A CRITICAL SURVEY OF THE 1962 DECISIONS OF THE SUPREME COURT IN LABOR RELATIONS LAW

CRISOLITO PASCUAL *

SURVEY OUTLINE

I. Jurisdiction of the Court of Industrial Relations.
  A. The Question of Jurisdiction of the Court of Industrial Relations.
  B. Jurisdiction of the Court of Industrial Relations Under the Industrial Peace Act.
    1. Over Cases Involving Unfair Labor Practices.
      (a) Unfair Labor Practice Procedure.
      (b) The Issue of Reinstatement and Business Recession.
      (c) The Issue of Reinstatement and the Payment of Backwages.
      (d) Computation of Backpay.
      (e) The Issue of Non-industrial Employment and Relations and the Industrial Peace Act.
    2. To Issue Injunctions.
  C. Jurisdiction of the Court of Industrial Relations Under Republic Act No. 602.
    1. Applicability of Section 4 of Commonwealth Act No. 103.
    2. The Problem of Jurisdiction of the Labor Standards Commission.
  D. Jurisdiction of the Court of Industrial Relations under Commonwealth Act No. 103.
    1. Jurisdiction to Terminate Effectiveness of Award, Order or Decision.
    2. Jurisdiction to Modify, Set Aside, or Reopen Award, Order or Decision.
  E. Jurisdiction of the Court of Industrial Relations Under Commonwealth Act No. 444.
    1. Types of Cases Within Jurisdiction of the Court of Industrial Relations.
    2. Prescription of Actions.

II. Union Security and Strength.
  A. The Issue as to the Nature of the "Closed Shop" Arrangement.

III. Employees Under the Industrial Peace Act.
  A. Distinction Between an Employee and an Independent Contractor.
  B. The Question of "Substantially Equivalent Employment."

---

* LL.B. (U.P.) 1940, LL.M. (Boston U.) 1948. Associate Professor of Law, University of the Philippines. Faculty Editor of the *Philippine Law Journal*. Author, Labor and Tenancy Law (1960), Legal Method (1956, 1960), and Introduction to Legal Philosophy (1951, 1953, 1959).

INTRODUCTION

One significant aspect of the decisions of the Supreme Court in the field of labor relations law in 1962 revolves on several questions: (1) the problem of the precise scope of the jurisdiction of the Court of Industrial Relations, (2) the problem of the matters appealable to the Supreme Court from the Court of Industrial Relations, (3) the problem of whether there is only one or two exceptions to the public policy of banning the issuance of injunctions in labor disputes, (4) the problem of whether or not the Court of Industrial Relations can issue injunctions *ex parte* in labor disputes, and (5) the problem of the nature of the "closed shop" arrangement as a device towards union security and strength.

The pronouncements of the Supreme Court in these problem-areas invite further scrutiny and restatement. In at least one problem-area, *i.e.*, the precise scope of the jurisdiction of the Court of Industrial Relations, the Supreme Court itself has already taken cognizance of the "confusion brought about by the contradictory rules in PAFLU v. Tan, on the one hand, and in [subsequent cases], on the other hand." Philippine Wood Products et al. v. Court of Industrial Relations et als., G.R. No. L-15279, June 30, 1961.

The other consequential aspect of the Supreme Court decisions in this field is the excellent inquiry by the Court into some of the pressing problems in labor relations law, such as the problem of the effect of business recession on the order of reinstatement of dismissed employees, the question of the computation of backwages and the practical method of computing it, the problem of the jurisdiction of the Court of Industrial Relations under Republic Act No. 602, and the question of the jurisdiction of the Court of Industrial Relations under Section 17 of Commonwealth Act No. 103, among others.

All the cases in labor relations law decided in 1962 are given in *italics* to distinguish them from the other cases which have been included in this survey.

I. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

A. THE QUESTION OF JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS.

The delineation of the limits of the jurisdiction of the Court of Industrial Relations has been a problem since the promulgation of the decision of the Supreme Court in the case of Philippine Association of Free Labor Unions v. Bienvenido A. Tan, August 31, 1956,

52 O.G., No. 13, 5836. By a close 6-to-4 vote, the majority, speaking through Mr. Justice Bautista Angelo, "confined" the jurisdiction of the Court of Industrial Relations to only four types of cases, adding that even if a case involves a labor dispute the Court of Industrial Relations would still have no jurisdiction over it if it is not one of the four types of cases recognized in the majority opinion:

> "But this broad jurisdiction was somewhat curtailed upon the approval of Republic Act 875, the purpose being to limit it to certain specific cases, leaving the rest to the regular courts. Thus, as the law now stands, that power is confined to the following cases: (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 875); (2) when the controversy refers to minimum wage under the Minimum Wage Law (Republic Act 602); (3) when it involves hours of employment under the Eight-Hour Labor Law (Commonwealth Act 444); and (4) when it involves an unfair labor practice (Section 5[a], Republic Act 875). In all other cases, even if they grow out of a labor dispute, the Court of Industrial Relations does not have jurisdiction, the intendment of the law being 'to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the employer and employee by means of an agreement freely entered into in collective bargaining' (Section 7, Republic Act 875). In other words, the policy of the law is to advance the settlement of disputes between the employers and the employees through collective bargaining, recognizing 'that real industrial peace cannot be achieved by compulsion of law.'"

Since the promulgation of this decision, the definition of the jurisdiction of the Court of Industrial Relations has become vague. Indeed, the Supreme Court itself took cognizance of this situation. Speaking through Mr. Justice Padilla in Philippine Wood Products et al. v. Court of Industrial Relations et als., G.R. No. L-15279. June 30, 1961, the Court observed that the error of the Court of Industrial Relations in dismissing the claim of several laborers for differential, overtime and separation pays with a petition for reinstatement and backpay should not be attributed to the Court of Industrial Relations because it was merely relying on the decision of the Supreme Court in the case of PAFLU v. Tan, and on subsequent decisions similar to it. The Court continued to say that the confusion brought about by the contradictory rules in PAFLU v. Tan, on the one hand, which prompted the Court of Industrial Relations to dismiss the laborers' claims, and the subsequent decisions, on the other hand, which led the Court of Industrial Relations to order the reopening of the claims of the laborers, should not be attributed to the Court of Industrial Relations, neither should the laborers be made

to suffer the confusion on the question of the jurisdiction of the Court of Industrial Relations.

Thus, speaking through Mr. Justice Labrador in Republic Savings Bank v. Court of Industrial Relations, G.R. No. L-16637, June 30, 1961, and through Mr. Justice Reyes in Manila Port Service et al. v. Court of Industrial Relations, G.R. No. L-16994, June 30, 1961, the Supreme Court appeared to be retreating from PAFLU v. Tan when it ruled that the Court of Industrial Relations has indeed exclusive jurisdiction over cases involving claims for overtime work if the claimants are still in the service of the employer or, having been separated therefrom because of the wrongful severance of the employer-employee relationship, are seeking reinstatement.

But 1962 was simply not the year for the overruling of the PAFLU v. Tan decision. Indeed, in 1962, the Supreme Court, in a cluster of cases, namely, *Pomposa Vda. de Nator et al. v. Court of Industrial Relations et als.*, G.R. No. L-16671, March 30, 1962; *San Miguel Brewery, Inc. v. Elpidio Floresca et al.*, G.R. No. L-15427, April 26, 1962; *Luis Recato Dy et al. v. Court of Industrial Relations et al.*, G.R. No. L-17788, May 25, 1962; *Ignacio Campos et al. v. Manila Railroad Company et al.*, G.R. No. L-17905, May 25, 1962; *Santiago Rice Mill et al. v. Santiago Labor Union*, G.R. No. L-18040, August 31, 1962; and *Board of Liquidators et al. v. Court of Industrial Relations et al.*, G.R. No. L-14336, Oct. 31, 1962, reiterated the ruling that the Court of Industrial Relations acquires jurisdiction over a case only when the case involves any of the four types of cases enumerated in PAFLU v. Tan, provided that there is an existing employer-employee relationship or if lacking is sought to be reestablished by a petition for reinstatement.

A reexamination however of the PAFLU v. Tan case shows that the uncertain and variable approach of the Supreme Court to the question of the jurisdiction of the Court of Industrial Relations can be traced to a misreading of Section 7 of the Industrial Peace Act, which was utilized by the Court as the basis for its conclusion.

The structural organization of Section 7 of the Industrial Peace Act is not unlimited. Its purpose is severely restricted, by both the section heading and the provision itself, to the lack of power of any court to "fix" or "set" for the parties the working conditions by means of a court order. This is the crux of the public policy expressed in Section 7. It provides:

> "*Fixing Working Conditions by Court Order.*—In order to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the em-

ployer and employee by means of an agreement freely entered into in collective bargaining, *no court of the Philippines shall have the power to set* wages, rates of pay, hours of employment, or conditions of employment except as in this Act is otherwise provided and except as is provided in Republic Act Numbered Six hundred two and Commonwealth Act Numbered Four hundred forty-four as to hours of work." (Emphasis supplied).

The jurisdiction which the foregoing provision of the Industrial Peace Act denies to all courts in the Philippines is the power to compulsorily set or arbitrarily fix the terms and conditions of employment which are normally reserved by the Industrial Peace Act for collective bargaining by the parties. The reason for this policy is provided right in Section 7 of the Industrial Peace Act. Now if attention is focused on the matters excepted by the Act in Section 7, that is to say, the kind of cases that the Court of Industrial Relations can, nevertheless, compulsorily arbitrate even if they involve the areas of collective bargaining, it will be noted that such cases are, by express provisions of the Act, left within the power or jurisdiction of the Court of Industrial Relations. Thus, the exceptions mentioned in Section 7 of the Industrial Peace Act are not enumerations of the jurisdiction of the Court of Industrial Relations. It is obvious that there are other labor disputes which the Court of Industrial Relations can take cognizance of not only under the Industrial Peace Act but also under other labor legislations not mentioned in Section 7 of the Industrial Peace Act.[1] Section 7 of the Industrial Peace Act is nothing more than a policy declaration divesting all courts of the Philippines of the jurisdiction to compulsorily arbitrate on rates of pay (Section 12(a), Rep. Act 875), wages (Sections 12(a) and 13, Rep. Act 875), hire or tenure of employment (Section 4(a) (4), Rep. Act 875), machinery for adjustment of grievances or questions arising under the labor contract or from employer-employee relationship in the plant (Sections 13 and 16, Rep. Act 875), and other terms and conditions of employment (Sections 4(a) (4), 12 and 13, Rep. Act 875). As stated above, these are matters left to the parties for mutual agreement across a bargaining table. Even so, when any of these areas gets involved in a labor dispute in industries indispensable to the national interest present all the conditions provided in Section 10 of the Industrial Peace Act, or when the labor dispute involves minimum wages above the applicable statutory minimum or when such claims are enmeshed in an actual strike present the conditions respectively provided in subsections (b) and (c) of Section 16 of Republic Act No. 602, or when

[1] Pascual, C., Labor and Tenancy Law, 263 (1960).

a labor dispute involves a question of legal working day or when a labor dispute involves compensation for overtime work present in either case the conditions required in Sections 1, 3 and 4 of Commonwealth Act No. 444, then the Court of Industrial Relations reacquires its exclusive jurisdiction to compulsorily arbitrate these questions by court order. But, certainly, these types of cases and that which involves the prevention of unfair labor practices as provided in Section 5 of the Industrial Peace Act are some but not the only cases falling within the jurisdiction of the Court of Industrial Relations.

B. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS UNDER THE INDUSTRIAL PEACE ACT.

Under the Industrial Peace Act, the Court of Industrial Relations has the following jurisdiction: (1) over cases involving unfair labor practices, Section 5(a), Rep. Act No. 875, (2) over labor disputes in industries indispensable to the national interest, Section 10, Rep. Act No. 875, (3) to issue injunctions in labor disputes in industries indispensable to the national interest, pursuant to Section 10, Rep. Act No. 875, and in unprotected labor union activities, pursuant to Section 9(d), Rep. Act No. 875, (4) over cases involving determination or redetermination of appropriate collective bargaining unit, Section 12, Rep. Act No. 875, (5) over cases involving questions concerning representation of employees, Section 12 (b), (c), and (d), Rep. Act No. 875, (6) over cases involving violations of internal labor organization procedures, Section 17, Rep. Act No. 875, (7) over cases involving enforcement of collective bargaining contracts, Benquet Consolidated Mining Company v. Coto Labor Union, G.R. No. L-12394, May 29, 1959; Philippine Sugar Institute v. Court of Industrial Relations, G.R. No. L-13098, Oct. 29, 1959, 57 O.G., No. 4, 635, and (8) over cases pending before the Court of Industrial Relations at the passage of the Industrial Peace Act, Section 27, Rep. Act No. 875.

In 1962 the decisions of the Supreme Court touching on the jurisdiction of the Court of Industrial Relations under the Industrial Peace Act involved only the first and the third types of cases in the foregoing list.

1. Over Cases Involving Unfair Labor Practices.

To protect the rights of self-organization and collective bargaining granted by the Industrial Peace Act, Section 4(a) and (b) thereof has outlawed certain acts as unfair labor practices whether committed by labor, by management, or by both.

One of the unfair labor practices on the part of the employer that is proscribed by Section 4 (a) (4) of the Act is to discriminate against employees on grounds of union affiliation and union activities. Thus, discrimination on other grounds are not prohibited by the Industrial Peace Act. The rationale for lawful discrimination is expressed in Phelps Dodge Corporation v. National Labor Relations Board, 313 U.S. 177, 85 L.Ed. 1271, 61 S.Ct. 845 (1941) and in Philippine Education Company v. Union of Philippine Education Company Employees, G.R. No. L-13778, April 29, 1960, 58 O.G., No. 10, 1952.

There are three requisites before the Court of Industrial Relations can find an employer guilty of this particular unfair labor practice: (1) the aggrieved party must be an employee within the meaning of that term in Section 2 (d) of Rep. Act No. 875, Thomason Plywood Corporation, 109 NLRB 898 (1954), (2) the employee or employees must be in the lawful exercise of the rights granted in Section 3 of Rep. Act No. 875, National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U.S. 240, 84 L.Ed. 627, 59 S.Ct. 490 (1939), and (3) the discriminatory acts of the employer tend to affect union membership and activities by either encouraging or discouraging it, Radio Officers Union v. National Labor Relations Board, 347 U.S. 17, 98 L.Ed. 455, 74 S.Ct. 323 (1954) and National Labor Relations Board v. Richards, 265 F.2d 855 (1959).

In the case of *National Rice and Corn Corporation v. NARIC Workers Union et al.*, G.R. No. L-18058, Aug. 30, 1962, the issue raised by the petitioner involved the first and third requisites, the second requisite having been conceded indirectly by the petitioner. The Supreme Court, in brushing aside the petitioner's contention that the respondent workers are not employees, relied on the rule that the findings of the Court of Industrial Relations with respect to questions of fact if supported by substantial evidence on the record shall be conclusive on the Supreme Court. And the Court was convinced that there is substantial evidence on the record of the case to support the findings of the Court of Industrial Relations.

a. Unfair Labor Practice Procedure.

Upon the filing of a charge for unfair labor practice by an offended party or by a labor organization, a preliminary investigation of the charge is made pursuant to Section 5 (b) of the Industrial Peace Act. This is mandatory. National Labor Relations Board v. Barnett Company, 120 F.2d 583 (1941); National Union of Printing

Workers v. Asia Printing Company, G.R. No. L-8750, July 20, 1956, 52 O.G., No. 13, 5858.

The charge may be withdrawn or adjusted, or dismissed, or the investigating officer of the Court of Industrial Relations may file a complaint. In the latter case, and after due hearing, a decision is issued which must contain not only a general cease-and-desist order but must also include an affirmative action such as required in Section 5 (c) of the Industrial Peace Act. This remedial action must be one that will affirm or, as the Act quaintly puts it, "effectuate" the policies of the Industrial Peace Act. If after investigation the Court of Industrial Relations shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Court of Industrial Relations shall state its findings of fact and shall issue an order dismissing the said complaint, as required by Section 5 (c) of the Industrial Peace Act.

In the case of *Baguio Gold Mining Company v. Benjamin Tabisola et al.*, G.R. No. L-15265, April 27, 1962, the Supreme Court reiterated the rule expressed in National Labor Union v. Insular Yebana Tobacco Corporation, G.R. No. L-15363, July 31, 1961, and in Cagalawan v. Customs Canteen, G.R. No. L-16031, Oct. 31, 1961, to the effect that the Court of Industrial Relations has no authority whatsoever to take any affirmative step or action when the charge of unfair labor practice is to be dismissed. If no person named in the complaint has engaged in or is engaging in any unfair labor practice then there is nothing to adjust or prevent, and if this is so, then there is no basis at all for a general and affirmative action on the part of the Court of Industrial Relations.

In so far as appeals from the Court of Industrial Relations are concerned, only decisions rendered *en banc* by the Court of Industrial Relations are reviewable, pursuant to Section 6 of the Industrial Peace Act and the ruling in the case of Broce et al. v. Court of Industrial Relations et al., G.R. No. L-12367, Oct. 28, 1959, 56 O.G. No. 49, 7445. As to what questions are reviewable by the Supreme Court Section 6 of the Industrial Peace Act provides:

> "Any person aggrieved by any order of the Court may appeal to the Supreme Court of the Philippines within ten days after the issuing of the Court's order but this appeal shall not stay the order of the Court and the person or persons named in the Court order shall meanwhile obey said order. The findings of the Court with respect to questions of fact if supported by substantial evidence on the record shall be conclusive. The appeal to the Supreme Court shall be limited to questions of law only."

The decisions of the Supreme Court in 1962 on this matter are not quite expressive of this statutory provision. The decision in *National Labor Union v. Court of Industrial Relations et al.*, G.R. No. L-14975, May 15, 1962, takes in less than it should due to its brevity. The decision in *Philippine Land-Air-Sea Labor Union et als. v. Kim San Rice and Corn Mill Company et als.*, G.R. No. L-18235, Oct. 30, 1962, takes in more than it should due to its sweep.

In the first case, the Supreme Court made the following observation:

> "It can be seen that the issues debated at the new trial are all of facts, determined by the Industrial Court according to its appraisal of the evidence submitted to it in the course of the rehearing. It is a firmly established and well-known rule that 'as long as there is evidence to support the decision of the Court of Industrial Relations, this Court should not interfere, nor modify or reverse it, just because it is not based on overwhelming or preponderant evidence. Its only province is to resolve or pass on questions of law.'"

In the second case, the Supreme Court commented as follows:

> "It is the settled rule in this jurisdiction that the decisions of the Court of Industrial Relations are open for review, on appeal by certiorari, only as to questions of law and not as to questions of fact, nor as to the sufficiency of the evidence to support its findings of fact."

The last sentence of Section 6 of the Industrial Peace Act which provides that appeal to the Supreme Court shall be limited to questions of law, presupposes that there is no question on the facts of the case brought on appeal. But the whole of Section 6 does not at all preclude a review of the findings of the Court of Industrial Relations with respect to questions of fact if such findings are not supported by substantial evidence on the record. This is not the same as an inquiry into the existence of contrary evidence on the record, Universal Camera v. National Labor Relations Board, 340 U.S. 474, 95 L.Ed. 456, 71 S.Ct. 481 (1950), which the Supreme Court cannot go into under present legislation. Unlike the composition of the U.S. Labor Management Relations Act of 1947 on appeals from the decisions of the National Labor Relations Board, the provision of Section 6 of the Industrial Peace Act is not similarly structured.

In the case of *National Labor Union v. Court of Industrial Relations et al.*, G.R. No. L-14975, May 15, 1962, the Supreme Court seems to convey the idea that there is no legal standard at all as to the kind or degree of evidence necessary to make the findings of fact by the Court of Industrial Relations conclusive on the Supreme

Court. In the case of *Philippine Land-Air-Sea Labor Union et als. v. Kim San Rice and Corn Mill Company et als.*, G.R. No. L-18235, Oct. 30, 1962, the Supreme Court seems to have unduly limited appeals to it from the Court of Industrial Relations to questions of law only and foreclosed consideration of the substantiality of the evidence to support the findings of the Court of Industrial Relations with respect to questions of fact.

The provisions of Section 6 of the Industrial Peace Act is better reflected in the decisions of the Supreme Court in Ormoc Sugar Co., Inc. v. Osco Workers Fraternity Labor, G.R. No. L-15826, Jan. 23, 1961, and in *Kaisahan ng mga Manggagawa sa La Campana v. Ricardo Tantongco et al.*, G.R. No. L-18338, Oct. 31, 1962. In these cases, the Supreme Court accurately stated that the findings of fact by the Court of Industrial Relations are not subject to review and are conclusive on the Supreme Court when the parties were given the opportunity to present evidence, and the evidence thus presented were considered by the industrial court, and the findings of the industrial court are supported by substantial evidence on the record.

As to the meaning of the term "substantial evidence," the decision in United States Lines v. Associated Watchmen and Security Union, G.R. No. L-12208, May 21, 1958, supplies the answer.

b. The Issue of Reinstatement and Business Recession.

May an employer guilty of an unfair labor practice in illegally dismissing his employees be ordered by the Court of Industrial Relations to reinstate them after the closure of the branch office where they were employed?

In *Columbian Rope Company of the Philippines et als. v. Tacloban Association of Laborers and Employees et al.*, G.R. No. L-14848, Oct. 31, 1962, the Supreme Court, speaking through Mr. Justice Makalintal, scrutinized the problem accurately. The Court made a distinction between a closure of business on justifiable grounds and one done by an employer in order to evade his responsibilities due to unfair labor practices. If the closure of the branch office is bona fide and justifiable then it may adversely affect the order of the Court of Industrial Relations which requires the reinstatement of the employees. This, however, is not a sufficient ground to deny the payment of backwages. Erlanger & Galinger, Inc. v. Court of Industrial Relations, G.R. No. L-15118, Dec. 29, 1960. On the other hand, if it is done by the employer to circumvent his obligation to reinstate his employees whom he illegally dismissed, a reinstatement order may issue so as to require the employer to offer the em-

ployees substantially equivalent employment in the other company branches. Williams Motor Company v. National Labor Relations Board, 128 F.2d 960 (1948). If there are no substantially equivalent positions then the Court of Industrial Relations may order that the employees be placed in a preferential list to be offered employment in any position for which they are qualified as such employment becomes available, and if the branch office be reopened they are to be offered immediate employment therein. Williams Motor Company v. National Labor Relations Board, 128 F.2d 960 (1948).

But suppose, for example, that it was the entire business and not just a portion thereof that was sold or closed. What then would be its effect on the power of the Court of Industrial Relations to order reinstatement of the employees who were illegally dismissed by the employer? In accordance with the ruling in the *Columbian Rope Company* case, a distinction must be made as to whether the closure of the business was due to legitimate business reasons and not merely to an attempt to defeat the order of reinstatement. In the former case, the Supreme Court has already expressed itself on this question in the case of Erlanger & Galinger, Inc. v. Court of Industrial Relations, G.R. No. L-15118, Dec. 29, 1960, that the unfavorable conditions in the company's business and the consequent reduction of its collectible accounts may not justify reinstatement. In the case of Southport Petroleum Company v. National Labor Relations Board, 315 U.S. 100, 86 L.Ed. 718, 62 S.Ct. 452 (1941), cited by the Supreme Court in the *Columbian Rope Company* case, the Supreme Court of the United States held that a bona fide discontinuance would terminate the duty of reinstatement created by the order of the National Labor Relations Board, despite the employer's unfair labor practices. Naturally if the business is reopened the dismissed employees were to be offered immediate employment therein. Williams Motor Company v. National Labor Relations Board, 128 F.2d 960 (1948). If the closure of the business is unjustifiable and there is no true change of ownership or there is merely a change in name or in apparent control, and is merely done to defeat the remedial order of the Court of Industrial Relations, then the order of reinstatement must be issued.

In connection with this variation of the *Columbian Rope Company* case, *supra*, the decision of the Supreme Court in *Valentin A. Fernando v. Angat Labor Union*, G.R. No. L-17896, May 30, 1962, becomes very instructional.

The petitioner in that case was sued for unfair labor practices in the Court of Industrial Relations. Although the financial condi-

tion of the business was good the petitioner, in order merely to avoid union demands, sold his transportation business to another group, which continued the operation but later summarily dismissed the employees of the former owner. The Court of Industrial Relations thought and so ruled that the new owners had a right to rely on the stipulation in the contract of sale that the buyer will not assume any obligation whatsoever to the seller's employees in case they all lose their jobs. Thus, the Court of Industrial Relations ordered the buyer to give the dismissed employees priority in reemployment and held the former owner responsible for backpay. On appeal the Supreme Court modified this remedial order by further requiring the petitioner to pay six months wages to the dismissed employees.

An order like this does not comply with the requirement of Section 5 (c) of the Industrial Peace Act that the Court of Industrial Relations must take such remedial action as will affirm or put into effect the policies of the Act towards industrial peace. On the other hand, the appeal to equity by the Supreme Court in modifying the order of the Court of Industrial Relations by requiring the petitioner to pay six months wages to the dismissed employees on the theory that within that period they will have found other suitable employment with the exercise of due diligence does not quite resolve the labor relations problem involved either. Neither does it satisfy the positive requirement of Section 5 (c) of the Industrial Peace Act that affirmative step be taken as will effectuate the policies of the Act.

What then in the circumstances of this case may satisfy the requirement of Section 5 (c) of the Industrial Peace Act? Perhaps some such action as the Supreme Court took in the case of *Columbian Rope Company of the Philippines et al. v. Tacloban Association of Laborers and Employees*, G.R. No. L-14848, Oct. 31, 1962. Such a course of action may pave the way for the Court of Industrial Relations to apply the affirmative step required by law to undo the harm. Conformably thereto the case could have been remanded to the lower court for further proceedings to receive evidence on and decide the question of whether there was a true change of ownership or whether there was merely a change in name or in apparent control. Whatever concrete order the Court of Industrial Relations may take to affirm or put into effect the policies of the Industrial Peace Act would depend a great deal on its findings on these questions.

There is still another variation of the problem presented in the *Columbian Rope Company* case, *supra*. Suppose that between the occurrence of the illegal dismissal of the employees and the order

of reinstatement of the Court of Industrial Relations, an employer suffered business reverses and was forced to cut his labor force. May the employer guilty of unfair labor practice be ordered by the Court of Industrial Relations to reinstate a greater number of persons than the economic operation of his business requires?

The Supreme Court supplied the answer to this one in two cases, namely, *Philippine-American Drug Company v. Court of Industrial Relations et al.*, G.R. No. L-15162, April 18, 1962, and *Columbian Rope Company of the Philippines et al. v. Tacloban Association of Laborers and Employees et als.*, G.R. No. L-14848, Oct. 31, 1962. In these cases the Supreme Court ruled that despite the employer's unfair labor practice he cannot be compelled to reinstate such a number of employees which exceeds or is more than the requirements of the economic operation of his business in the altered economic conditions. But the Court of Industrial Relations has all the authority to order that the employees who were not reinstated be given preferential treatment in employment should the employer's economic conditions subsequently change calling for additional personnel.

This raises a labor relations problem. What means must the employer use in the selection of the employees to be reinstated in order to avoid a fresh charge of unfair labor practice for discrimination under Section 4 (a) (4)? The case of National Labor Relations Board v. Mackay Radio & Telegraph Company, 304 U.S. 333, 82 L.Ed. 1381, 58 S.Ct. 904 (1948) supplies the principles for the solution of this question.

c. The Issue of Reinstatement and the Payment of Back Wages.

In San Miguel Brewery, Inc. v. Santos et al., G.R. No. L-12682, Aug. 31, 1961, the Supreme Court defined the affirmative remedy of reinstatement as the restoration to a state from which one has been removed or separated. Consequently the Supreme Court ruled that a temporary guard who was removed from that position may be reinstated to the same but not to the position of permanent guard, a higher category in view of the tenure of office involved.

In *Philippine-American Drug Company v. Court of Industrial Relations et al.*, G.R. No. L-15162, April 18, 1962, the Supreme Court clarified this interpretation when it ruled that the Court of Industrial Relations has no authority to order reinstatement of dismissed employee to a position he had not previously occupied but only to

his former position or to a substantially equivalent employment. These two cases suggest the rule that a dismissed employee can be reinstated to his former position if still open, or to a similar one if there be any, or else to a lesser but not to a higher position, provided that the lesser position is substantially equivalent to his former position.

The other significance of the decision in the case of *Philippine-American Drug Company v. Court of Industrial Relations et al.*, G. R. No. L-15162, April 18, 1962, is the delineation of the scope of the priority-in-employment order which the Court of Industrial Relations usually issues in cases where employees are separated from the company due to business reverses, should the company thereafter take in additional employees. The Supreme Court viewed a preferential right to employment as a lesser claim than reinstatement as this is provided in Section 5 (c) of the Industrial Peace Act. Mr. Chief Justice Bengzon observed that a preferential right to employment is a kind of reinstatement but one that is contingent upon availability of work. This involves an important question: Can the Court of Industrial Relations utilize a preferential-right-to-work order as an affirmative step in unfair labor practice cases? This was not raised in the case because both the Court of Industrial Relations and the Supreme Court felt that the petitioner was justified in dismissing some forty employees due to business recession. But in view of the meaning given by the Supreme Court to the preferential-right-to-work order it might just become the next issue to claim the attention of the Court. The crux of the matter lies of course on whether such a step will affirm or put into effect the policies of the Industrial Peace Act enumerated in Section 1 thereof.

d. Computation of Backpay.

In any computation of backpay, there are three elements to be considered, namely, gross backpay, favorable economic items except pay during lay-off, and net interim earnings.

In *Talisay-Silay Milling Co., Inc. v. Court of Industrial Relation et al.*, G.R. No. L-17344, April 23, 1962, the Supreme Court encountered the question of computation of gross backpay. Mr. Justice Concepcion, speaking for six other members of the Court, distinguished between a situation where the number of actual working days are known and one where it is not known. In the first situation, the average daily wage of each employee or laborer during a given period prior to his improper dismissal is first ascertained; then the actual number of working days of the employee or laborer

during the period for which the backpay was due is determined; and, finally, the said number of actual working days is multiplied by the average daily wage of the employee or laborer concerned.

In the other situation, *i.e.*, where the actual number of working days are not known, the compensation actually received by each employee or laborer during a given period prior to the discharge or dismissal is first ascertained; then the average monthly earning during the said period is determined; and, finally, the employee's average monthly compensation is multiplied by the number of months covered by the period for which the backpay is due.

e. The Issue of Non-industrial Employment and Relations and the Industrial Peace Act.

In the case of *University of Santo Tomas Hospital v. U.S.T. Hospital Employees Association et al.*, G.R. No. L-12919, Oct. 30, 1962, and *U.S.T. Press v. National Labor Union et al.*, G.R. No. L-17207 & No. L-17373, Oct. 30, 1962, the Court of Industrial Relations insisted on assuming jurisdiction over several unfair labor practice cases involving non-industrial establishment.

On this issue these cases reached the Supreme Court. Speaking for seven other members of the Court, Mr. Justice Bautista Angelo invoked the decisions in Boy Scouts of the Philippines v. Araos, G.R. No. L-10091, Jan. 29, 1958; University of San Agustin v. Court of Industrial Relations et al., G.R. No. L-12222, May 28, 1958; The Elks Club v. The United Laborers & Employees of the Elks Club, G.R. No. L-9747, Feb. 27, 1959; Cebu Chinese High School et al. v. Philippine Land- Air-Sea Labor Union et al., G.R. No. L-12015, April 22, 1959; La Consolacion College et al. v. Court of Industrial Relations et al., G.R. No. L-13282, April 22, 1960; The University of the Philippines et al. v. Court of Industrial Relations, G.R. No. L-15416, April 28, 1960. The Supreme Court reiterated the rule that the Industrial Peace Act applies only to industrial or business employment and relations and does not govern the labor relations of organizations and entities which are organized, operated and maintained not for profit or gain but for social service, education and instruction, hospital and medical services, and others engaged in the encouragement and promotion of character, patriotism and kindred virtues in the youth.

2. Jurisdiction to Issue Injunctions.

There are two types of cases expressly excepted by the Industrial Peace Act from the public policy prohibiting the issuance of

injunctions in labor disputes: (1) over labor disputes in industries indispensable to the national interest even if the labor concerted activity involved is lawfully and peacefully conducted, as provided in Section 10 of the Industrial Peace Act, and (2) over unprotected union activities, as provided in Section 9 (d) of the Industrial Peace Act. This is not the time to catalog the union activities that are subject to injunction but there are a number of them scattered in different provisions of the Industrial Peace Act and in the decisions of the courts.

There are certain conditions that must exist before the Court of Industrial Relations can issue a restraining order. In the first type, the prerequisites are mentioned in Section 10 of the Act. In the second type, the conditions that must exist before an injunction can be issued are provided in Section 9 (d) (1), (2), (3), (4), and (5) of the Industrial Peace Act.

In *Caltex Refinery Employees Association v. Antonio Lucero et al.*, G.R. No. L-15338, April 28, 1962, the Supreme Court reached the correct disposition of the issue but made two rather loose remarks in the process.

In this case, respondent company filed an *ex parte* petition to prevent the petitioning union from striking within the cooling-off period, which it alleged would expire 30 days from March 30, 1959, in view of the fact that the strike notice filed by the union was entered in the records of the Conciliation Service of the Bureau of Labor Relations only on that date. The respondent company made a special allegation, pursuant to Section 9 (d) of the Industrial Peace Act, to the effect that unless the restraining order is issued without notice substantial and irreparable injury would be caused to the company's property. On the other hand, the union contended that the 30-day cooling-off period should be counted from March 25, 1959, the day the strike notice was delivered by the union to the security guard of the Conciliation Service, no matter that it was filed during the holy week and was not transmitted to the receiving clerk for notation until five days later. The Department of Labor upheld the company view as the correct one in a memorandum dated April 15, 1959, two days after the union issued a letter confirming its intention to proceed with the strike in any case. But the Court of First Instance of Manila, where the petition was filed, failed to comply with the procedural requirements provided in Section 9(d) of the Industrial Peace Act which naturally moved the Supreme Court to overrule the court *a quo* and to declare the restraining order illegal.

The first remark of the Supreme Court that prompts a review is as follows:

> "Under section 9(a) of Republic Act 875, no court shall have jurisdiction to issue any restraining order, temporary or permanent, in any case growing out of a labor dispute, to prohibit any person participating or interested in such dispute from doing, whether singly or in concert, among other acts, the following: 'ceasing or refusing to perform any work or to remain in any relation of employment.' The *only exception* that the law makes is when in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and such dispute is certified by the President to the Court of Industrial Relations (Section 10, Republic Act 875). In such a case, the court may issue a restraining order forbidding the employees to strike pending an investigation by the court of the labor dispute as thus certified by the President. From the above, it is clear that, *with the exception of the case aforesaid,* no court can issue a restraining order against the members of a union who plan to hold a strike *even if the same may appear to be illegal* for such is a weapon that the law grants to them to protect and advance their interest." (Emphasis supplied).

Section 10 of the Industrial Peace Act is not the only provision that provides an exception to the prohibition on the issuance of injunction in a case growing out of a labor dispute, even if the union activities involved may appear to be illegal. Section 10 of the Act no doubt provides an exception but it is not the only exception provided in the Industrial Peace Act.

An analysis of Section 9(a) of the Industrial Peace Act shows that the exception therein contained refers only to a very special situation, *i.e.,* the acts enumerated therein are all categorized by the Industrial Peace Act as *lawful activities.* Therefore, only when these lawful acts get involved in the situation mentioned in Section 10 of the Act are they to be subject to injunction. And the social engineering which the Act preferred here is obvious, the national interest is simply the greater interest.

But as stated above, Section 9(d) of the Act provides the other exception to the public policy of banning the debonair manner of granting injunctions in ordinary situations, that is to say, where the national interest is not involved at all. Thus illegal union activities which are promotive of industrial unrest rather than industrial peace can be enjoined, provided, however, that the procedural conditions enumerated in Section 9 (d), (1), (2), (3), (4), and (5) of the Industrial Peace Act are all present. In other words, these are the terms under which the law will withdraw its protection to an otherwise protected labor activity. Mr. Justice Bautista Angelo aptly stated in the majority opinion in Philippine Association of

Free Labor Unions v. Bienvenido A. Tan, G.R. No. L-9115, Aug. 31, 1956, 52 O.G. No. 13, 5836, that if any of these conditions is absent then the labor activity in question cannot be restrained for it still enjoys the protection of the law.

The philosophy underlying the allowance of injunction in a case involving a labor dispute occurring in an industry indispensable to the national interest is quite different from that which undergirds the issuance of an injunction in a labor dispute where *unlawful* acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained. The Supreme Court had a feeling for the distinction between Section 9(a) and Section 9(d) of the Industrial Peace Act when it said:

> "Even if it may be held that a restraining order may be issued when the strike is contrary to law, or if carried out it may cause substantial and irreparable injury to the property of the employer, such restraining order can only be issued upon compliance with the procedural requirements laid down in Section 9(d) of Republic Act 875."

The other remark made by the Supreme Court in the *Caltex Refinery Employees Association* case, *supra,* that needs further scrutiny is as follows:

> "In this particular instance [referring to the procedural requirements of Section 9(d) of the Industrial Peace Act], these requirements are (1) there must be a hearing, of which due notice should be given to both parties, where the testimony of witnesses is taken in support of the petition or opposition, with opportunity of cross-examination; and (2) there must be a showing that the public officer charged with the duty to protect petitioner's property are unable or unwilling to furnish adequate protection. In other words, *there cannot be any ex parte grant of a restraining order* in a case involving a labor dispute.
>
> "Indeed, this is what we held in a recent case: 'We believe, . . . that in order that an injunction may be properly issued the procedure laid down in Section 9(d) of Republic Act 875 should be followed *and cannot be granted ex parte* as allowed by Rule 60, section 6, of the Rules of Court.'" (Emphasis supplied).

It is an established fact that the petition filed by the respondent company was for an *ex parte* grant of a writ of injunction. Furthermore, the petition made a special averment that unless a temporary injunction is issued without notice substantial and irreparable injury would be caused to its property.

Under Section 9(d) of the Industrial Peace Act, an injunction may be issued in either of two ways. The first is by means of a *pro parte* hearing. The second is by a recourse to an *ex parte* hearing. However, under this step a special plea must be made in

the petition that unless an injunction shall be issued *ex parte* substantial and irreparable injury to complainant's property will be unavoidable, as required by Section 9(d) of the Act.

The fact that the other party is not notified does not mean that there is no hearing on the matter anymore. Section 9 (d) still demands that a hearing be conducted in open court. The proponent must still present his witnesses who must all testify under oath. And the evidence required for a grant of an injunction *ex parte* must still be sufficient, if sustained or accepted by the judge, to justify him in issuing the injunction as in a situation where the other party is notified and is ready to dispute the request for a restraining order. Thus, the sweep of the Court's remarks and the conclusion based thereon that "there cannot be any *ex parte* grant of a restraining order in a case involving a labor dispute" appear to be contrary to the policy of the Industrial Peace Act to save valuable property which may be threatened by unavoidable substantial and irreparable injury if not immediately restrained. The concern that an *ex parte* grant of injunction may be a diminution of the right of labor to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection is again a matter of social engineering in which the policy-making body has stated its preference. At any rate, the Industrial Peace Act has limited the effectivity of a restraining order issued *ex parte* to no more than five days. The Act has decreed that such an injunction shall become void at the expiration of the period of five days, on the theory that five days is enough time for the employer to prepare and take precautionary measures to avoid the substantial and irreparable injury that he fears his property would suffer. But if inconsequential and reparable injury would still be caused on his property then this is no longer a ground for an injunction. And if temporal damage, including the damage of interference with his business, is done not for damage sake but as a means for the attainment of union objectives then such damage is justified and the employer must have to bear such injury.

The rule on the issuance of *ex parte* injunction was expressed better by the Supreme Court, in three previous cases, namely, Reyes v. Tan, G.R. No. L-9137, Aug. 31, 1956, 52 O.G., No. 14, 6187; National Association of Trade Unions v. Bayona, G.R. No. L-12940, April 17, 1959, 56 O.G., No. 44, 6761; and National Waterworks et al. v. Court of Industrial Relations et al., G.R. No. L-13161, Feb. 25, 1960, 57 O.G., No. 19, 3517. In the Bayona Case, for example, the Supreme Court held:

> "Under Section 9(d) of Republic Act No. 875, an injunction *ex parte* can be issued only upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon hearing after notice. In other words, there is still necessity for a hearing at which sworn testimony for the applicant would be received, and not only that, the court should be satisfied that such testimony would stand cross-examination by the court and be sufficient to overcome denial by the defendants [if there were a hearing on notice]. As no hearing was held in the court below and the injunction issued on the basis of mere affidavits submitted by respondents, the injunction in question is void for not having been issued in accordance with the provisions of Republic Act No. 875."

C. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS UNDER REPUBLIC ACT NO. 602.

The public policy on the lack of power of the courts to set or fix the terms and conditions of employment is laid down in Section 7 of the Industrial Peace Act. Except in cases falling under Section 10 of the Industrial Peace Act, those coming within the purview of Sections 1, 3 and 4 of the Eight-Hour Labor Law, and those falling under Section 16(b) and (c) of the Minimum Wage Law, no court of the Philippine has the power to set or fix working conditions and terms of employment. These are matters which the Industrial Peace Act has generally left to the parties for settlement by means of collective bargaining.

The case of *Valleson, Inc. v. Bessie C. Tiburcio,* G.R. No. L-18185, Sept. 28, 1962, deals with the jurisdiction of the Court of Industrial Relations under the Minimum Wage Law. In a very precise definition of this jurisdiction, the Supreme Court, speaking through Mr. Justice Concepcion, drew the line between claims for underpayment or differential pay on the one hand and claims for minimum wages on the other.

Insofar as claims for underpayment of wages is concerned, the Court cited Section 16(a) of Republic Act No. 602 as decisive on the matter. It provides:

> "The Court of First Instance shall have jurisdiction to restrain violations of this Act; action by the Secretary or by the employees affected to recover underpayment may be brought in any competent court, which shall render its decision on such cases within fifteen days from the time the case has been submitted for decision; in appropriate instances, appeal from the decision of these courts on any action under this Act shall be in accordance with applicable laws."

Conformably with this view, the Supreme Court, speaking this time through Mr. Chief Justice Bengzon, in *Rufina Gallardo et al.*

v. Manila Railroad Company, G.R. No. L-16919, Sept. 29, 1962, and in *Maxima Danting v. Manila Railroad Company*, G.R. No. L-16920, Sept. 29, 1962, ruled that cases involving claims for underpayment of wages fall within the jurisdiction of the competent court. And since the amounts involved in these two cases were ₱809.81 and ₱1,197.30, respectively, then their enforcement falls within the jurisdiction of the proper justice of the peace court.

Insofar as claims for minimum wages are concerned, the Supreme Court, in the *Valleson, Inc.* case, *supra*, applied Section 16 (b) and (c) of the Minimum Wage Law. The Court ruled that the Court of Industrial Relations has jurisdiction over a minimum wage case if the wage claimed is above the applicable statutory minimum or that the demand for minimum wages involves an actual strike. The Court did not discuss the prerequisites for the exercise of the jurisdiction of the Court of Industrial Relations in these types of cases. They are provided in Section 16(b) and (c) of Republic Act No. 602. Their absence would be fatal to the jurisdiction of the labor court, as held in the case of Benguet Consolidated Mining Company v. Coto Labor Union, G.R. No. L-12394, May 29, 1959. There was no discussion either of the kind of minimum wages that may get involved in an actual strike. Not all claims for minimum wages that get involved in an actual strike fall within the jurisdiction of the Court of Industrial Relations. Section 16(b) and (c) of the Minimum Wage Law, in relation to Section 6 thereof, limits this to only two kinds, namely, a demand for the statutory minimum wage, and a demand for the wage order minimum issued by the Secretary of Labor.

1. The Applicability of Section 4 of Commonwealth Act No. 103.

Section 4 of Commonwealth Act No. 103 provides that the petition or complaint must be filed by more than 31 employees and that the alleged labor dispute is likely to cause a strike or lockout.

In the case of *Luis Recato Dy et al. v. Court of Industrial Relations et al.*, G.R. No. L-17788, May 25, 1962, the Supreme Court ruled that after the passage of Republic Act No. 875 it is no longer fatal to the jurisdiction of the Court of Industrial Relations that the requirements mentioned in Section 4 of Commonwealth Act No. 103 are not previously met. According to the Court, the reason for this is to be found in the curtailment by the Industrial Peace Act of the broad powers of arbitration conferred upon the Court of Industrial Relations by Commonwealth Act No. 103. The decision of the Supreme Court in the *Luis Recato Dy* case, *supra*, reaffirms

the decisions in PRISCO v. Court of Industrial Relations et al., G.R. No. L-13806, May 23, 1960, and in Philippine Wood Products v. Court of Industrial Relations, G.R. No. L-15279, June 30, 1961. These two cases, by the way, overruled the decisions in Gomez v. North Camarines Lumber Co., Inc., G.R. No. L-11845, Aug. 18, 1958, and in Mindanao Employees Union v. Mindanao Bus Company, G.R. No. L-9795, Dec. 28, 1957.

2. The Problem of Jurisdiction of the Labor Standards Commission.

The Supreme Court has decided, in a number of cases, the claim of the Labor Standards Commission, acting through its regional offices, to decide questions involving underpayment of wages under the Minimum Wage Law and claims for overtime pay under the Eight Hour Labor Law.

In the cases of *Ramon Velez v. Gabino Saavedra et als.*, G.R. No. L-16386, Jan. 31, 1962; *Olivo G. Ruiz v. Ceder V. Pastor*, G.R. No. L-16856, April 25, 1962; *Worldwide Paper Mills, Inc. v. Labor Standards Commission et als.*, G.R. No. L-17016, April 25, 1962; *Davao Far Eastern Commercial Company v. Alberto C. Montemayor et als.*, G.R. No. L-16581, June 29, 1962; *Valderrama Lumber Manufacturers Company, Inc. v. Administrator and Hearing Officer, Regional Office No. 5*, G.R. No. L-17783, June 30, 1962; *Gapan Farmers' Cooperative Marketing Association, Inc. v. Fe Parial et als.*, G.R. No. L-17024, July 24, 1962; *Rufina Gallardo et al. v. Manila Railroad Company*, G.R. No. L-16919, Sept. 29, 1962; *Maxima Danting v. Manila Railroad Company*, G.R. No. L-16920, Sept. 29, 1962; *Filipro, Inc. et al. v. F. A. Fuentes et al.*, G.R. No. L-17781, Dec. 29, 1962, the Supreme Court reiterated its holding in Equitable Banking Corporation v. Regional Office No. 3 et al., G.R. No. L-14442, June 30, 1961, that the Labor Standards Commission of the Department of Labor has no jurisdiction to take cognizance of claims for underpayment and claims for overtime work. The Court ruled in all these cases that Reorganization Plan No. 20-A, which conferred jurisdiction on the Labor Standards Commission to hear and determine money claims of the types mentioned above, is unconstitutional. The discussion on this constitutional issue is found in Corominas v. Labor Standards Commission, G.R. No. L-14837, June 30, 1961.

However, the Labor Standards Commission is and remains clothed with jurisdiction to determine money claims falling under the Workmen's Compensation Act. This was first held in Miller v. Mardo, G.R. No. L-15138, July 31, 1961 and reiterated by the Su-

preme Court in *Chua Tay v. Regional Office No. 3, Department of Labor, et als.*, G.R. No. L-16981, March 30, 1962; *San Felipe Iron Mines, Inc. v. Jose A. Naldo et als.*, G.R. No. L-18026, May 30, 1962; and *Leonard M. Stoll et al. v. Atanacio A. Mardo et al.*, G.R. No. L-17241, June 29, 1962.

D. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS UNDER COMMONWEALTH ACT NO. 103.

Under Commonwealth Act No. 103, the Court of Industrial Relations has jurisdiction to induce the parties to settle their disputes by mutual agreement; to modify or reopen its awards, orders or decisions; to terminate the effectiveness of its awards, orders or decisions; and to interpret its awards, orders or decisions.

Two of these powers of the Court of Industrial Relations were involved in the 1962 decisions of the Supreme Court.

1. Jurisdiction to Terminate Effectiveness of Award or Decision.

The problem of the nature of the proceedings under Section 17 of Commonwealth Act No. 103, dealing with the authority of the Court of Industrial Relations to terminate the effectiveness of its orders, awards or decisions, was not settled until the promulgation of the decisions of the Supreme Court in Katipunan Labor Union v. Caltex (Philippines) Inc., G.R. No. L-10337, May 20, 1957, and in National Waterworks v. Court of Industrial Relations et al., G.R. No. L-13161, Feb. 25, 1960, 57 O.G., No. 19, 3517. In these cases the Supreme Court ruled that the hearing for the termination of an award, order or decision of the Court of Industrial Relations, whether such award, order or decision was based on a compromise agreement or not, must be *pro parte*. In case of an award, order or decision where the period of effectivity has already elapsed, whether the award, order or decision was based on a compromise agreement or not, the hearing in the Court of Industrial Relations must also be *pro parte*. But if the period of the duration of an award, order or decision is specified therein and has already elapsed then the Court of Industrial Relations may proceed *ex parte*. These rules were applied in *Caltex (Philippines) Inc. v. Katipunan Labor Union*, G.R. No. L-13918, April 25, 1962.

2. Jurisdiction to Modify, Set Aside or Reopen Award, Order or Decision.

In the case of Hotel & Restaurant Free Workers v. Kim San Cafe, G.R. No. L-8100, Nov. 29, 1957, 54 O.G., No. 16, 4722, the

Supreme Court, pursuant to Section 17 of Commonwealth Act No. 103, ruled that the Court of Industrial Relations may exercise its jurisdiction to alter, modify or set aside, in whole or in part, an award, order or decision, or to reopen any question involved therein, provided that the application or petition is filed by the interested party at anytime during the effectiveness of the award, order or decision, or within three years from the date of the award, order or decision if the period of effectivity thereof is not therein specified.

In the case of *Price Stabilization Corporation v. Court of Industrial Relations et als.*, G.R. No. L-14613, Nov. 30, 1962, the Supreme Court, through Mr. Justice Regala, stated the objective of this authority of the Court of Industrial Relations. Since it is not unlikely that the Court of Industrial Relations may err in disposing of labor disputes, Section 17 was incorporated in Commonwealth Act No. 103 to give the Court of Industrial Relations "continuing control over the case, in the interest of management and labor, as long as it remains under its control and jurisdiction in order to accord substantial justice to the parties."

Is this an absolute authority of the Court of Industrial Relations, in view of the general grant of power made in Section 17 of Commonwealth Act No. 103?

In the case of *San Pablo Oil Factory, Inc. et al. v. Court of Industrial Relations et al.*, Nov. 28, 1962, the Supreme Court strictly but accurately defined this particular jurisdiction of the Court of Industrial Relations. Speaking through Mr. Justice Dizon, the Court, citing the decision in Pepsi Cola Bottling Co. v. Philippine Labor Organization, G.R. No. L-3506, Jan. 31, 1951, ruled that "however broad and ample this grant of authority may seem, it does not grant the Court of Industrial Relations authority to reopen issues already passed upon and to substantially alter its decision after the same has become final and executory." This is not contrary to the statement of the objective of Section 17 of Commonwealth Act No. 103 as stated in the *Price Stabilization Corporation* case, *supra.* What the Supreme Court is emphasizing in the *San Pablo Oil Factory* case, *supra,* is that an award, order or decision may be reopened "only upon grounds coming into existence after the order or decision was rendered by the Court of Industrial Relations, but not upon grounds which had already been directly or impliedly litigated and decided by said court, nor upon grounds available to the parties at the former proceeding and not availed of by any of them." To hold otherwise, concluded the Court, "may give way to vicious

and vexatious proceedings." If any of the parties then is minded to ask for a reopening of an issue already passed upon by the Court of Industrial Relations his remedy is to move for a reconsideration thereof within the time set for it. If this does not succeed then he may appeal from such award, order or decision before it becomes final and executory.

But what is the nature of the grounds that may move the Court of Industrial Relations to alter, modify or set aside its award, order or decision?

In the case of *Northwest Airlines, Inc. v. Northwest Airlines Philippines Employees Association et als.*, G.R. No. L-17378, April 30, 1962, the Supreme Court provided the answer to this question. It appears in that case that the issue involved in the original or main unfair labor practice case was whether it was the employer or the employee who was liable for the payment of the medical expenses incurred by the employee while in the Tokyo office of the petitioner, and whether or not the same was deductible from the employee's salary depending on the answer to the first issue. On the other hand, the second action brought by the employee in the Court of Industrial Relations seeks to enjoin the petitioner from terminating the employment of the employee on an entirely different ground. In other words, the question of employment and lay-off of the respondent employee was never placed in issue in the original or main unfair labor practice case.

The Supreme Court, speaking through Mr. Justice Barrera, stated that while it is true that under Section 17 of Commonwealth Act No. 103 the Court of Industrial Relations has jurisdiction to alter, modify, set aside, or reopen an award, order or decision, "this applies only where the subsequent matter is incidental or related to the original or main case and not where, as in the instant case, the new controversy has absolutely no relation or is alien to the original or main case." To hold otherwise, concluded the Supreme Court, would grant the Court of Industrial Relations additional power which is not conferred or even contemplated by Commonwealth Act No. 103.

E. Jurisdiction of the Court of Industrial Relations Under Commonwealth Act No. 444.

The public policy in so far as hours of work is concerned is stated in Section 7 of Republic Act No. 875. Generally labor disputes cannot be compulsorily decided by the Court of Industrial Re-

lations save when it falls under any of the three exceptions mentioned in Section 7 of the Industrial Peace Act. One of the exceptions deals with Commonwealth Act No. 444, otherwise known as the Eight-Hour Labor Law.

The conditions for the exercise of this jurisdiction are given in Prize Stabilization Corporation v. Court of Industrial Relations, G.R. No. L-13806, May 23, 1960, and in Santos v. Quisumbing, G.R. No. L-15376, June 30, 1961. The question of the applicability of Section 4 of Commonwealth Act No. 103 in cases falling under Commonwealth Act No. 444 has been settled in Philippine Wood Products v. Court of Industrial Relations, G.R. No. L-15279, June 30, 1961.

1. Types of Cases Within Jurisdiction of the Court of Industrial Relations.

There are two. First, cases involving questions which have to do with the legal working day, pursuant to Section 1 of Commonwealth Act No. 444. Questions which deal with hours of employment or work are implicated in this type of cases. Pan American Airways v. Pan American Airways Employees Association, G.R. No. L-16275, Feb. 23, 1961.

The second type deals with cases involving claims for compensation for overtime work, pursuant to Sections 3 and 4 of Commonwealth Act No. 444.

In the case of *National Development Company v. Court of Industrial Relations et al.*, G.R. No. L-15422, Nov. 30, 1962, the Supreme Court, speaking through Mr. Justice Regala, held that the Court of Industrial Relations has jurisdiction over claims for overtime pay. This was an application of the rule pronounced in NASSCO v. Court of Industrial Relations, G.R. No. L-13888, April 29, 1960, 58 O.G., No. 36, 5875; Price Stabilization Corporation v. Court of Industrial Relations, G.R. No. L-13206, May 23, 1960; and Manila Port Service v. Court of Industrial Relations, G.R. No. L-16994, June 30, 1961, 58 O.G., No. 43, 7042.

2. Prescription of Actions.

Under Section 7-A of Commonwealth Act No. 444, as amended by Republic Act No. 1993, actions to enforce this type of claims prescribe if not commenced within three years after the cause of action has accrued, provided that actions already commenced before the effective date of the Act shall not be affected by the period prescribed therein.

In *A. L. Ammen Transportation Company, Inc. et al. v. Jose Borja,* G.R. No. L-17750, Aug. 31, 1962, one of the contentions advanced by the petitioner was that respondent's action was commenced beyond the prescriptive period of three years counted after the accrual of the cause of action. The petitioner argued that the phrase "actions already commenced" employed in Republic Act No. 1993 refers only to actions filed with the regular courts and not in administrative bodies like the Regional Offices of the Labor Standards Commission, where the claim for overtime pay was filed. The Supreme Court, speaking through Mr. Justice Dizon, disagreed with the narrow interpretation suggested by the petitioner. The Court emphasized the point that Republic Act No. 1993, amending Section 7-A of Commonwealth Act No. 444, is a piece of labor legislation and as such should be interpreted liberally in accordance with Art. 1702 of the Civil Code. Thus, the Supreme Court ruled that the term "actions" includes "every judicial and administrative proceedings intended to enforce a right or secure redress for a wrong already committed."

II. UNION SECURITY AND STRENGTH

Professor Mathews gives a list of the principal sources of threats to the welfare of organized workers, namely, employers, other labor unions, and the workers themselves.

A labor organization needs to be strong if it is to effectively serve not only its own interest but to a far greater extent that of its members and those whom it represents with the employer in matters which have to do with terms and conditions of employment. So far the most important means by which a labor organization establishes its security and strength are the "union security provisions" frequently included in collective bargaining contracts, the best known of which are the "shop arrangement" provisions and the "check off" provisions.

In the 1962 decisions of the Supreme Court in labor relations law only the "shop arrangement" provisions were involved, and of this class only the "closed shop" and the "union shop" arrangements were discussed.

A. The Issue as to the Nature of the "Closed Shop" Arrangement.

A "closed shop" is simply defined as an arrangement whereby an employer binds himself to hire in his shop or plant only members of the contracting union who must however continue to remain mem-

bers in good standing of the said union to keep their jobs.[2] For this particular shop arrangement to exist mutual consent is required. However, it must be strictly construed for it is undeniably compulsive and discriminatory. Indeed, the "closed shop" arrangement would have been an unfair labor practice were it not expressly excepted by law from the catalog of unfair labor practices. National Labor Union v. Aguinaldo's Echague, G.R. No. L-7358, May 31, 1955, 51 O.G., No. 6, 2899; Tolentino v. Angeles, G.R. No. L-8150, May 30, 1956, 52 O.G., No. 9, 4262; Bacolod Murcia Milling Company v. National Employees Union, G.R. No. L-9003, Dec. 21, 1956, 53 O.G., No. 3, 615. Its only saving feature is its recognition by the Industrial Peace Act as a means to implement the public policy of encouraging the trade and industrial union movement.[3] Thus, in the United States, after starting with the "closed shop" arrangement in the Labor-Management Relations Act of 1935 the American Congress outlawed it in the Labor-Management Relations Act of 1947 and authorized the "union shop" arrangement, in view of the fact that the trade and industrial union movement in the United States has already gone a long way towards union security and strength. Indeed, in 1959, the American Congress further clipped some of the powers and rights of labor unions in the United States with the enactment of the Labor-Management Reporting and Disclosure Act (73 Stat. 519, 29 U.S.C. 401, Supp. 1961).

In the case of *Findlay Millar Timber Company v. Philippine Land-Air-Sea Labor Union et al.*, G.R. Nos. L-18217 and L-18222, Sept. 29, 1962, the Supreme Court affirmed the decision of the Court of Industrial Relations which, in turn overruled the findings of the trial judge that the "closed shop" clause in the labor contract involved in this case was applicable to both old and new employees of the employer with whom a collective bargaining union has a trade agreement. In so doing, the Supreme Court reminded the trial judge that his opinion on the matter was not in conformity with the decisions of the Supreme Court in Freeman Shirt Manufacturing Co., Inc. et al. v. Court of Industrial Relations et al., G.R. No. L-16561, Jan. 18, 1961 and in Local 7, Press & Printing Free Workers et al. v. Emiliano Tabigne et al., G.R. No. L-16093, Nov. 29, 1960, where the Supreme Court held that:

> "The closed shop agreement authorized under section 4, subsection a(4) of the Industrial Peace Act . . . should, however, apply only to persons to be hired or to employees who are not yet members of any labor organization. It is inapplicable to those already in the service who

[2] Pascual, C., Labor and Tenancy Law, 180 (1960).
[3] Section 1(a), Republic Act No. 875.

> are members of another union. To hold otherwise, *i.e.*, that the employees in a company who are members of a minority union may be compelled to disaffiliate from their union and join the majority or contracting union, would render nugatory the right of all employees to self-organization and to form, join or assist labor organization of their own choosing, a right guaranteed by the Industrial Peace Act (Sec. 3, Rep. Act No. 875) as well as by the Constitution [Art. III, Sec. 1(6)]."

This view is not in agreement or accord with the express public policy contained in Section 4 (a) (4) of the Industrial Peace Act, which provides:

> "It shall be unfair labor practice for an employer: To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act or in any other Act or statute of the Republic of the Philippines shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section twelve."

There is no question that the reservation in the foregoing provision of the Industrial Peace Act authorizes a "closed shop" arrangement. It would also authorize a shop arrangement containing a lesser degree of discrimination and compulsion than that included in a "closed shop" arrangement. In other words, the Industrial Peace Act does not authorize shop arrangements which embody a greater degree of discrimination and compulsion than that incorporated in the "closed shop" arrangement. An example of a prohibited shop arrangement under Section 4 (a) (4) of the Industrial Peace Act would be a "closed shop arrangement with a closed or partially closed labor union." James v. Marinship Corporation, 155 F.2d 323 (1945). Another example would be a "closed shop arrangement creating a general monopoly of labor." Wilson v. Newspaper and Mail Deliverers Union, 197 Atl. 720 (1938).

While there is no legal duty on the part of the employer to enter into any of the types of shop arrangements allowed by law (Dee Cho Union v. Dee Cho Lumber, G.R. No. L-10080, April 30, 1957, 55 O.G., No. 3, 434), there is nothing in the Industrial Peace Act or in any statute of the Philippines to preclude an employer and a labor organization from entering into a "closed shop" arrangement if they so desire.

A "closed shop" arrangement is what the proviso of Section 4 (a) (4) of the Industrial Peace Act says it is: the employer's shop is simply closed to anyone who is not a member in good standing of the bargaining labor organization, regardless of the fact that the

employee is new or old, or a member of a minority labor union or not. However, due to the presence of a certain degree of discrimination and compulsion in a "closed shop" arrangement there are some evident conditions that must be met. Otherwise such a shop arrangement would be illegal and both employer and labor union may be charged and held guilty of unfair labor practice under Section 4 (a) (4) and Section 4 (b) (2) of the Industrial Peace Act.

These conditions are as follows: (1) as prescribed in Section 4 (a) (4), the labor organization must be the employees' bargaining representative elected pursuant to any of the methods provided in Section 12 of the Industrial Peace Act, (2) as provided in Section 2 (f) and (h) of the Industrial Peace Act, the registration and filing requirements enumerated in Section 23 (b) of the Act must be met if the labor union is to qualify as the "representative" of the employees for purposes of collective bargaining, (3) as ordained in Section 4 (a) (4) of the Industrial Peace Act, the "closed shop" arrangement must be entered upon by mutual agreement, and (4) as held in the case of Confederated Sons of Labor v. Anakan Lumber, G.R. No. L-12503, April 29, 1960, the terms of a "closed shop" arrangement must be expressed clearly and unequivocably in the labor contract, namely, that the condition of employment in the shop or plant of the employer is membership in good standing in the bargaining labor organization, and that non-membership in the bargaining labor organization is a ground for dismissal from employment.

It is rather difficult to comprehend the pronouncements of the Supreme Court regarding this matter in the *Findlay Millar* case, *supra,* and in *Kapisanan ng mga Manggagawa ng Alak v. Hamilton Distillery Company et als.,* G.R. No. L-18112, Oct. 30, 1962, as well as the Court's reference to the Freeman Shirt Manufacturing case, *supra,* that "the closed shop authorized under sec. 4 subsec. a(4) of the Industrial Peace Act should, however, apply only to persons to be hired or to employees who are not yet members of any labor organization" and that "it is inapplicable to those already in the service and who are members of another union." This is not in harmony with the history of trade and industrial union movement, particularly with respect to the quest for security and strength of labor unions. It is encouraging though that the Supreme Court used the adverb "however" to indicate its guarded recognition of the considerations of practical affairs and the history that lie behind the proviso of Section 4 (a) (4) of the Industrial Peace Act.

What then makes the Supreme Court wary or cautious of the "closed shop" arrangement that it was constrained to rule that this

particular shop arrangement cannot be applied to those already in the service at the time of the approval of the bargaining contract and to those who are already members of other unions? Mr. Justice Bautista Angelo stated the Court's concern that if these groups of employees were covered then they may be compelled to disaffiliate from their unions and join the bargaining union, which would then render nugatory the rights of all employees to self-organization and to form, join or assist labor organizations of their own choosing.

Nevertheless, the Court's reservation and the reason advanced for it might be reassessed in the light of certain factors. First, a "closed shop" arrangement contains a certain degree of compulsion. This is unavoidable; it is its essence. Second, to the right to organize or to affiliate with any organization is coupled the correlative right to disband or to disaffiliate. Third, and perhaps the most important factor, Congress, in the exercise of its policy making power, has deemed it best, for the sake of the struggling trade and industrial union movement in the Philippines, to provide an exception to the right to join or affiliate with a labor organization for the purpose of collective bargaining. The proviso of Section 4 (a) (4) of the Industrial Peace Act starts with the principal phrase "That nothing in this Act or any other Act or statute of the Philippines . . ." Undoubtedly this choice of words covers even Section 3 of the Industrial Peace Act where the right to join or affiliate with a labor organization for the purpose of collective bargaining is contained. Thus, the proviso of Section 4 (a) (4) would read, in another way of putting it, as follows: that nothing in Section 3 of the Act . . . can preclude an employer from entering with a labor organization that is the bargaining representative of his employees into a "closed shop" arrangement that requires as a condition of employment membership in good standing in said bargaining union.

If there is a feeling on the part of the Court that the right of the employees to form, join or assist labor organizations of their own choosing for purposes of collective bargaining, mentioned in Section 3 of the Industrial Peace Act, is being unduly restricted by the exception that the Act itself expressly incorporated in Section 4 (a) (4), this solicitude need not turn to over-anxiety because there are certain built-in safety devices right in the law. First, right in Section 4 (a) (4) of the Industrial Peace Act, is a prescription that the "closed shop" arrangement can be entered only by mutual consent. The Industrial Peace Act does not create a legal claim in favor of a labor organization to a "closed shop" arrangement. Naturally there is no legal duty at all on the part of an employer to enter into such

a shop arrangement, if he does not want to. And it is not unfair labor practice for him to refuse to do so. Second, the parties, as it often happens, compromise the issue between them by entering into a "union shop" arrangement, or more often now into a "maintenance of membership shop" arrangement, which, respectively, contain a lesser degree of compulsion and discrimination than is found in a "closed shop" arrangement. Third, if the parties do enter into a "closed shop" arrangement, it is good only during the life of the collective bargaining contract. Thereafter, the employees are again at liberty to exercise their right to select their bargaining representative. Fourth, the Supreme Court itself, in a wise and punctilious appreciation of the problem posed by the "closed shop" arrangement, has required that the conditions thereof be expressed clearly and unequivocally in the labor contract.

The *Findlay Millar* case, *supra,* was quite a departure from the case of *Industrial-Commercial-Agricultural Workers Organization et als. v. Central Azucarera de Pilar et als.*, G.R. No. L-17422, Feb. 28, 1962, and the case of *San Carlos Milling Company, Inc. et al. v. Court of Industrial Relations et als.*, G.R. Nos. L-15453 and L-15723, March 29, 1962. The decisions in these early 1962 cases show a change of attitude of the Supreme Court on the question of whether or not the types of shop arrangements authorized in Section 4 (a) (4) of the Industrial Peace Act cover also old employees, whether members of a minority union or not.

In the *Central Azucarera de Pilar* case, *supra,* the so-called "union shop" arrangement was worded as follows:

> "The EMPLOYER agrees that in hiring unskilled employees and laborers, the members of the WORKERS ASSOCIATION should be given preference and the Management should notify accordingly to the WORKERS ASSOCIATION of any vacancy existing in all Departments. New employees and laborers hired who are not members of the WORKERS ASSOCIATION will be on TEMPORARY STATUS, and the EMPLOYER agrees that before they will be considered regular employees and laborers they have to become members of the CENTRAL AZUCARERA DE PILAR ALLIED WORKERS' ASSOCIATION within thirty (30) days from the date of employment and if they refuse to affiliate with the said labor organization within this time they will be immediately dismissed by the EMPLOYER."

Commenting on whether this is a precise statement of the "union shop" arrangement, the Supreme Court, speaking through Mr. Justice Barrera, ruled:

> "Nothing, however, is provided with respect to old employees or laborers already in the employ of the Central, whether members of the

> CAPAWA or not. There is, likewise, no requirement whatsoever on union members to remain as such under pain of being dismissed."

This is quite a significant pronouncement. First, it correctly held that the so-called "union shop" arrangement provided in the labor contract does not establish the true or complete "union shop" arrangement. The Court noted that there is absolutely nothing to show that the old employees, whether members of the bargaining union or not, are included. Indeed, only new employees are referred to, and these are they which are required to affiliate within 30 days from the date of their respective employment under pain of immediate dismissal. The Court was saying in effect that even old employees who are not yet members of the bargaining union or who belong to some other union in the shop or plant of the employer are covered if they are expressly referred to in the shop arrangement agreed upon in the labor contract and that their loss of status in good standing is expressly made a ground for dismissal. This view became marked when the Court applied it in the subsequent case of *San Carlos Milling Company, Inc. et al. v. Court of Industrial Relations et als.*, G.R. Nos. L-15453 and L-15723, March 29, 1962. In these cases, the Court, speaking through Mr. Justice Reyes, emphasized the importance of expressing in a clear and unequivocal manner the stipulations or conditions required for the existence of the shop arrangement agreed upon by the parties. In the absence of these conditions or in case they are ambiguously expressed, the shop arrangement incorporated in the labor contract will not be recognized as the true or complete one and any dismissal based thereon will be unwarranted and will be considered as a joint unfair labor practice on the part of the employer and the labor organization.

III. EMPLOYEES UNDER THE INDUSTRIAL PEACE ACT

The term "employee" is broadly defined in Section 2 (d) of the Industrial Peace Act to include: (1) any employee, and shall not be limited to the employee of a particular employer unless the Act explicitly states otherwise, and (2) any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment. The reason for this broad coverage is found in modern conditions of employer organizations that extend even beyond the operations of a single employer. Besides labor organizations do enter into collective bargaining agreements with an association of employers. Due to this involved labor relations, employees are many times brought into economic relations with employers who may not be their employers

at all. But broad as the definition may be there are, in this jurisdiction, certain well recognized exceptions, one of which is the independent contractor.[4]

A. DISTINCTION BETWEEN AN EMPLOYEE AND AN INDEPENDENT CONTRACTOR.

It is not always easy to classify workers and laborers into these slots. The scope of these terms must therefore be understood with reference to the purposes of the Industrial Peace Act and the material facts involved in the economic relationship. In other words, the question is whether the situation involves an employer-employee relationship or a prime entrepreneur-independent contractor relationship.

To decide this problem the simple "right of control" test was first applied. The simplicity of this test, according to the Supreme Court of the United States in National Labor Relations Board v. Hearst Publications, Inc., 322 U.S. 111, 88 L.Ed. 1170, 64 S.Ct. 851 (1954), is however more largely in formulation than in application. This led to the formulation of the more reliable "economic facts of the relations" test. Said the Supreme Court of the United States in the case just cited:

> "In short when the particular situation of employment combines those characteristics so that the *economic facts of the relation* make more nearly one of employment than of independent business enterprise with respect to the ends sought to be accomplished by the legislation, those characteristics may outweigh technical legal classification for purposes unrelated to the statute's objectives and bring the relation within its protection." (Emphasis supplied.)

In other words, the American Court discarded the common law "right of control" test which did not have any relation to the objectives and policies of the Labor Management Relations Act.

In *Dy Pac & Company, Inc. v. Court of Industrial Relations et al.*, G.R. No. L-18460, Aug. 24, 1962, the Supreme Court applied the "economic facts of the relation" test in determining whether the laborers are employees of the petitioner or independent contractors. Speaking through Mr. Justice Concepcion, the Court observed that while it is a fact that the laborers were hired by a secondary employer, nevertheless the economic facts involved in the case show that the workers are not independent contractors but employees of the petitioner company. Therefore they are entitled to the rights granted by the Industrial Peace Act. Among the economic facts involved in the

[4] 37 *Philippine Law Journal*, No. 2, 342.

relation between the petitioner and respondents are the following: (1) the individual hiring of the workers by the secondary employer was subject to the approval of the company, (2) it was the company and not the secondary employer who paid the wages of the workers, (3) the workers signed the payroll of the company, and (4) the shutdown occurred soon after the laborers organized a labor union and made certain economic demands on the company.

This decision continues the ruling in LVN Pictures Inc. v. Philippine Musicians Guild et al., G.R. No. L-12582, Jan. 28, 1961; Sampaguita Pictures, Inc. v. Philippine Musicians Guild et al., G.R. No. L-12598, Jan. 28, 1961; Cruz v. Manila Hotel, G.R. No. L-9110, April 30, 1957, 53 O.G., No. 23, 8540; and Sunripe Coconut Products v. Court of Industrial Relations et al., G.R. No. L-2009, April 30, 1949, 46 O.G., No. 11, 5506.

B. THE QUESTION OF SUBSTANTIALLY EQUIVALENT EMPLOYMENT.

Section 2 (d) of the Industrial Peace Act provides that the term "employee" shall include, among others, any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment.

In Far Eastern University v. Court of Industrial Relations et als., G.R. No. L-17620, Aug. 31, 1962, Mr. Justice Concepcion, speaking for the full Court, scrutinized very well the meaning of the term "substantially equivalent employment" by making a comparative study of the nature of the position which the employee had with his former employer and the position he holds with his present employer. The factors used by the Court are: (1) position, which involves a comparison of job description, (2) hours of work, (3) conditions of work, (4) income, and (5) the employee's prospects for the future in his present job, which involves qualifications.

In the *Far Eastern University* case, *supra*, the Supreme Court held that the position of the employee in his new job has no future for him on the basis of his qualifications, which are not necessary nor related to his present position. In other words, his position with his former employer had a future for him as a career, which is nonexistent in his new job. Taken as a whole these factors point to the conclusion that the new job of the employee in this case was inferior and not substantially equivalent to his former job.

The question as to whether an employer can be ordered to reinstate an employee who has found a substantially equivalent and re-

gular employment to his former position was not presented to the Court in the case. This is an interesting question. It becomes doubly so if another factor is injected: that the employee receives more in pay in his second or new employment. This can wait until a case involving this problem reaches and is decided by the Supreme Court.