectively. Each member shall receive ₱25.00 for each meeting actually attended, provided that no compensation shall be paid for more than one meeting a week; members of the Commission who are government employees or officials shall not receive any additional compensation.

The membership of the Commission shows that none of the

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* A.B., LL.B., LL.M.; Professorial Lecturer in Commercial Law, College of Law, University of the Philippines.

[1] Rep. Act No. 1161

[2] Rep. Act No. 1792

[2a] Effective Sept. 1, 1957.

[3] Sec. 2, Rep. Act No. 1161. The protection against "unemployment" originally found in the amended law (R.A. No. 1161) was stricken out.

[4] Government employees are covered under the GSIS (Government Service Insurance System).

[5] Germany was the first country to adopt a social security system in 1881, followed by most of the European countries; later, Great Britain, New Zealand, Australia, and the United States followed suit.

[6] Sec. 3, Rep. Act No. 1161, as amended.

members thereof is required by law to have technical training for social security administration. However, the law makes provision for an Administrator who shall serve as the chief executive officer, immediately responsible for carrying out the program of the Social Security System, and who "shall be a person who has had previous experience in technical and administrative fields related to the purposes of this Act."[7]

Compulsory Coverage

The chief characteristics of a social security system are: *compulsory coverage* on all or substantially all employers and employees; maximum benefits against *risks of disability, sickness, unemployment, old age, and death;* and *compulsory contribution* on the part of the employers, the employees, and the Government. The indemnity payable under the System must be shared by these three, because each has an interest in the well-being of the employees: the *employer* must contribute because the employee is partly responsible for the success of his business; the *employee* must contribute because it involves his own security; the *Government* must share a portion of the burden, because the duties of present-day governments are not merely to preserve peace and order but to look after the well-being of its citizens, as the economic security of the people means the security of the nation.

All employers whose business have been in operation for at least two years, with at least 50 employees (but after the first year of the System's operation, all employers with only at least six employees) are obliged to be members of the Social Security System; so also, all the employees of the covered employers, between the ages of 16 and 60, inclusive, who have been in the service of a covered employer for at least six months, are obliged to join the System.[8]

Beginning from the last day of the calendar month immediately preceding the month when an employee's compulsory coverage takes effect, and every month thereafter during his employment,

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[7] Sec. 3, par. (b), Rep. Act No. 1161.

[8] Except the following employments: "Agricultural labor; domestic service in a private home; employment purely casual and not for the purposes of occupation or business of the employer; service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 years in the employ of his parents; service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines; service performed in the employ of the Philippine Government or an instrumentality or agency thereof; service performed in the employ of a school, college or university if such service is performed by a student who is enrolled and is regularly attending classes therein; service performed in the employ of a foreign government or international organization, or their wholly-owned instrumentality; service performed as a student nurse in the employ of a hospital or nurses' training school, and service performed as an intern in the employ of a hospital by an individual who holds the degree of Doctor of Medicine; and such other services performed by temporary employees which may be excluded by regulation of the Commission. Employees of bona fide independent contractors shall not be deemed employees of the employer engaging the services of said contractors." (Sec. 8, par. (j), R.A. No. 1161, as amended.)

there shall be deducted and withheld by the employer from the employee's average monthly compensation not in excess of ₱500[8a] a contribution equivalent to 2-1/2% of said monthly compensation.[9] The employer, on the other hand, shall also pay, with respect to such covered employee in his employ, a monthly contribution equivalent to 3-1/2% of the monthly compensation of said covered employee, which contribution (of the employer) shall not, directly or indirectly, be charged against the employee.[10]

These contributions shall be collected and remitted by the employer to the System at the end of each calendar month under such rules and regulations as may be prescribed under the System. Any employer who fails to remit such contributions to the System within thirty days from the due date, shall pay, besides the contribution due, a penalty of 3-1/2% thereof per month until paid.[11]

Failure of the employer to pay or remit the contributions prescribed by law shall entitle the System to avail itself of the following remedies: (1) By enforcing payment thereof in the same manner as taxes are made collectible under the National Internal Revenue Code; or (2) By an action in court which shall hear and dispose of the same in preference to any other civil action; or (3) By issuing a warrant to the Sheriff of any province or city commanding him to levy upon and sell any real and personal property of the debtor.[12]

The failure, however, of the employer to pay or remit the contributions required by the law "shall not prejudice the right of the employee to the benefits of the coverage".[13] This may be interpreted to mean that, although the law requires as a condition precedent to the payment of a death or disability benefit to the employee that said employe must not have failed to pay his contributions for more than six months,[14] yet if it appears that such failure was due to the fault of the employer, then such default shall not prejudice the right of the covered employee to the payment of such death or disability benefit under the law.

The law is silent as to what shall happen if such default is due to the declaration of insolvency of the employer under the Insolvency Law. Shall the claim of the System for the unpaid or unremitted contributions be considered preferred claims under the Insolvency Law? The claims for unpaid salaries or wages of the employee for one year preceding the insolvency proceedings are preferred No. 2 under the Insolvency Law, but the claims by the System for unpaid contributions do not seem to fall under any of the preferred credits mentioned in the law. It is an elementary doctrine that preferred claims are strictly construed, and unless they fall clearly as preferred in the law, they shall only be deemed as ordinary claims. Hence, for the protection of the System and of the covered employee, the pre-

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[8a] Sec. 8, par. (f), Rep. Act No. 1161, as amended.
[9] Sec. 18, Rep. Act No. 1161, as amended.
[10] Sec. 19, Rep. Act No. 1161, as amended.
[11] Sec. 22, Rep. Act No. 1161.
[12] Id.
[13] Sec. 22, par. (b), Rep. Act No. 1161.
[14] Sec. 13, Rep. Ac No. 1161, as amended.

sent law on social security should have made special provisions on this matter.

Effectivity of Coverage; Commencement of Contributions

Compulsory coverage of an employee shall take effect "on the first day of the calendar month *following the month* when his employer qualified as a member of the System." [14a]; and "beginning as of the last day of the calendar month *immediately preceding* the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, there shall be deducted and withheld from the monthly compensation of such covered employee a contribution equal to 2-1/2% of his monthly compensation." [14b]

When is an employer deemed to qualify as a member of the System? In view of the Commission's Rule [14c] that "compulsory coverage in the System for all qualified *employees* shall begin on *September 1, 1957*", then it follows that all covered *employers* shall be deemed qualified as of *August 1, 1957*, unless by special arrangement or permission of the Commission, an employer is made to qualify earlier, say, as of July 1957. Assuming that an employer qualified as of August 1, 1957, then the employee's compulsory coverage shall take effect "on the first day of the calendar month following the month when his employer qualified as a member of the System", that is to say, on September 1, 1957. Hence, the 2-1/2% employee's contribution or deduction shall begin on August 31, 1957. But where the employer is admitted as of July 1957 (which may be true in some cases), and not as of August 1, 1957, then the employee's deduction shall begin July 31, 1957, based on his July salary. In the latter case, the employee shall be deemed covered by the System beginning August 1, 1957, notwithstanding the Commission's Rule that "compulsory coverage in the System for *all* qualified employees shall begin on September 1, 1957". [14d]

The Commission requires that the employer shall remit the premiums representing both contributions to the System "every month *in advance*, within the first seven days of the month for which such premiums are applicable" [14e], which means that on or before August 7th, 1957 (or July 7th, 1957 in some cases), and within the same period every month thereafter, the employer must advance the entire premiums (6%) *out of its own funds*, as this is an obligation imposed by the System on covered employers alone, [14f] and not on co-

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[14a] Sec. 10, Rep. Act No. 1161, as amended by Rep. Act No. 1792.

[14b] Sec. 18, *Id.*

[14c] Rule II, No. 2, Rules & Reg., SSS, July 15, 1957.

[14d] Rule II, No. 2 Rules & Reg., SSS, July 15, 1957.

[14e] Rule III, No. 2, *Id.*

[14f] *Id.*

vered employees, without prejudice to deducting the 2-1/2% from the employee's salary "on the *last day* of the calendar month immediately preceding the month when an employee's coverage takes effect". [14g]

Where a Covered Employee Receives Salaries from Two or More Employers

It is possible that a covered employee receives salaries from two employers covered by the System, in which case, shall each covered employer deduct 2-1/2% from the said employee's salaries and shall each employer contribute 3-1/2% to the System? For example, employee A receives a regular monthly salary of ₱400 from employer B, and another compensation of ₱300 for teaching after office hours in a private university. Under the law, both employers, if covered by the System, must deduct 2-1/2% on the salary paid by each, or a monthly deduction of 2-1/2% on ₱700, when under the law, only that part of the employee's compensation not in excess of ₱500 shall be subject to compulsory contribution.

The Social Security Commission has issued the following Rule on this point:

> "b. Part-time employees, if otherwise qualified, shall also fall under compulsory coverage, their contributions to be based on their actual compensation. If a person is employed in two or more entities, all on a part time basis, each employer shall remit the contributions corresponding to the earnings of the employee from his position thereat. If the total earnings of an employee from his several part-time jobs exceed ₱500 a month, the contribution of each employer shall be **proportionately adjusted**".[14h]

"Shall be proportionately adjusted" by whom? By the Social Security Commission, it is to be assumed. Has the Social Security Commission the necessary accounting personnel for this purpose?

Perhaps, to avoid injustice and to simplify matters, the employee should be given the option under whose covered employer he would like to come, for purposes of the Social Security System; provided, however, that if the employee is a regular employee in one but only a part-time employee in the other, the regular employment must be covered by the System. The Social Security Commission may promulgate an amended rule governing this matter. Under the law, "such other services performed by temporary employees" may be exempted from the System by regulation of the Commission. [14i]

[14g] "If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their *respective employers.*" (Sec. 22, Rep. Act No. 1161.) This provision is unreasonable and oppressive, as it compels the covered employer to contribute *even before* the employee's salary has been earned.

[14h] Rule 1, par. (b), Rules & Reg., SSC, July 15, 1957.

[14i] Sec. 8, par. j, No. 10, Rep. Act No. 1161, as amended by Rep. Act No. 1792.

So, where a person is regularly employed in a firm and teaches in the evening in a private college or university, the latter employment must be deemed "temporary" within the meaning of the Social Security Act. So, also, where an employee is already covered under the GSIS and teaches in a private college or university, the latter employment must be deemed "temporary" for purposes of the Social Security Act. After all, the Social Security Act has been enacted to benefit private employees who do not have the benefit of any plan of social security, but when they are already covered by the GSIS or by a covered employer under the Social Security Act, the purpose of the law has been accomplished.

Retirement Benefits

An illustration of how much real benefit covered employees expect to receive from the System will enable one to see more clearly what this Social Security is all about which our legislators have invented for them.

Employee *A*, with a monthly salary of ₱400.00 is 30 years old at the time he was compelled to join the System. His monthly contribution will be 2-1/2% of his monthly salary, or ₱10.00 a month, while his employer will contribute 3-1/2%, or ₱14.00, thereby making a total contribution to the System of ₱24.00; so that in one year both employee and employer would have contributed to the System ₱288.00. The Government's contribution takes the form of annual appropriations needed to meet the expenses of the System.[15]

If *A* reaches the retirement age of 60 years, he shall have the option to retire,[16] and shall be entitled to a life pension equivalent to 1/2 of 1% of his average monthly salary, multiplied by the number of years he has been a member of the System.

In our example *A* has been a member of the System for 30 years; hence, he shall receive a monthly pension of ₱60.00 until he dies.[16a] Being already 60 years on the date of his retirement, his remaining life expectancy would likely not exceed 10 years more. Assuming that he dies at the age of 70 years, he would have therefore received from the System the total amount of ₱7,200.00 only.

Inasmuch as the total contributions of both *A* and his employer to the System for 30 years would amount to ₱8,640.00, then the System is bound to profit, at the expense of the employee in the sum of not less than ₱1,440.00. And if *A* should not be able to live up to 70 years from his date of retirement (which is very probable in most cases), then the System would still make a greater profit than the amount indicated above. Thus, if he continues to live only for two years from his date of retirement, dying at the age of 62 years, *A* would only receive from the System the sum of ₱1,440.00 out of a total investment of ₱8,640.00 of both employee and employer.

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[15] Sec. 20, Rep. Act No. 1161, as amended.

[16] Sec. 12, par. (c), Rep. Act No. 1161, as amended.

[16a] The minimum monthly pension prescribed by law is ₱25, payable for not less than 2 years. (Sec. 12, par. (a), R.A. No. 1161, as amended.)

The Social Security System has been created, it is to be presumed, for the benefit primarily of the employee, and not of the System nor of the employer. All contributions given to the System are intended to inure to the benefit of the employee. But when the System, and not the employee, is the one that gets the benefits, it cannot be called a Social Security System, but a system for the security of the System. When the employee does not get back at least what he and his employer contributed or invested in the System, it amounts to confiscation of one's property without due process of law; it amounts to taking one's property without just compensation; it amounts to enriching one's self at the expense of another. In any light one may look at it, it violates all known principles of justice and equity.[17]

To remedy this inequity of the law, the writer proposes that a provision (which he may call a saving, or equitable, or an equalizing clause) be inserted in the Social Security Law that "In any case where a covered employee, upon retirement or death, would receive less than what he and his employer had actually contributed to the System, the total amount so contributed up to the time of his death or retirement must be paid to him or his estate, plus 3% interest."

It may be argued in defense of the present provisions of the Social Security Law that the System must have some allowance to offset the risks in maintaining the System. In case of *compulsory coverage,* the risks which are experienced in an ordinary insurance business are practically eliminated. In an ordinary insurance business, insurance on the part of insured is *purely voluntary* and the company has no right to compel others not already insured to insure themselves to minimize the hazards of loss. In a social security system, the insurance is compulsory on the covered population, and the great number of individuals compelled to contribute to the common fund practically wipes out the risks of loss on the part of the System. And if we take into account that in five or ten years' period these compulsory contributions would accumulate into billions of pesos which will be used by the System in investments at not less than 6% interest, then there is absolutely no need for the System to make business with the members' money.[17a]

Besides, the expenses for the maintenance of the System, including the salaries and wages of its employees, are taken care of by the *annual appropriations* of Congress which, according to law shall constitute its own contribution to the System. Although the Social Security Law on this point is guilty of inconsistency, in that according to some of its provisions the budget of its expenditures including salaries of personnel may be charged against the funds of the System,[18] yet the true intent of the law is that the contributions

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[17] It may be that in some instances, the covered employee may receive more than what he and his employer have contributed to the System; this is only what it should be, because a Social Security System is established to give maximum benefits at the minimum cost.

[17a] According to the writer's information, no less than 3,000,000 private employees will come under the compulsory coverage.

of the employees and the employers shall not be used to maintain the System:

> *"Government contribution.* — As the contribution of the Government to the operation of the System, the Congress shall *annually appropriate* out of any funds in the national treasury not otherwise appropriated, *the necessary sum or sums to meet the estimated expenses of the System for each ensuing year.* In addition to this contribution, the Congress shall appropriate from time to time such sum or sums as may be needed to assure the maintainance of an adequate working balance of the funds of the System as disclosed by suitable periodic actuarial studies to be made of the operations of the System."[19]

Death and Disability Benefits

Upon the total and permanent disability or death of the covered employee before his retirement age, he or his designated beneficiary shall be entitled to a benefit payment equivalent to 100% of his average monthly compensation received during the year of his disability or death, multiplied by twelve if he has been a member of the System for at least one year, or multiplied by six only, if he has been a member for less than a year; provided, that in no case shall the employee be qualified to claim the said benefits if he has failed to pay his contributions for more than six months prior to his death or disability.[20]

In case of partial but permanent disability, the amount of the benefit shall be such percentage of the average monthly compensation as the Commission may determine with due regard to the degree of disability.[21]

Let us now examine if our covered employe *A* would fare better if he should die before retirement rather than retire at the age of 60 years.

If *A* dies at the age of 59 years, he and his employer would have contributed to the system for 29 years the total sum of ₱8,352.00, but according to the law his beneficiary would be paid a death bene-

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[18] Secs. 4, par. (f), 25, 3, par. (b), Rep. Act No. 1161; as amended.

[19] Sec. 20, Rep. Act No. 1161, as amended.

[20] Sec. 13, par. (a), Rep. Act No. 1161, as amended.

[21] The Social Security Law did not define "total and permanent disability", and "partial but permanent disability", as it should have provided. Under the Workmen's Compensation Law (Act No. 3428, as amended), the following injuries are considered *total and permanent:* Loss of sight of both eyes; the loss of both feet; the loss of one hand and one foot; an injury to the spine resulting in complete and permanent paralysis of both legs or both arms, or one leg and one arm; and injury to the brain resulting in incurable imbecility or insanity.

A *permanent partial disability* is a disability which is permanent in its nature, like loss of the thumb, loss of the first finger, etc. The writer believes that this kind of disability can very well be taken care of by the Workmen's Compensation Law, or by a private plan of the employer, and should not have been the object of coverage by the Social Security Act; if this kind of disability is eliminated from the System, perhaps the premium payable by the employee could still be made lower than what the law actually provides, or the benefits increased.

fit equivalent to one year's salary or the sum of only ₱4,800.00 thereby enabling the System again to make a profit of ₱3,552.00 upon the employee's death. The only way by which the covered employee may gain an advantage over the System is to die immediately say, after one year of membership in the System, in which case he shall be paid the said sum of ₱4,800.00, although the total contribution to the System within the same period would amount only to ₱288.00.[22]

Effect of Separation from Employment

When an employee under compulsory coverage is separated from his employment, his employer's contrbution, according to the law, shall cease at the end of the month of separation, "but said employee may continue his membership in the System and receive the benefits of this Act, in accordance with such rules and regulations as may be promulgated by the Commission."[22a] The Social Security Commission promulgated a rule that such employee may continue his membership in the System and receive the benefits of the Act "if he continues paying the 6% monthly premiums representing his as well as the employer's contributions, based on his monthly salary at the time of his separation."[22b] And if the employee fails to continue paying the 6% monthly contribution to the System (which is most likely to happen), then what happens to the amount already contributed to the System? The System has again enriched itself at the expense of another. And to the employee who has been separated from his employment, this must be "the unkindest cut of all."

The Social Security Law also grants to covered employee sickness benefit as follows:

> "SEC. 14. SICKNESS BENEFIT. — (a) Under such rules and conditions as the Commission may prescribe, any covered employee under this Act who, after one year at least from the date of his coverage, on account of sickness or bodily injury is confined in a hospital, or elsewhere with the Commission's approval, shall, for each day of such confinement, be paid by his employer an allowance equivalent to 20% of his daily rate of compensation, plus 5% thereof for every dependent if he has any, but in no case shall the total amount of such daily allowance exceed six pesos, or 60% of his daily rate of compensation, whichever is the smaller amount, nor paid for a period longer than 90 days in one calendar year: *Provided,* That he has paid

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[22] Perhaps, the law needs an amendment on this matter. A *pro rata* or graduated scale should be devised whereby the System would not be paying too much in case of early death nor should the System be permitted to retain too much of what rightfully belongs to the member. Or an equalizing clause mentioned by the writer in the article may also be inserted for the protection of the System. Thus, it may be provided that in case of death or permanent disability benefits, the covered employee shall not be paid more than twice the total amount contributed to the System, or a provision of similar tenor.

[22a] Sec. 11, Rep. Act No. 1161.

[22b] Rules & Regulations, Social Security System, July 15, 1957.

the required premiums for at least six months immediately prior to his confinement: *Provided, further,* That the payment of such allowance shall begin only after the first seven days of confinement, except when such confinement is due to injury or to any acute disease; but in no case shall such payment begin or — before all leaves of absence with pay, if any, to the credit of the employee shall have been exhausted: *Provided, further,* That any contribution which may become due and payable by the covered employee to the System during his sickness shall be deducted in installments from such allowances, issuing to him the corresponding official receipt upon complete payment of such contribution: *Provided, finally,* That the total amount of the daily allowances paid to the covered employee under this section shall be deducted from the death or disability benefit provided in section 13 if he dies or becomes totally or permanently disabled within 5 years from the date on which the last of such allowances becomes due and payable.

"(b) Seventy per centum of the daily benefits paid by an employer as provided in the preceding paragraph shall be reimbursed by the System to said employer upon receipt of satisfactory proof of such payment and of the legality thereof."[23]

The above provision contains no less than four *provisos,* which means that sickness benefit is not easy to give. The sickness benefits could very well have been eliminated from the law, and thereby reduce further the contribution on the part of the covered employee or increase his death or retirement benefits. The law could simply have compelled the employer to give some kind of benefit under a private plan, as is done by some private firms which, for a consideration of a nominal premium paid by each employee, the employer provides free hospitalization for a certain period of time.[24] The provisions of the Social Security Law regarding sickness benefits are so miserly that the same may just as well be discarded. It will be noted that before the employee could be entitled to a sickness benefit of not more than ₱6.00 per day of confinement (which in many cases would amount to less than ₱6.00), he must be confined in a *hospital* (or elsewhere with the Commission's approval); one day's stay in a hospital would cost more than ₱6.00. The sickness allowance shall begin only *after the employee had been confined for 7 days* in which case, the employee *would be unlucky* if he gets sick for not more than seven days, or he may connive with hospital authorities that he be allowed to remain for more than seven days to entitle him to the sickness allowance. And *all leaves with pay, if any, must first be exhausted* to entitle him to the sickness benefit— a situation which does not always exist.

It must also be noted that it is the employer who must disburse the daily allowances to which the employee is entitled during the period of his sickness; but only "seventy per centum of the daily

[23] Sec. 14, Rep. Act No. 1161.

[24] The Far Eastern University has such a private plan of hospitalization benefits to its professors and employees at a nominal cost of ₱32 per annum and ₱6.00 per annum for each dependent.

benefits paid by an employer" shall be reimbursed by the System to said employer, thereby giving the System another opportunity of making profit at the expense of the employer. If this is the best that the System could give for sickness benefit, this risk may well be eliminated from the law so that the contributions of both employee and employer may be made less burdensome, or the benefits actually given to the members be further increased. It is reiterated that a social security system could only be justified if it could give to the covered employees the maximum benefits at the minimum cost. If it could not do this, the compulsory aspect of the system becomes undemocratic and oppressive.

The Law Deprives Employees of Better Private Plans

The law provides that "Nothing contained in this Act shall be construed as a limitation on the right of employers and employees to agree on and adopt benefits which are over and above those provided under this Act".[25] But such a provision is a useless gesture, because the present law compels all employers within the coverage to become members of the System. If the employer has a better plan than what the System actually gives, he should no longer be forced to contribute to the System. This is but fair, as very few employers would grant two plans for his employees and incur double expense. This exemption idea was originally embodied in Sec. 9 of Republic Act No. 1161, but this sound provision was stricken out when it was amended by the present law.

It is true that the present law provides that "any benefits already earned by employees under private benefit plans existing at the time of the approval of his Act *shall not be discontinued, reduced, or otherwise impaired*". But this provision is held nugatory by another proviso which follows: "*Provided, further,* That private benefit plans which are existing and in force at the time of the compulsory coverage shall be *integrated* with the plan of the System *in such a way that* where the employer's contribution to his private plan is more than 3-1/2%, he shall pay to the System only the 3-1/2% required in the Act and he *shall continue his contributions to such private plan less the* 3-1/2% *contributed to the System* so that the employer's total *contributions to his private benefit plan and to the Social Security System shall be the same as his contribution to his private plan before the compulsory coverage*". In other words, shorn of its legal and literary verbiage, the law permits the employer who has an existing and better plan for his employees to modify and lessen the same so that his total contributions to his private plan and to the System would remain the same as before the compulsory coverage.

So, after guaranteeing to the employees that existing benefits given by employers for their benefit "shall not be discontinued, reduced, or otherwise impaired", it nevertheless compels the said employers to integrate their existing private plans with the System "in such a way that x x x his total contributions to his private plan

[25] Sec. 9, Rep. Act No. 1161, as amended.

AND to the Social Security System shall be the SAME as his contribution to his private plan before the compulsory coverage". Thus if the employer is contributing say, 4% to his existing private plan, he may therefore reduce such contribution to only 1/2% to enable him to contribute 3-1/2% to the System so that his total contribution to both plans would be the same as 4%. Is this not impairment of the benefits already acquired by the employees? The present law, therefore, suffers from self-defeating provisions. Fortunately, however, the law is again guilty of another contradictory provision, to wit:

> "*Provided, further,* that any changes, adjustments, modifications, eliminations or improvements in the benefits to be available under the remaining private plan, which may be necessary to adopt by reason of the reduced contribution thereto as a result of the integration, shall be *subject to agreements between* the employers and the employees concerned."[26]

It is quite certain that employees who are already enjoying certain benefits under private plans would not voluntarily consent to any modification thereof which would diminish their rights thereunder. Notwithstanding the vague and conflicting provisions of the law, *rights already acquired* by employees under private plans could not be "discontinued, reduced, or otherwise impaired". But what about better plans about *to be given* by some good employers to their employees?

It is therefore quite fair that employers who have better plans than what the present Social Security Law grants to covered employees should no longer be compelled to contribute to the System. The Social Security Commission, through the Administrator, may itself determine whether a private plan is better than the benefits offered by the System. Certainly, it cannot be contended that the plan under the present Social Security Law is the best and that no employer could think of a better one. Such attitude unreasonably shuts the door of opportunity to hundreds of thousands of employees who could have been given better protection under private plans against the hazards provided for by the present law.

PROPOSALS

The present Social Security Law need not be repealed. It deserves to stay. As a matter of fact, its enactment, as previously stated, is long overdue. It needs only to be amended again to make it more just and equitable.

The following amendments are proposed:

1. The conflicting and self-defeating provisions of the law should be done away with, so that the main object of the law to benefit primarily the covered employee may always remain in view;

2. The protection against sickness and partial disability may

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[26] Sec. 9, Rep. Act No. 1161, as amended.

be eliminated in the meantime, but the law should, at the same time, compel all covered employers to provide or devise private plans against these hazards. In this way, the contributions payable under the law may further be decreased or the benefits given to covered employees increased;

3. Employers who have better plans for their employers than the one actually given by the present law should be exempted from the provisions of the Social Security Act;

4. An equalizing clause should be inserted in the law that in all cases of payments of death or retirement benefits, as well as where the employee is separated from his employment, the covered employee must receive at least the total amount already contributed by both employer and employee to the System;

5. In case of adjudication of insolvency of the covered employer, all contributions due and unpaid from said employer shall be preferred claims on the part of the System, preferably preferred claim No. 1 or 2 in the order of preference of credits.

A Social Security System, it is again reiterated, must be a system for the security of the covered employees and not a plan for the security of the System. The compulsory aspect of the System could be justified only if it could give the maximum benefits to covered employees at the minimum cost. Otherwise, the law would amount to the mere creation of another government office in our already clogged bureaucracy at the expense of private employers and employees.