LABOR LAW

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I. THE INDUSTRIAL PEACE ACT

RIGHT TO SELF-ORGANIZATION

The encouragement and protection of the right of employees to self-organization for the purpose of collective bargaining and for the promotion of their moral, social, and economic well-being occupies a primordial position in the policy declaration of the Industrial Peace Act.[1] This right, coupled with the employees' freedom to form, join or assist labor organizations of their own choosing, is specifically guaranteed by Section 3 of the Act. In the case of *Pagkakaisa Samahang Manggagawa Ng San Miguel Brewery At Mga Kasangay (PAFLU) v. Enriquez*[2] the Supreme Court had occasion to discuss the nature and extent of the employees' freedom of choice. Speaking through Justice Montemayor, the Court pointed out that with respect to the choice of a labor union, the employee is a "free agent". It observed that a member of a labor union may leave and cancel his membership with the same at any time. This is so for when an employee or laborer joins a labor union, he makes no undertaking to continue his membership therein for any fixed period of time, much less indefinitely.

APPROPRIATE COLLECTIVE BARGAINING UNIT

The basic test for determining the appropriateness of a collective bargaining unit is whether the employees grouped in a single unit have a substantial mutuality of interest in wages, hours, and working conditions, as revealed by the type of work they perform.[3] This test was first applied in this jurisdiction in the case of *Democratic Labor Association v. Cebu Stevedoring Co.*, et al.[4] where the Court declared that the most efficacious bargaining unit is one comprised of constituents enjoying a community of interest and economic or occupational unity. This community of interest, it added, is reflected in groups having substantial similarity of work and duties or similarity of compensation and working conditions. Thus, in the *Democratic Labor* case, it was deemed proper that two separate bargaining units be certified to the workers, one for the regular and permanent workers and the other for the casual or temporary workers. The case of *Philippine Land-Air-Sea Labor Union (PLASLU) v. CIR*[5] is a reiteration of this ruling.

The mutuality of interest test was again applied in the case of *Alhambra Cigar and Cigarette Manufacturing Company, et al. v. Alhambra Employee's Association (PAFLU)*.[6] In that case there were eight departments in the company, namely, the engineering and garage, the raw leaf, cigar, cigarette, packing, sales, administrative, and dispensary. Labor union *A* applied for certification as the sole bargaining agent for all the employees in the administrative, sales, engineering, and dispensary departments. Labor union *B*

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* Staff Member, *Law Register*, 1960-61; and Member, Student Editorial Board, PHIL. LAW JOURNAL, 1961.

[1] Sec. 1(a), Rep. Act 875.
[2] G.R. No. L-12999, July 26, 1960.
[3] National Labor Relations Board Fourteenth Annual Report, 33 (1949).
[4] G.R. No. L-10321, Feb. 28, 1958.
[5] Philippine Land-Air-Sea Labor Union v. CIR, G.R. No. L-14656, Nov. 29, 1960.
[6] G.R. No. L-13573, Feb. 20, 1960.

objected claiming that there was in force an existing collective bargaining agreement covering all the workers of the company, signed between the latter and labor union *B*. It appeared, however, that the agreement in question, in so far as the fixing of the terms and conditions of employment was concerned, did not expressly cover the employees in the administrative, dispensary and sales departments. The Court held that since the employees in the administrative, sales and dispensary departments performed work which had nothing to do with production and maintenance, unlike those in the raw leaf, cigar, cigarette, packing and engineering and garage departments whose functions involved production and maintenance, they had a community of interest which justified their formation or existence as a separate appropriate collective bargaining unit. The Court observed that the existence of such a unit would insure to said employees in the three departments the full benefit of their right to self-organization and collective bargaining and, thereby, effectuate the policies enunciated in the Industrial Peace Act. Similarly, it noted that although the physician and two nurses in the dispensary department performed functions which might properly be designated as technical or professional nevertheless they could properly be grouped with the sales and administrative employees, as their functions had nothing to do with production and maintenance.

CERTIFICATION ELECTION

Certification elections are held to ascertain the will and choice of the employees in an appropriate collective bargaining unit in respect to the selection of a bargaining representative.[7] The labor organization chosen by the majority of the employees in an appropriate collective bargaining unit becomes the exclusive representative of all the employees in such unit for the purpose of collective bargaining.[8] Section 12 (c) of the Act provides that in an instance where a petition is filed by at least ten per cent of the employees in the appropriate unit requesting an election, it shall be mandatory on the Court to order an election for the purpose of determining the representative of the employees for the appropriate bargaining unit. Explicit as the law is on the mandatory character of the duty of the CIR to order such election upon compliance of the ten per cent requirement, this provision is, however, not absolute.[9] It admits of exception under Section 12 (b) of the Act where the CIR is enjoined from ordering certification in the same unit for more than once a year. Another exception is when there is pending charge of company domination of one of the labor unions intending to participate in the election.[10] Then there is the "contract-bar" rule under which the CIR may not order certification election where there exists a collective bargaining agreement of not more than two years duration, the idea being that such a length of time does not unduly limit the right of employees to change their bargaining representative.[11] This period of two years has been extended to four years in the case of *General Maritime Stevedores' Union of the Philippines, et al. v. South Sea Shipping Lines, et al.*[12]

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[7] Rothenberg, Labor Relations, p. 515.
[8] Sec. 12(a), Rep. Act 875.
[9] Philippine Land-Air-Sea Labor Union v. Bogo-Medellin Milling Co., et al., G.R. No. L-11910, Aug. 31, 1960.
[10] Acoje Mines Employees, et al v. Acoje Labor Union, et al., G.R. No. L-11273, Nov. 21, 1958.
[11] Philippine Long Distance Telephone Company Employees' Union v. Philippine Long Distance Telephone Company, et al., G.R. No. L-8138, Aug. 20, 1955.
[12] G.R. No. L-14689, July 26, 1960.

In that case, the CIR certified labor union *A* as the exclusive bargaining representative of the employees and laborers of the company after a certification election held on April 15 and June 10, 1955. Two years afterwards, labor union *B* petitioned for another certification election. The CIR denied the same invoking the contract bar rule. It appears that on June 28, 1957, a collective bargaining agreement was entered into between the company and labor union *A*, section 10 of which provided that it shall take effect on July 21, 1957, to continue in full force for two years, unless either party shall notify the other of its intention to terminate the agreement within sixty days prior to its expiration date. It appears further that the agreement was but a renewal of a similar contract between the parties in 1955. While the case was still pending in the Supreme Court on September 15, 1959, the agreement was again renewed pursuant to its automatic renewal clause. Speaking through Mr. Justice Montemayor, the Court held that "a bargaining agreement may run for three or four years, but in such case, it is equally advisable that to decide whether or not within those three or four years, a certification election should not be held, may well be left to the sound discretion of the CIR, considering the conditions involved in the case, particularly, the terms and conditions of the bargaining contract." Thus:

> "The appealed order of the CIR dismissing the petition for certification election and refusing to allow the selection of a new bargaining agent was valid under the circumstances obtaining at the time. However, inasmuch as there has been a renewal of the bargaining agreement for another two years and because it seems that the present agreement is but a renewal of the one entered into way back in 1955, so that until the expiration of the present agreement, about six years shall have passed, it is advisable that a new certification election be held."

This doctrine was reiterated by the Supreme Court a month later in the case of *Philippine Land-Air-Sea Labor Union (PLASLU) v. Bogo-Medellin Milling Co., et al.*[13] There, a collective bargaining agreement was entered into between labor union *A* and the company on July 29, 1949 for three years expiring July 28, 1952. By agreement of the parties it was renewed for another three years expiring on July 28, 1955. On February 3, 1954, labor union *A*, labor union *B*, and the company filed a joint motion informing the CIR that they had concluded an amicable agreement wherein, among other things, labor union *B* agreed "to recognize the validity and participate in the benefits of the collective bargaining and union shop agreement entered into between labor union A and the company dated May 16, 1952." The bargaining agreement was again renewed by labor union *A* and the company on July 28, 1955 with no objection whatsoever from labor union *B*. Also, it did not even appear that labor union *B* prior to July 28, 1955 requested the company for recognition as the sole collective bargaining agency for the workers and employees therein. Under these circumstances the Court held that the petition for a certification election filed by labor union *B* on August 26, 1955 was properly denied by the CIR.

In these decisions the Court has been greatly influenced by the progressive trend in the rulings of the National Labor Relations Board of the United States towards promoting stability of labor relations by holding as a bar to repeated certification elections collective bargaining agreements even for five years' duration.[14] The policy is not rigid, iron-clad and fixed, but "one to be applied according to the changing conditions and industrial practices." [15]

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[13] Note 9, *supra*.

[14] *In re* General Motors Corporation, 102 NLRB 1140 (1953) where the Board confronted with a five-year contract, refused to order a certification election despite the lapse of more than two years and a half since the agreement became effective.

[15] Note 9, *supra*.

PRINCIPLE OF SUBSTITUTION

The case of *General Maritime Stevedores' Union of the Philippines, et al. Lines, et al.*[16] is likewise noteworthy for the principle of substitution that it posited. The Court said in that case that after two years of the life of a bargaining agreement, a certification election may be allowed by the CIR; that if a bargaining agent other than the union or association that executed the contract, is elected, said new agent would have to respect said contract but that it may bargain with the management for the shortening of the life of the contract if it considers it too long, or refuse to renew the contract pursuant to an automatic renewal clausee.

UNION'S ELIGIBILITY FOR ELECTION

Only legitimate labor organizations have the right to be certified as the exclusive bargaining representatives of the employees in collective bargaining units.[17] The question arises where two labor unions, both legitimate, bear almost the same membership in a given company, as to which of them should be given the right to be voted for in the certification election. The case of *Benguet Consolidated Unions Council v. CIR at al.*[18] presented an identical problem and the Court declared that the question is an internal affair which should be decided not by the CIR but by the workers affiliated with both unions.

DUTY TO BARGAIN COLLECTIVELY

The duty to bargain collectively means the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith, for the purpose of negotiating an agreement with respect to wages, hours and/or other terms and conditions of employment, and of executing a written contract incorporating such agreement if requested by either party, or for the purpose of adjusting any grievances or question arising under such agreement.[19] Such duty, however, does not compel any party to agree to a proposal or to make concession.[20] Thus, where under a collective bargaining agreement a labor-management committee was created to whom matters are referred in case of disagreement and nothing is provided that the decision of the committee shall be final, such committee has only the power to recommend to the management who may approve or disapprove the same. The non-approval by the management of any such recommendation is not a violation of its duty to bargain collectively.[21]

Likewise, there is no duty to bargain collectively with a labor union which has not been so designated by the majority of the employees in an appropriate collective bargaining unit.[22] In the case of *The Management of El Hogar Filipino Mutual Building & Loan Association, et al. v. Building Employees Association, et al.*[23] the Court sustained the petitioner's refusal to entertain the union's demand for collective bargaining in view of the fact that out of the ten workers of the company only three were members of the union.

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[16] Note 12, *supra*.
[17] Sec. 23(b). Rep. Act 875.
[18] G.R. Nos. L-13129, and L-13179-80, Aug. 31, 1960.
[19] Sec. 13, Rep. Act 875.
[20] *Id.*
[21] Bay View Hotel Employees' Union v. Bay View Hotel, Inc., et al., G.R. No. L-10393, March 30. 1960.
[22] Sec. 12(a), Rep. Act 875.
[23] G.R. No. L-9740, March 30, 1960.

"CLOSED SHOP"

A closed shop agreement is an arrangement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs.[24] In the United States, the closed shop arrangement was outlawed in 1947 by the Taft-Hartley Law, permitting only union shop and maintenance of membership arrangements and only if the majority of the employees in an appropriate bargaining unit agree thereto.[25] In this jurisdiction, however, closed shop agreements are valid provided the contracting union is the representative of the employees in an appropriate collective bargaining unit.[26] The attitude of the Court towards this kind of agreement is best illustrated in the case of *Federated Sons of Labor v. Anakan Lumber Company, et al.*[27] In that case, labor union *A* with a membership of over 1,000 laborers and employees of the company entered with the latter into a contract entitled "Collective Bargaining and Closed Shop Agreement". Subsequently 46 employees of the company and members of labor union *A* joined labor union *B*. As a result, said 46 employees were expelled from labor union *A* pursuant to its constitution and by-laws. Thereafter, labor union *A* demanded from the company the dismissal of these 16 employees upon authority of the alleged closed shop agreement. The issue was whether the company was bound to dismiss said employees under the agreement. Labor union A claimed that since it was given the exclusive right and privilege to supply the company with laborers and employees and the company with laborers and employees and the company had agreed to employ or hire only such persons who are members of the union, it follows that such laborers and employees of the company as may cease to be members of labor union *A* must be expelled from the company. Speaking through Mr. Justice Concepcion, the Court ruled:

> "Inasmuch as Article II above quoted does not provide that employees 'must continue to remain members in good standing' of respondent union 'to keep their jobs,' the collective bargaining agreement between them does not establish a 'closed shop' except in a very limited sense, namely, that the laborers, employees and workers engaged by the company after the signing of the agreement . . . must be members of respondent labor union. The agreement does not affect the right of the company to retain those already working on or before said date or those hired or employed subsequently thereto, while they were members of respondent union, but who thereafter, resign or are expelled therefrom.
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> "In order that an employer may be deemed bound, under a collective bargaining agreement, to dismiss employees for non-union membership, the stipulation to this effect must be so clear and unequivocal as to leave no room for doubt therein. *An undertaking of this nature is so harsh that it must be strictly construed, and doubts must be resolved against the existence of a 'closed shop'*. Referring particularly to the above-quoted Article II, we note that the same establishes the exclusive right of respondent union to 'supply' laborers, etc., and limits the authority of the company to 'employ or hire' them. In other words, it requires that the laborers, employees and workers hired or employed by the company be members of respondent union at the time of the commencement of the employer-employee relation. Membership in respondent union is not a condition for the continuation of said relation of a laborer or employee engaged either before said agreement or while he was a member of said union." (Underscoring supplied.)

In the case of *Local 7, Press & Printing Free Workers (FFW), et al. v. Tabigne*,[28] the petitioning employees were dismissed by their employer upon

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[24] National Labor Union v. Aguinaldo's Echague, Inc., 51 O.G. 2899, cited in Bacolod-Murcia Milling Co., et al. v. National Employees-Workers Security Union, 53 O.G. 615 and in Federated Sons of Labor v. Onakan Lumber Co., et al., G.R. No. L-12503, April 29, 1961.

[25] Sec. 8(a) (3), Rep. Act 875.

[26] Sec. 4(a) (4), Rep. Act 875.

[27] Note 24, *supra*.

[28] G.R. No. L-16093, Nov. 29, 1960.

request of the Democratic Labor Union with whom the company has a collective bargaining agreement with a closed shop clause. Upon hearing of said closed shop agreement, petitioners applied for membership with the union but were not accepted and instead were dismissed by the company. The Court ruled that their dismissal was unjustified because the closed shop clause could not apply to them who were already in the company's employ at the time of its execution.

RIGHT TO STRIKE

Under Section 11 of the Act, employees in the Government and any of its political subdivision or instrumentalty are enjoined from striking for the purpose of securing changes or modification in their terms and conditions of employment. The proviso limits the prohibition only to employees employed in governmental functions. Thus, two tests must be met before the prohibition can apply. First, is the employment one in the Government, any political subdivision, or instrumentality thereof? Second, are the employees concerned employed in purely governmental function? [29] These two tests were applied in the case of *NARIC Workers' Union, et al. v. Alvendia, et al.*[30] In that case, NARIC filed a suit for damages with petition for preliminary injunction as a result of the alleged blocking and obstruction of the gates of the company's offices by striking picketers who threatened violence and bodily harm to persons crossing the union's picket lines. The company argued that as an instrumentality of the government its employees are precluded from declaring a strike against it by section 11 of the Industrial Peace Act. Overruling this contention, the Court held:

> "Conceding that the respondent National Rice and Corn Corporation is an instrumentality of the Government, especially since the law creating it (Republic Act No. 663) expressly declares the same to be so, yet its activities are not purely or exclusively governmental in nature. Thus, under the statute, the corporation is empowered, under Section 3 thereof, among other matters, to buy and sell rice and corn or its by-products; to give loans on reasonable terms and finance activities in rice and corn industry; to borrow, raise or secure money; to mortgage or otherwise encumber its properties; and to enter into, make, perform and carry out contracts of every class and description necessary or incidental to its purpose, for which it may derive profits or incur losses.
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> "Now, under the proviso of Section 11 of the Industrial Peace Act, the prohibition to strike is clearly limited to 'employees employed in governmental functions and not to those employed in proprietary functions of the Government." Since the work of the members of the petitioning union consists mainly in hauling goods at the respondent's warehouses, barges and piers, the same bears only a very remote relation to the governmental functions of respondent corporation, and the union members are not covered by the prohibition against strikes. Restrictions of the workers' basic right to collective action or protect themselves against oppressive practices are to be strictly construed."

In the case of *GSIS Employees Association, et al. v. Alvendia, et al.*[31] the action for declaratory relief filed by the GSIS as to whether its employees can declare a strike in the light of section 11 of the Industrial Peace Act, was dismissed by the Court declaring that the issue had already been determined in previous cases.[32]

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[29] G.S.I.S. v. Castillo, et al., G.R. No. L-7175, April 27, 1956; Angat River Irrigation System v. Angat River Workers' Union, G.R. Nos. L-10943-44, December 28, 1957; Boy Scouts of the Philippines v. Araos. G.R. No. L-10091, Jan. 29, 1958.

[30] G.R. No. L-14439, March 25, 1960.

[31] G.R. No. L-15614, May 30, 1960.

[32] Note 29, *supra*.

UNFAIR LABOR PRACTICE

Unfair labor practices refer to acts and practices deemed prejudicial to the fundamental right of labor to self-organization. A catalogue of these acts and practices is found in Section 4 (a) and (b) of the Act. In the case of *Velez v. PAV Watchmen's Union, et al.*[33] the Court found the following acts of the employer as clearly constituting unfair labor practices: (a) threats of bodily harm upon an employee soliciting membership for the union; (b) warning given to the employee union member to resign from the union if he wanted to keep his job; (c) bypassing employee union members in work assignments after the employer failed to dissuade them from pursuing their union activities; and (d) organizing a company dominated union to offset the influence of the legitimate labor union. In the case of *Associated Watchmen and Security Union (PTWO) v. Lanting, et al.*[34] the Court refused however to find the company guilty of unfair labor practice in the face of the refusal of the company to employ the guards affiliated with a watchmen agency, which affiliates were members of the petitioner union. The Court took that position because it found no contractual relation between the company and the union. Furthermore, the company's refusal to employ said affiliates was not due to their union membership or activities but due to the failure of the watchmen agency of which the guards were affiliates to file the agreed bond to guarantee the faithful performance of its contract with the company. In another case,[35] the dismissal of a college professor, even if made without just cause, was held to be free from any taint of unfair labor practice because his dismissal was not in any way connected with the exercise of his right to union membership.

Under Section 4 (a) (5) of the Act, it is declared an unfair labor practice for an employer to dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges under the Act. Whether these charges must be connected with the employee's right to self-organization in order to give rise to unfair labor practice on the part of the employer, was resolved in the case of *Royal Interocean Lines, et al. v. CIR, et al.*[36] There *A* had worked for the petitioner since January 5, 1932 until her discharge on October 23, 1953. It appears that *A* and the manager of the Manila Branch of the petitioner developed strained relationship that led the former to file a complaint against said manager. The latter, with the approval of the head office, dismissed *A*. *A* charged the manager with unfair labor practice in the CIR which held the manager guilty thereof. Upon appeal, the Court overruled the decision. The Court declared that even from a literal and grammatical standpoint, the provision in dispute (section 4 (a) (5)) has to be interpreted in the sense that the charges, the filing of which is the cause of the dismissal of the employee must be related to his right to self-organization, in order to give rise to unfair labor practice on the part of the employer. And as *A*'s dismissal had no relation to union activities and the charges filed by her against the employer had nothing to do with or with or did not arise from her union activities, her dismissal did not constitute unfair labor practice.

The rule laid down in the *Royal Interocean Lines* case is in recognition of the employer's inherent right to discipline his employees, his normal prerogative to hire or dismiss them. The prohibition is directed only against the

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[33] G.R. No. L-12639, April 27, 1960 .
[34] G.R. No. L-14120, Feb. 29, 1960.
[35] Mapua Institute of Technology v. Manalo, G.R. No. L-14884, May 31, 1960.
[36] G.R. No. L-11745, Oct. 31, 1960.

use of the right to employ or discharge as an instrument of discrimination, interference or oppression because of one's union affiliation or activities.

In another case, the Court refused to find the employer guilty of unfair labor practice considering that the dismissal of the employees was not due to their union activities but solely because they had committed certain acts of misconduct and dereliction of duty which rendered them unfit to continue in the service of the company, their position as night watchmen being confidential in nature.[37] The holding in the case of *Philippine Education Company v. Union of Philippine Education Employees, et al.*[38] is to the same effect. There, the company refused to reinstate an employee who had joined the strike not because of his union affiliation or activity but because the company had ample reason to distrust him. It appeared that the employee concerned was convicted of theft of the magazines of the company although subsequently acquitted on reasonable doubt in the court of first instance. Nevertheless, the Court held the company's refusal to reinstate as justified under the circumstances.

JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

Over Non-Profit Entities

It is well settled that the Industrial Peace Act applies and was intended to apply only to entities organized and operated for profit, engaged in profitable trade, occupation or industry.[39] Thus, charitable institutions and others neither created nor operated for profit are excluded from the coverage of the Act and for this reason the CIR has no jurisdiction to entertain and decide any complaint against these entities even if it involves unfair labor practices.[40] The cases of *La Consolacion College, et al. v. CIR et al.*[41] and *The University of the Philippines, et al. v. CIR, et al.*[42] are reiterations of this doctrine.

In the *La Consolacion case*, the petitioner is an educational institution operated by the Agustinian sisters. The college derives its income from the fees collected from the students from which it pays the salaries of its teachers and buys the books and equipments needed by the college. The laborers involved had been employed as janitors, gardeners, kitchen helpers and carpenters. They were dismissed by the Mother Superior not only because they demanded better wages and working conditions, but also because they joined a labor union. The Court held that the petitioner being an educational institution not organized for profit, the CIR had no jurisdiction to hear the complaint of unfair labor practice.

In the case of the *University of the Philippines*, the University of the Philippines Employees' Welfare Association (UPEWA) on behalf of its members, helpers in the U.P. Women's South Dormitory, filed an action for unfair labor practice in the CIR alleging discrimination in regard to hire and tenure of employment by not better working conditions. The Court declared the CIR without jurisdiction. It said that the University of the Philippines was established "to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training." Performing as it does a legitimate government function, the University is maintained by the Government. It declares no dividends and is, obviously not a corporation

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[37] The Management of El Hogar Filipino Mutual Building and Loan Association, et al. v. Building Employees' Association, et al., Nate 23, *supra*.
[38] G.R. No. L-13779, April 29, 1960.
[39] Boy Scouts of the Philippines v. Aracs, G.R. No. L-10091, Jan. 29, 1958.
[40] *Id.*
[41] G.R. No. L-13282, April 22, 1960.
[42] G.R. No. L-15416, April 28, 1960.

created for profit but an institution of higher education and therefore not an industrial or business organization.

Over Money Claims

A money claim by a worker or laborer, whether still in or already outside the service of the employer, is a demand for payment of a sum of money in the form of overtime, underpayment, work on Sundays and holidays, etc., which still has to be prosecuted before a court and established by competent evidence, which would still necessitate a decision or award.[43] Where the petition is merely for the enforcement of a decision or award involving a money claim which has already become final and executory, the court which has jurisdiction over it is that which as a result of a hearing or other proceeding, rendered award.[44] Thus, an action for the execution of an award of the CIR must be brought in the CIR itself and it is not neecssary for that purpose to establish the elements required to confer jurisdiction on the CIR, such as, that the petition involves a labor dispute causing or likely to cause a strike and that the petition should be signed by at least 31 claimants.[45]

On the other hand, however, when the action is not for the execution of a money claim award but on the money claim itself the CIR has exclusive jurisdiction to act thereon if it appears that there exists between the claimant and respondent an employer-employee relationship, or if such no longer exists, if the complaint includes a prayer for reinstatement.[46] Absent either of these requisites, the case falls within the exclusive jurisdiction of the regular courts.[47] Thus, where the case merely involves the recovery of retirement pay on account of the employee's separation from the service and he is not seeking his reinstatement, it is merely a money claim that is cognizable by the regular courts.[48]

In *Ajax International Corporation v. Seguritan et al.*[49] the Court pointed out that while the claimant apparently confined his claim to overtime pay, it does not mean that he was not interested in his reinstatement it appearing that he ceased working due merely to the strike staged by the union of which he was a member and the strike was still pending settlement before the CIR. Unless, therefore, that strike shall have been definitely decided, it could not be said that the employer-employee relationship had terminated, for the outcome might still be that the strike was legal and the strikers entitled to reinstatement.

To Issue Injunctive Relief

The case of *Rizal Cement Company v. Rizal Cement Workers' Union*[50] is authority for the rule that the certification of the President of the Philippines of a labor dispute to the CIR has the consequence of depriving the CFI which had acquired jurisdiction over the case, of jurisdiction to entertain a

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[43] Philippine Long Distance Telephone Co. v. CIR, et al., G.R. No. L-13447, Feb. 17, 1958.
[44] *Id*
[45] National Development Co. v. Aralar, et al., G.R. No. L-14258, July 26, 1960. Another instance where the requirement under Section 4 of Commonwealth Act No. 103, as amended, as to the filing of the complaint by at least 31 employees, may not be complied with is where the same was filed not only by the employees but also by the union of which they were members. (Sampaguita Pictures, Inc., et al. v. CIR, et al., G.R. No. L-16404, Oct. 25, 1960.
[46] Price Stabilization Corporation v. CIR, et al., G.R. No. L-13806, May 23, 1960; Sampaguita Pictures, Inc., et al. v. CIR, e tal., *supra*.
[47] See National Shipyard and Steel Corporation v. CIR, et al., G.R. No. L-13888, April 29, 1960.
[48] Elizalde Paint & Oil Factory, Inc. v. Bautista, G.R. No. L-15904, Nov. 23, 1960.
[49] G.R. No. L-16038, Oct. 25, 1960.
[50] G.R. No. L-12747, July 30, 1960.

petition for injunction restraining picketing as an offshoot of a strike. It appeared in that case that on May 29, 1956, the company filed with the CFI a petition to enjoin the union from illegal picketing conducted pursuant to a strike. The CFI issued the injunction of the same day. On June 1, 1956, the union filed a motion for reconsideration. While said motion was still pending, the labor dispute was certified by the President of the Philippines to the CIR. The company insisted that the CFI had acquired jurisdiction under section 44 of the Judiciary Act of 1948 the matters complained of being ordinary violence, threats, intimidation and coercion which are cognizable by ordinary courts and that the CFI should have retained the jurisdiction already acquired because the same could not be removed by any subsequent event. The Court overruled this contention. Its decision penned by Mr. Chief Justice Parás quoted approvingly the conclusion of the CFI, thus:

> ". . . it is one where when this case was presented, this Court had jurisdiction but that jurisdiction was lawfully withdrawn pursuant to Section 10, Republic Act No. 875, by virtue of Exhibit '2' the certification of the dispute by the President to the CIR; this is more properly a case of abatement and there being no showing that the President had no authority to certify the strike unto the Court of Industrial Relations that authority must stand with the necessary consequence of taking out this case from this Court."

Also, where the picketing and strike are merely incidents or consequences of the unfair labor practice and there is already pending in the CIR charges for unfair labor practice against the company, the jurisdiction to issue injunctive relief lies exclusively in the CIR.[51] The idea is that the issuance of injunction be made by the court having jurisdiction over the main case, in order that the writ be issued upon cognizance of all relevant facts.[52]

To Reinstate Employees As a Solution to Strikes

The case of *Hind Sugar Company v. CIR, et al.*[53] sheds light on the extent of the power of the CIR to fix terms and conditions of employment if no other solution is found to a labor dispute certified by the President of the Philippines to the CIR. In said case the union presented a set of labor demands against the company. Upon failure of the company to confirm to its demands, the union declared a strike. The President of the Philippines certified the labor dispute to the CIR pursuant to section 10 of the Act. After due investigation the CIR ordered the reinstatement of two seasonal employees. The company resisted the order claiming excess of jurisdiction inasmuch as the matter of rehiring did not constitute a labor dispute which the CIR may legally adjudicate. The Court ruled that the last clause of section 10 empowering the CIR to "issue an order fixing the terms and conditions of employment" is broad enough to authorize the CIR, if it deems it necessary or useful for the settlement of the dispute, to order the return to work not only of the actual workers who were so at the time of the strike but all other regular workers of the company, even though not actually at work or working during the day of the strike because of the seasonal character of their job.

Where CIR Has No Jurisdiction

The case falls within the exclusive jurisdiction of the regular courts if the complainant merely seeks the recovery of damages occasioned by the acts

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[51] NARIC Workers' Union, et al. v. Alvendia, Note 30, *supra*.
[52] Erlanger & Galinger, Inc. v. Erlanger & Galinger Employees' Association. G.R. No. L-11907, June 24, 1958.
[53] G.R. No. L-13364. July 26, 1960.

of interference and violence perpetrated by another labor union. This was the ruling in *Cueto v. Ortiz, et al.*[54] Be it noted that in said case the Court made a statement that with the exception of the cases specified in the 1956 case of *Philippine Association of Free Labor Unions et al. v. Tan et al.*,[55] the CIR has no jurisdiction even if the case involves a labor dispute. Those cases are as follows: (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court (Section 10, Republic Act No. 875); (2) when the controversy refers to minimum wage under the Minimum Wage Law (Republic Act No. 602); (3) when it involves hours of employment under the Eight-Hour Labor Law (Commonwealth Act No. 444); and (4) when it involves an unfair labor practice (Section 5(a), Republic Act No. 875).

PROCEDURE IN THE COURT OF INDUSTRIAL RELATIONS

The rules of procedure observed in ordinary court litigations are not controlling in the hearing, investigation and determination of complaints for unfair labor practice. For one thing, the Act prescribes a definite procedure to be followed in unfair labor practice cases.[56] Furthermore, the CIR has its own rules. And deviations from the CIR's own rules will not per se void the proceedings. Thus, the non-observance by the trial judge of the rules of the CIR by *motu propio* ordering the reinstatement of the case without submitting his findings and recommendation to the court *in banc* will not affect the decision of said judge where no material damage to either party results thereby.[57]

While under the Act, a regular complaint for unfair labor practice to be filed by the court prosecutor, formally starts the proceeding, this does not necessarily bestow on said officer absolute control and supervision over the said proceeding.[58] Thus, in filing a motion for reconsideration the aid or supervision of the court prosecutor is not indispensable.[59]

Under Section 5(d) of the Act unfair labor practice cases must be decided within 30 days after its submission. The Act itself provides that this provision shall be considered as mandatory in character.[60] The Court interpreted this provision in the case of *Permanent Concrete Products, Inc., et al. v. Frivaldo.*[61] In that case Juan Frivaldo filed an unfair labor practice complaint against the company on September 10, 1956. The parties submitted the case for decision on May 14, 1957. The CIR, however, rendered its decision only on May 29, 1958. It did not appear that the company took steps to call attention to the delay, or to ask that the case be decided earlier, nor did they attempt to take other remedial measures. On the other hand the company simply waited until the decision was rendered whereupon they attacked the decision as void on account of the delay. The Court sustained the decision declaring that the mandatory character of the 30-day period fixed by section 5(d) of the Act for rendering decisions in unfair labor practice cases was intended merely to expedite cases for the benefit of laborers, who "cannot afford such a delay." The Legislature has not provided that decisions of the CIR rendered

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[54] G.R. No. L-11555, May 31, 1960.
[55] 52 O.G. 5836.
[56] Sec. 5, Rep. Act 875.
[57] Cano v. CIR, et al., G.R. No. L-15594, Oct. 31, 1960.
[58] *Id.*
[59] *Id.*
[60] Sec. 5(d), Rep. Act 875.
[61] G.R. No. L-14179, Sept. 15, 1960.

after the lapse of 30 days would be null and void; and this omission was evidently dictated by the realization that such nullity would only defeat the very purpose of the clause, as the parties would be ultimately driven to bring anew the case to the courts, thus subjecting the laborers to greater delay and hardship. The Court added a statement that in the Act the 30-day provision "shall be considered as mandatory in character" was simply designed to provide the parties to the industrial dispute with means to compel the prompt disposition of the case by the court by writ of mandamus, administrative complaint or similar recourse.

The case of *Brito v. CIR, et al.*[62] reiterates the doctrine that a slight delay in the adjudication of the case occasioned by a reasonably justified continuance of the hearing of the case, to afford the petitioner company the opportunity to cross-examine the witnesses of the union and to present evidence in his behalf, would not materially prejudice the union and therefore may be allowed in accordance with the provisions of Sections 13 and 20 of Commonwealth Act No. 103, as amended, "that in the hearing, investigation and determination of any question or controversy and in exercising any duties and power under this Act, the Court shall act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable." In the *Brito case* the case was set for hearing on January 17, 1958, with due notice thereof sent to the parties through their respective counsel. As neither respondent Brito nor his counsel appeared at the hearing, the CIR allowed the petitioning union to present its evidence. However, Brito's counsel was sick and confined in bed for several days prior to the date of the hearing and he came to know of said hearing only on January 20, 1958, when he returned to his office and went to the CIR to find out the status of the case. So, on the following day, January 21, Brito's counsel filed a motion, praying that he be given a chance to cross-examine the petitioner's witnesses and present his evidence. His motion was denied by the CIR *in banc* but on appeal was granted by the Court.

Under Section 14 of Commonwealth Act No. 103, a decision, award, or order of the CIR becomes self-executory 10 days after its promulgation notwithstanding the institution of an appeal therefrom, unless at the discretion of the court, the execution thereof is expressly ordered suspended (1) for special reasons, and (2) upon the appellant's depositing in court either the amount of salaries or wages due the laborers or employees under the order, decision or award appealed from, or a bond of such amount that would insure its compliance. This provision was assailed in the case of *Talisay-Silay Milling Company v. CIR, et al.*[63] as unconstitutional. However, the Court through Mr. Justice Barrera upheld its constitutionality, declaring that said provision of law is not unconstitutional in the sense as contended that it infringes upon the Supreme Court's plenary jurisdiction under the Constitution to review, revise, reverse, modify or affirm on appeal, certiorari or writ of error, final judgments and decrees of inferior courts.

Interlocutory orders of the CIR are not appealable. Thus, the order of the CIR requiring a plebiscite to be conducted among the employees in the three proposed groups of collective bargaining units, to determine whether the employees desire to be separated from the unit of the rest of the employees

[62] G.R. No. L-14201, May 31, 1960.
[63] G.R. Nos. L-14023, Jan. 30, 1960.

being represented by the duly certified bargaining agent, cannot be appealed inasmuch as the order leaves something more to be done in the CIR and does not decide one way or the other the petitions of the respondent unions.[64]

TERMINATION OF THE EFFECTIVITY OF AWARDS OF THE CIR

Under Section 17 of Commonwealth Act No. 103 where no period is specified during which an award, order or decision of the CIR shall be valid and effective, any party to a controversy may terminate the effectiveness thereof after three years have elapsed from the date of said award, order or decision by giving notice to that effect to the CIR. In the 1957 case of *Katipunan Labor Union v. Caltex (Philippines) Inc., et al.*[65] the Court held this provision inapplicable where the agreement sought to be terminated was the result of a compromise freely entered into by the parties and approved by the CIR. The reason given is that the judicial approval could not alter the essential nature of the compromise as a binding contract, nor did it cease to be a compromise because a judge had stamped official approval thereon. As a result, the compromise would be governed by the basic principle that the obligation arising therefrom have the force of law between the parties, which means that neither party may unilaterally and upon his own exclusive volition escape his obligations thereunder unless the other party has assented thereto, or unless for causes sufficient in law and pronounced adequate by a competent tribunal. In other words, a compromise approved by the CIR does not fall within the phrase "an award, order or decision of the Court" as used in the Act. For that reason, section 17 applies only to awards imposed upon the parties by the CIR. Following the reasoning of the Court, it would seem that the mere notice of termination sent to the CIR by a party to an award which is not a compromise is sufficient to terminate the effectivity thereof where it is one that does not provide for the period of its effectivity and the three-year requirement has been complied with. Such an inferential conclusion, however, is not correct as shown in the 1960 case of *National Waterworks and Sewerage Authority v. CIR, et al.*[66]

In the *NAWASA* case a labor dispute arose between NAWASA and the union as a result of the refusal of the former to accede to the demand of its employees members of the union, for higher pay. The CIR summoned the parties to a conference during which it was agreed to grant the employees a general increase of ₱0.50 a day effective October 21, 1949. The agreement stated that the same would only remain in force until the CIR shall have fixed the reasonable and just compensation to which the employees were entitled. Thereafter, the CIR proceeded to receive evidence on the strength of which it ordered the adoption of a new scale of wages on June 13, 1950. Neither of the parties was satisfied and both moved for a reconsideration. The result was the award issued on November 25, 1950 fixing the salary increase of ₱0.50 a day. It thus appears that the award was not the result of a compromise arrived at between the parties but rather it was fixed by the CIR as the reasonable increase to which the employees and laborers were entitled after a mature study and consideration of the evidence submitted by the parties at the hearing set by the CIR for the purpose. On December 29, 1953, the NAWASA gave notice to the CIR to terminate the award. Since the award did not specify the time during which it shall be valid and effective, con-

[64] Manila Railroad Co. v. CIR, G.R. Nos. L-16292-94, Oct. 31, 1960.
[65] G.R. No. L-10337, May 27, 1957.
[66] G.R. No. L-13161, Feb. 25, 1960.

sidering that it was not the result of a compromise arrived at between the parties, it was the theory of NAWASA that it could terminate the same by giving notice to the CIR after the lapse of three years from the date of the award. Speaking through Mr. Justice Bautista Angelo, the Court overruled this contention, thus:

> "Since an award is made as a result of a controversy and is binding upon the parties, it would appear logical that its effectivity cannot be terminated *ex parte* unless the period of its duration is specified therein. The reason is obvious: since the award is made in favor of the employee, it is but fair and just that he be heard before his right thereto is terminated, otherwise the employer might act arbitrarily or to his prejudice. That is why the law requires that notice of termination be given to the court. This requirement is not merely *proforma*. This is to give the court the right to intervene in order that the interest of labor may not be jeopardized."

The Court reaffirmed this ruling in *National Development Company v. Aralar, et al.*[67] decided five months later. Mr. Justice Montemayor who wrote the opinion said that although under Section 17 of Commonwealth Act 103 as amended, a notice to terminate the effectivity of an award is allowed still, when the award was made as a result of a controversy between the management and labor, it is naturally binding upon both parties and its effectivity cannot be terminated *ex parte* unless the period of its duration is specified in the award. A hearing should be held before the CIR which may then decide whether or not the terms of the award may continue to be enforced, on the basis of prevailing conditions. For instance, if at the time of the award the company was making sufficient profits so as to justify the award, say in the form of increase in salaries and wages, but at the time of the notice of termination the company was no longer making profits but on the contrary was suffering losses, then the CIR may order that the increase in the wages should be stopped.[68]

In *Hacienda Luisita v. National Labor Union, et al.*[69] the award involved was the result of a compromise agreement of the parties. There was no disagreement that the Hacienda could terminate its effectivity *ex parte* by serving notice to the CIR. The only issue was whether the three-year period be reckoned from the date of the award or from the date of effectivity of the subsequent collective bargaining agreement between the parties. The Court held that the date of the award was controlling. The Court, however, made a *dictum* that the ruling in the case of *Katipunan Labor Union v. Caltex (Philippines) Inc. v. CIR, supra*, that an award may not be terminated by mere notice of one party was not applicable to the case at bar. At the same breath it said that as the time for authority to change a labor contract is expressly fixed by law at three years under Section 17 of Commonwealth Act No. 103, "it stands to reason that in the absence of any other agreement to the contrary, and for reasons of justice and equity, any party to an agreement may change or modify the same upon the expiration of the period of three years from the date thereof."

CONSTITUTIONALITY OF THE *MESADA* PROVISION

In *Abe et al. v. Foster Wheeler Corporation, et al.*[70] the Court upheld the constutitionality of Republic Act No. 1052 which provides for the payment to the employee of one month's salary from the date of termination of his

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[67] Note 45, *supra*.
[68] *Id.*
[69] G.R. No. L-13072, March 30, 1960.
[70] G.R. No. L-14785, Nov. 29, 1960.

employment where no notice of termination was served on him at least one month in advance and his employment is for no definite period. In said case, Felix Abe and 393 others filed a complaint against the company claiming that they were employed by the defendant and discharged without notice. There was no controversy that the petitioners were employed after the repeal of Article 302 of the Code of Commerce on mesada by the new Civil Code on August 30, 1950 but before the effectivity of Republic Act No. 1052 on June 12, 1954, reviving said privilege an dthat they were separated from the service after Republic Act No. 1052 went into operation. The company contended that as the contracts of employment were entered into at a time when there was no law granting the workers one month salary, the application as to them of Republic Act No. 1052 constituted an impairment of the contractual obligation. The Court ruled that said Act being a regulatory measure, not a substantive law, its enactment may properly be considered a valid exercise of the police power of the State. And the freedom of contract is not absolute but is subject to reasonable legislative regulation aimed at the promotion of public health, safety, moral and general welfare.

II. AGRICULTURAL TENANCY ACT

TENANCY RELATIONSHIP

Tenancy relationship can only be created by consent of the landholder, through lawful means and not by usurpation. Thus, the unauthorized dispossession of the tenants by an overseer and the latter's cultivation of the landholdings could not give him any legal right to work on it as a tenant and enjoy the protection of security of tenure under the Act.[1] That the usurpation occurred before the Act took effect is immaterial inasmuch as the act was already illegal under the laws then enforced.[2]

The amendment to Section 9 of the Act by Republic Act No. 2263 providing for the continuance of the tenancy relationship in the event of the tenant's death or incapacity, has no retroactive effect.[3] For that reason where upon the death of the real tenants in 1955, the petitioners, members of said tenants' immediate farm household, were merely allowed by the landholder to continue working on the land, said petitioners cannot as a matter of right demand that they be recognized as tenants after the amendatory law took effect on June 19, 1959.[4]

RIGHTS OF LANDHOLDER

Section 25(1) of the Act provides that the landholder shall have the right to choose the kind of crop and the seeds which the tenant shall plant in his holdings provided that if the tenant should object the court shall settle the conflict according to the best interest of both parties. The Court has interpreted this provision to include the right of the landholder to convert her riceland into a fishpond if it appears that by effecting said conversion the landowner would obtain greater yield or income than treating it merely as a riceland.[5] The case of *Lacap et al. v. De Guzman*[6] is a reiteration of this doctrine.

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[1] Cañada et al. v. Rubi et al., G.R. No. L-15595, Dec. 29, 1960.
[2] *Id.*
[3] Ulpiendo et al. v. CAR, et al., G.R. No. L-13891, Oct 31, 1960.
[4] *Id.*
[5] De Miranda v. Reyes, G.R. No. L-10929, March 27, 1958.

The right of the landholder to determine the site for the stacking of the harvest is not absolute. The Act carries a proviso that said site must not be farther than one kilometer from the center of the area cultivated by a majority of the tenants and that in case of disagreement by the tenant, the CAR shall determine whatever may be in the interest of both parties.[7] The question as to who should seek the intervention of the CAR in the event of such disagreement was brought for decision in the case of *Pagdañganan v. CAR, et al.*[8] In that case the landholder filed a suit to eject his tenants. One of the grounds he alleged was the stacking by the tenants of their harvest in a place other than that designated by the landholder. The objection of the tenants to the choice of the site was that said choice would entail great difficulties on their part and possibly result in damage to or loss of their harvest because of the muddy pathway. Neither of the parties sought the intervention of the CAR. The landholder contended that the duty to seek court intervention lay with the tenants and not with the landholder. The Court held that the law is silent on the point. Nevertheless, as the landholder failed to show that he was prejudiced by the act of the tenants in stacking the harvest at a different place, he could not eject said tenants on the ground of such disobedience. The fact that the tenants signed a contract recognizing the landholder's right to choose where the harvest should be stacked could not change the situation because said contract must be read together with the limitations provided for in the Act, since said law is part of said contract. Were it otherwise, the law could easily be circumvented and the purpose thereof defeated in that the landholder could choose a site not only too far, but also too difficult for the tenants, thereby enabling him to create at will a cause for the ejectment of his tenants.

DISPOSSESSION OF TENANTS

The case of *Saclolo v. CAR, et al.*[9] is authority for the view that a landholder who owns the land as paraphernal property may dispossess her tenant thereof in order that the same may be cultivated by her husband. The Court, speaking through Mr. Justice Labrador, reasoned out that if there is unity and community of existence between husband and wife, then the husband may not be considered as a being distinct and different from the wife, and the cultivation of the wife's land should be considered as a joint effort of both.

JURISDICTION OF THE COURT OF AGRARIAN RELATIONS

Where there is no tenancy relationship between the parties and the situation is merely one of forcible entry or usurpation, the CAR has no jurisdiction.[10] However, where the complaint alleges that defendant is plaintiff's tenant but defendant in his answer denies tenancy relationship, alleging that the land has been occupied, cultivated and possessed by him in the concept of an owner, the CAR has original and exclusive jurisdiction thereof under Section 21 of the Act.[11]

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[6] G.R. No. L-12597, Aug. 31, 1960.
[7] Sec. 25(1), Rep. Act 1199, as amended.
[8] G.R. No. L-13858, May 31. 1960.
[9] G.R. No. L-13274, Jan. 30, 1960.
[10] Pabustan v. De Guzman, G.R. No. L-12898, Aug. 31, 1960; Reyes v. Camarines Sur Regional Agricultural School, G.R. No. L-15753, Dec. 29, 1960.
[11] Mandih v. Tablantin, G.R. No. L-12795, March 30, 1960.

APPEAL FROM DECISIONS OF THE CAR

In *Caisip v. Cabangon* [12] the Court held that an appeal from a decision of the CAR may be by a special civil action for certiorari, in which case petitioner need not comply with the provisions of Section 13 of Republic Act 1267 and Rule 44 of the Rules of Court. As such, however, the petitioner must meet the requirements called for such special action, in that the court *a quo* must have acted without or in excess of its jurisdiction, or with grave abuse of discretion, in rendering the decision complained of, and furthermore that petitioner must have no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law (Section 1, Rule 67, Rules of Court). Thus, where only the CAR's appraisal of the evidence presented by the parties is assigned as error with no question of jurisdiction nor grave abuse of discretion is presented, the special civil action for certiorari will not lie.[13]

Only final judgments of the CAR may be appealed. This was the ruling in *De la Fuente, et al. v. Geron, et al.*[14] In that case several tenants filed a complaint to compel their landlords to render an accounting and reliquidation of the harvests for a number of agricultural years. Subsequently, the parties reached an amicable settlement for the division of the harvests of the agricultural years 1957-58 and 1958-59. It contained nothing about the harvests previous to 1957. The CAR approved the agreement. After the approval had become final, the tenants' again filed a petition for the reliquidation of harvests for 1952-57 under the same contracts of tenancy and of the same parcels of land. The landlords filed a motion to dismiss on the ground of *res judicata.* Instead of denying the motion to dismiss, the CAR ordered the reopening of the previous case for the reception of evdience on the reliquidation of the past harvests. Thereupon, the landlords filed a petition for review. The Court dismissed the petition holding that the order for the reopening of the case being interlocutory (as the landlords might still win after the reception of such evidence) the same could not be appealed.

III. THE WORKMEN'S COMPENSATION ACT

"ARISING OUT OF AND IN THE COURSE OF"

Personal injuries in order to be compensable must be due to an accident arising out of and in the course of employment.[1] In the 1956 case of *Batangas Transportation Company v. Rivera* [2] the Court laid down the rule that once it is proved that the employee died in the course of the employment the legal presumption in the absence of substantial evidence to the contrary is that the claim comes within the provisions of the Act, i.e., that, the accident arose out of the workman's employment. The Court has expanded this rule with its decision in *De los Reyes v. Reyes*, et. al.[3] There it declared that the presumption that the death arose in the course of the employment can also give rise to the presumption that the death arose out of the employment, and the two presumptions can make out a compensable claim. In other words, the fact of death having arisen in the course of employment need not be proved. The same can

[12] G.R. Nos. L-14684-86, Aug. 26, 1960.
[13] *Id.*
[14] G.R. No. L-14138, July 30, 1960.
[1] Sec. 2, Com. Act 3428, as amended.
[2] G.R. No. L-7658, May 8, 1956.
[3] G.R. No. L-13115, Feb. 29, 1960.

be presumed in certain cases and the presumption can give rise to another presumption—that the death arose out of the employment.

In the *De los Reyes* case the deceased was a driver of a jeepney operated by the respondent. He was last seen operating said vehicle at 9 o'clock in the evening of September 26, 1955. The following morning, his dead body was found in Tayabas, Quezon, obviously a victim of murder. The records show that there was specific instruction given by the respondent to the deceased to follow the route prescribed by the Public Service Commission which route was within Manila and suburbs. There was no proof that at the time of the murder he was in the actual performance of his duty. The Court presumed that such murder occurred while the deceased was in the course of his employment because there was no showing that the deceased voluntarily deviated from his prescribed route. It could be that while driving in the city the deceased was forced to go out and drive to the province of Quezon on the threats of his malefactors. From this presumption of death in the course of the employment the Court concluded that the death must be presumed to have arisen out of said employment.

EFFECT OF DEVIATION

The case of *Chua Heng v. Roma et al.*[4] deals on the effect of a deviation from the duties of the employment upon the compensability of an injury sustained during such deviation.

In that case the deceased was employed by Chua Heng as cargador in loading and unloading copra at his warehouse. On the day of the accident, after asking permission from his employer, the deceased went to the employer's house just across the street to get a drink of water. Reaching the kitchen of said house, he saw a puppy eating some fried fish inside an open cabinet. He tried to drive away the puppy, in the course of which his right hand was bitten by said puppy. The puppy was not owned by the employer. Two years afterwards, the deceased died of hydrophobia. Held: It is well settled that such acts as are reasonably necessary to the health and comfort of an employee while at work, such as the satisfaction of his thirst, hungry, or other physical demands, or protecting himself from excessive colds, are nevertheless incidental to the employment, and injuries sustained in the performance of such act are generally held to be compensable as arising out of and in the course of employment. That the deceased was not at his usual place of work does not take the case out of the operation of this rule for the reason that the laborer was practically driven to that place through the employer's fault in not providing an adequate supply of drinking water at the warehouse. The employer's contention that the injury was sustained not from drinking water but from driving away the puppy and hence, while he was engaged in an independent activity, is untenable. Such act is not a voluntary deviation from his duties, considering that the act of the deceased was practically an instinctive one, motivated by a sense of loyalty to his employer, a desire to protect the latter's property, that can not be deemed wholly foreign to the duties of the laborer as such.

"AGGRAVATED BY"

The fact that an employee lacked nourishment and that he lived in a small and crowded room, are not in themselves conclusive as causing the aggravation

[4] G.R. No. L-14827, Oct. 31, 1960.

of his tuberculosis.[5] If at all, they are merely contributory factors and could not counteract the established fact that the nature of his employment as a truckman, required him to perform strenuous work day and night, as the exigencies of the service required the same, exposing him to the elements thereby aggravating his illness which he undoubtedly contracted in the course of his employment.[6]

Where an employee was injured while he was engaged in the performance of work outside of his employment, but said injury became worse by an accident which he met while performing work in the course of his employment he can recover compensation for such injury. This was the ruling in *Dangue v. Franklin Baker Company of the Philippines, et al.*[7] In that case the claimant's right eye was hit by the leaves of a shrub while he was cleaning his kaingin. His right eye became reddish as a result thereof but he was nevertheless allowed to work the following day after consulting the company physician. While in the course of his work as sheller, his right eye again was struck by a flying speck of coconut shell. Consequently, the claimant sustained a permanent partial loss of vision of the injured eye.

DEFENSES

The defense of drunkenness in workmen's compensation cases must be supported by clear and convincing proof to the effect that such intoxication or drunkenness rendered the employee incapable of doing his work so that he could not be said to be engaged in his employment.[8] The accident or injury must be shown to have arisen out of his drunken condition and not out of the work.[9]

Likewise, the defense of notorious negligence is an affirmative allegation which must be established by substantial evidence.[10] A violation of a company regulation against having members of the employee's family in a company vehicle is not in itself notorious negligence as would bar recovery where it is not certain that such violation directly caused the accident.[11]

SICKNESS MUST BE DISABLING

The case of *Realica v. Andamo et al.*[12] reiterates the rule that an illness to be compensable must be disabling. In that case the claimant spat blood while working. It was found that he was not suffering from tuberculosis, but only from bronchiectasis. The physician of the Workmen's Compensation Commission testified that a person suffering from this illness could still continue with his ordinary work. The Court said that if this be true then the claimant could not be or have been suffering from any disability for which compensation might be recovered. The Court therefore remanded the case to the Commission for the reception of further evidence.

EFFECT OF NON-CONTROVERSION OF CLAIM

As a rule, when the employer does not controvert the claim of the employee for compensation, he is deemed to have waived his right to interpose

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[5] Manila Railroad Co. v. Ferrer et al., G.F. No. L-15454, Cept. 30, 1960.
[6] *Id.*
[7] G.R. No. L-15838, April 29, 1960.
[8] Compania Maritima v. Cabagnot et al., G.R. No. L-10675, April 29, 1960.
[9] *Id.*
[10] Batangas Transportation Co. v. Rivera et al., G.R. No. L-14427, April 29, 1960.
[11] Davao Gulf Lumber Corp. v. Del Rosario, G.R. No. L-...., Dec., 1960.
[12] G.R. No. L-14256, Jan. 30, 1960.

any defense, and he could not prove anything in relation thereto.[13] Thus, it is error for the Commission to absolve the employer from liability where the latter admitted the injury to have been sustained in the performance of the regular work, and did not controvert the claim for compensation.[14]

THE REQUISITE EMPLOYER-EMPLOYEE RELATIONSHIP

The employer-employee relationship is essentially contractual.[15] But no written contract of employment is required by the Act. An employment contract can be implied from the fact that the deceased was assigned by the company as a gangwayman in one of its vessels and his salary was paid directly from the funds of the company.[16] The fact that the deceased was supplied to the company by a watchmen agency did not make the agency an independent contractor as would bar recovery from the company for his death occurring in line of duty where it appears that the company assumed control and supervision over the work of the deceased.[17]

The case of *Capulong v. L.V.N. Pictures, Inc.*[18] lays down the rule that a movie actress is not a laborer or an employee within the meaning of the Workmen's Compensation Act. The Court said that actors and actresses have become, by common acceptance, more than mere employees, much less as mere laborers. Some special talent is required of them. In a sense, they have established among themselves a sort of a profession and are looked to as such. For their performance, they admittedly earn much more than any ordinary laborer or employee. Moreover, the terms "actors" and "actresses", as distinguished from "servants" and "workman" have gained their established legal meaning. Upon the other hand, the workmen's compensation laws are aimed principally to give protection and adequate compensation to laborers or workmen rendering manual or menial chores suffering injury in connection with their work.

In the *Capulong case* the plaintiff worked as a movie actress with the defendant corporation. She had no regular work and received no regular salary. She was only paid a fixed amount for every picture produced wherein she appeared. While she was performing a role, she was kicked on the mouth by a horse rented by the defendant and used during the filming.

The case of *Bernardo v. Pascual et al.*[19] reiterates the holding of the Court in *Martha Lumber Mill v. Lagradante, et al.*[20] that forest guards hired by lumber concessionaires, although appointed by the Department of Agriculture and Natural Resources, are still deemed employees of the concessionaires.

ENFORCEMENT OF AWARDS

Section 1, Rule 11 of the Rules of the Workmen's Compensation Commission provides that as soon as a decision, order or award has become final and executory, the Regional Administrator or the Commission, as the case may be, shall, *motu propio* or on motion of the interested party, issue a writ of execution requiring the sheriff or other proper officer to whom it is directed to execute said decision, order or award, pursuant to Rule 39 of the Rules of

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[13] Victorias Milling Co. v. Compensation Commissioner, G.R. No. L-10533, May 13, 1957.
[14] Dangue v. Franklin Baker Co., et al., note 7, *supra*.. General Shipping Co. v. Workmen's Compensation Commission, et al., G.R. No. L-14936, July 30, 1960.
[15] *See* Sec. 39(b), Com. Act 3428, as amended.
[16] Note 8, *supra*.
[17] *Id.*, Koppel (Phil.) Inc. v. Larlucio, G.R. No. L-14903, Aug. 29, 1960.
[18] G.R. No. L-9697, Nov. 29, 1960.
[19] G.R. No. L-13260, Oct. 31, 1960.
[20] G.R. No. L-7599, June 27, 1956.

Court. In *Santos et al. v. Estenzo et al.*[21] the Court held that this rule did not divest the regular courts of jurisdiction under Section 51 of the Workmen's Compensation Act to execute the decision of any referee or the Commissioner upon proper application of any party in interest. The reason is that said Rule did not amend Section 51 as the Commission cannot amend an act of Congress.

ATTORNEY'S FEES

Section 6, Rule 26 of the Rules of the Workmen's Compensation Commission merely regulates the fees that may be awarded either in the Commission, or when the decision thereof has been appealed to the Supreme Court. It does not govern the fees allowable by courts of justice, in proceedings for the execution of the award of the Commission, which are governed by the Rules of Court, when the employer unduly refuses to comply with said award.[22]

[21] G.R. No. L-14740, Sept. 26, 1960.
[22] *Id.*