A CRITICAL SURVEY OF THE 1964 DECISIONS OF THE SUPREME COURT IN LABOR RELATIONS LAW

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INTRODUCTION

In 1964 the Supreme Court decided many cases involving questions which have to do with the administration and interpretation of the Industrial Peace Act.

Some of these decisions are of first impression in our jurisdiction. Many decisions on familiar issues still lend themselves to interesting scrutiny.

As in previous years, much of what happened last year in the field of labor relations law involved the contrasting interpretations of the Supreme Court in the prominent issues in labor law. One example is the conflicting opinions of the Supreme Court on the nature and function of the closed-shop arrangement authorized by Section 4(a)(4) of the Industrial Peace Act. In the cases of Victorias Milling Co., Inc. v. Victorias-Manapala Workers Organization,[1] and Victorias-Manapala Workers Organization v. Court of Industrial Relations,[2] the Supreme Court discarded the view of the closed-shop employment arrangement which the Court reached in four previous cases decided in the early part of 1963, namely, Industrial, Commercial and Agricultural Workers Organization v. Jose S. Bautista *et als.*,[3] United States Lines Company v. Associated Watchmen

[1] G.R. No. L-18467, September 30, 1963.
[2] G.R. No. L-18470, September 30, 1963.
[3] G.R. No. L-15639, April 30, 1963.

and Security Union *et als.*,[4] Big Five Products Workers Union v. Court of Industrial Relations,[5] and National Brewery & Allied Industries Labor Union v. San Miguel Brewery, Inc.[6] But in 1964, the Supreme Court, speaking through the same justice who penned the decisions in the two Victorias Milling Company cases, *supra*, once again changed its position by reversing its decision in the two Victorias Milling Company cases and reviving its view of the closed-shop arrangement expressed in the cases of Local 7, Press & Printing Free Workers (FFW) *et al.* v. Emiliano Tabigne *et al.*,[7] and Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations *et al.*[8] Another example which is also of some dimension for the bar is the fluctuating view of the Supreme Court on the scope of the jurisdictional competence of the Court of Industrial Relations.

As in the past annual surveys, the titles of labor cases decided last year by the Supreme Court are given in *italics* to distinguish them from the other cases used in this analytical survey.

I. THE COURT OF INDUSTRIAL RELATIONS

A. PLEADING

1. BASIS FOR DETERMINING COURT'S JURISDICTION

The allegations in the complaint or petition determine the jurisdiction of the Court of Industrial Relations.[9] This rule was expanded in Insular Sugar Refining Corporation v. Court of Industrial Relations *et al.*,[10] where the Supreme Court ruled that in determining whether the Court of Industrial Relations has authority to hear and decide a case on the basis of the allegations in the pleadings, the truth of the facts therein averred must be theoretically admitted. Thus, it was held in the Insular Sugar Refining Corporation case that the existence of an employer-employee relationship is to be theoretically admitted where there is an allegation in the complaint that the employees were illegally dismissed. This supposition is based on the rule that an employer-employee relationship is not terminated by an illegal dismissal. Pursuant to this holding, the Supreme Court ruled in *Jose Serrano v. Luis Serrano et als.*[11] that the Court of In-

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[4] G.R. No. L-15508, June 29, 1963.
[5] G.R. No. L-17600, July 31, 1963.
[6] G.R. No. L-18170, August 31, 1963.
[7] G.R. No. L-16073, November 29, 1960.
[8] G.R. No. L-16561, January 28, 1961.
[9] Administrator of Luisita Estate v. Alberto, G.R. No. L-12133, October 31, 1958, citing Suanes v. Almeda-Lopez, 73 Phil. 573 (1942).
[10] G.R. No. L-19247, May 31, 1963.
[11] G.R. No. L-19562, May 23, 1964.

dustrial Relations can proceed to hear and decide a case when the allegations in the pleadings are sufficient.

But even with these guidelines the Court of Industrial Relations may still be in doubt as to its competence over a case. According to the Supreme Court in *Manila Electric Company v. Pascual Ortañez et als.*,[12] it is best for the Court of Industrial Relations to proceed with the investigation until such time as the facts it has gathered show that the case is clearly beyond the jurisdiction of the court.

2. AMENDMENT OF PLEADINGS

Of some complication is the matter of amendment of pleadings solely for the purpose of bringing a case within the jurisdiction of the Court of Industrial Relations. This question reached the Supreme Court in the case of *Vicente Tamayo v. San Miguel Brewery, Inc.*[13]

In this case, a petition for reconsideration and for leave to amend the complaint was filed soon after its dismissal by the Court of Industrial Relations. The complainant wanted to add the allegation that under the terms and conditions of the collective bargaining contract as well as the rules and regulations of the company an employee can be dismissed only for a just and valid cause and that he was dismissed on another ground. The respondent company opposed the motion on the ground that a complaint cannot be amended after its dismissal in order to cure a jurisdictional defect.

Under existing court decisions, a complaint cannot be amended to confer jurisdiction on the Court of Industrial Relations[14] if the cause of action originally alleged in the complaint is undoubtedly beyond the jurisdiction of the Court of Industrial Relations.[15] In the case of *Vicente Tamayo v. San Miguel Brewery, Inc.*,[16] the Supreme Court, speaking through Mr. Justice Roberto Regala, distinguished accurately between a complaint which fails to allege facts sufficient to constitute a valid cause of action from one where the cause of action originally set forth is not within the jurisdiction of the court. Under the rule expressed in the Campos Rueda case, a complaint is beyond remedy where the cause of action is not really within the court's competence. But where the cause of action stated in the complaint is within the court's jurisdiction but is not alleged with sufficient clarity such failure can still be cured by leave of

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[12] G.R. No. L-19557, March 31, 1964.
[13] G.R. No. L-17749, January 31, 1964.
[14] Campos Rueda Corporation v. Jose S. Bautista, *et al.*, G.R. No. L-18452, September 29, 1962.
[15] *Manila Electric Company v. Pascual Ortañez et als.*, G.R. No. L-19557, March 31, 1964.
[16] See note 13, *supra*.

court in order to assert additional facts which, together with those previously alleged in the original complaint, would make the factual situation sufficient to constitute a valid cause of action and thus bring the case within the jurisdiction of the Court of Industrial Relations.

B. The Problem of Jurisdiction of the Court of Industrial Relations

With the enactment of Republic Act No. 875, the broad jurisdictional competence of the Court of Industrial Relations under Commonwealth Act No. 103 over all cases involving labor disputes has been reduced considerably. But to what extent, there seems to be no agreement. Even the Supreme Court is not certain.

In any case, the delineation of the jurisdiction of the Court of Industrial Relations was first made in the case of Philippine Association of Free Labor Unions v. Bienvenido A. Tan.[17] In a close 6-to-4 decision, the Supreme Court held that with the enactment of the Industrial Peace Act the jurisdiction of the Court of Industrial Relations has been limited to only four types of cases, beyond which the Court of Industrial Relations cannot act. Speaking for five other members of the majority group, Mr. Justice Felix Bautista Angelo stated:

> "[A]s the law now stand, that [jurisdiction] 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 No. 875); (2) when the controversy refers to minimum wages 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). 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 No. 875)."

Since the promulgation of this and subsequent contrasting decisions, the delineation of the jurisdictional competence of the Court of Industrial Relations has become difficult. The members of the Supreme Court themselves have taken notice of this situation as early as 1960. In the case of Price Stabilization Corporation v. Court of Industrial Relations,[18] the Supreme Court, through Mr. Justice Jesus G. Barrera, referred to the lack of a clear and definite

[17] G.R. No. L-9115, August 31, 1956, 52 O.G. (13) 5836.
[18] G.R No. L-13806, May 23, 1960.

statement of the scope of the jurisdiction of the Court of Industrial Relations. And in the case of Philippine Wood Products *et al.* v. Court of Industrial Relations *et als.*[19] that the Supreme Court expressly admitted "the confusion brought about by the contradictory rules in PAFLU v. Tan and subsequent cases one the one hand, and Gomez v. North Camarines Lumber Company and [subsequent cases] on the other hand."

The pronouncements of the Supreme Court in 1964 with regard to this problem have not helped to clarify the issue either.

1. DEFECT OF THE PAFLU v. TAN DECISION

There are two things that should be noted in the decision of the Court in PAFLU v. Tan.

First, the view that the Court of Industrial Relations has no jurisdictional competence beyond the four types of cases therein specified is not in accordance with the policies of the Industrial Peace Act. Indeed, the Supreme Court itself is afraid that its holding in PAFLU v. Tan has curtailed the jurisdiction of the Court of Industrial Relations to a degree that is prejudicial to the objectives of the Industrial Peace Act. The Supreme Court has articulated this apprehension in Luis Recato Dy *et al.* v. Court of Industrial Relations [20] and *Philippine Engineers' Syndicate, Inc. v. Jose S. Bautista.*[21]

The other thing that should be noted in the majority view in PAFLU v. Tan is the non-contextual use of the public policy expressed in Section 7 of the Industrial Peace Act. To be sure, the policy-statement in Section 7 underlies the removal of the power of compulsory arbitration of the Court of Industrial Relations, except in the cases therein specified. This section provides as follows:

> *"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 employer 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).

Note that the crucial point in this provision is the declaration that no court in the Philippines can interpose its authority on matters over which it has no original business.[22] In order to "prevent un-

[19] G.R. No. L-15279, June 30, 1961.
[20] G.R. No. L-17788, May 25, 1962.
[21] G.R. No. L-16440, February 29, 1964.
[22] 38 *Philippine Law Journal,* 5 (1963).

due restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between employer and employee by means of an agreement freely entered into," Section 7 of the Industrial Peace Act has divested all courts in the Philippines of jurisdiction to compulsorily arbitrate questions dealing with rates of pay,[23] wages,[24] hire or tenure of employment,[25] the kind of machinery for the adjustment of grievances and the settlement of issues arising under the labor contract or from employer-employee relationship in the plant,[26] and other terms and conditions of employment.[27] These matters have been transferred to labor and management for collective bargaining.

This rule is not, however, inflexible. The Industrial Peace Act itself provides three exceptions to it. Put differently, the Court of Industrial Relations can still compulsorily arbitrate questions dealing with bargainable matters when they get involved in a labor dispute in an industry indispensable to the national interest, present all the conditions provided in Section 10 of the Industrial Peace Act; or when they get involved in a labor dispute concerning minimum wages above the applicable statutory minimum or when such money claims are enmeshed in an actual strike, present the conditions respectively provided for them in subsections (b) and (c) of Section 16 of Republic Act No. 602; or when they get involved in a labor dispute concerning the legal working day or compensation for overtime work, present in either case the conditions required in Sections 1, 3 and 4 of Commonwealth Act No. 444.

Thus, the three exceptions mentioned in Section 7 of the Industrial Peace Act are not the only types of cases falling within the jurisdiction of the Court of Industrial Relations. To be sure, there are other classes of cases involving other labor legislation not mentioned in Section 7 of the Industrial Peace Act over which the Court of Industrial Relations has jurisdiction. Under the Industrial Peace Act alone there are more types of cases over which the Court of Industrial Relations has jurisdiction than all the types of cases enumerated by the majority view in the case of PAFLU v. Tan.

2. THE FLOWERING OF THE PAFLU v. TAN DECISION

From Paflu v. Tan to Philippine Sugar Institute v. Court of Industrial Relations[28] to Elizalde Paint & Oil Factory, Inc. v. Jose S.

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[23] Section 12(a), Republic Act No. 875.
[24] Sections 12(a) and 13, Republic Act No. 875.
[25] Section 4(a)(4), Republic Act No. 875.
[26] Sections 13 and 16, Republic Act No. 875.
[27] Sections 4(a)(4), 12 and 13, Republic Act No. 875.
[28] G.R. No. L-13098, October 29, 1959, 57 O.G. (4) 635.

Bautista,[29] the Supreme Court upheld the view that the Court of Industrial Relations has no jurisdiction over a case that does not fall under any of the four types of cases enumerated in the Paflu v. Tan decision.

But after the promulgation of the decision in Paflu v. Tan, quite a number of cases involving money claims reached the Supreme Court. The issue common to these cases was whether the Court of Industrial Relations had jurisdiction over claims for underpayment of wages, separation or termination pay, overtime pay, and extra compensation. To apply the decision reached by the Supreme Court in Paflu v. Tan to this type of cases would have taken them out of the jurisdiction of the Court of Industrial Relations. In so far as money claims are concerned, the decision in Paflu v. Tan mentions only controversies involving *minimum wages* under the Minimum Wage Law (Republic Act No. 602). But, obviously, this is not the only type of controversy involving money claims arising out of and in connection with employment. Furthermore, the Supreme Court itself was worried that "further curtailment of the jurisdiction of the Court of Industrial Relations would defeat the purpose of the Industrial Peace Act to the detriment of labor." [30] Thus, is cases involving money claims arising out of and in connection with employment the Supreme Court was forced to distinguish between money claims filed by employees [31] from money claims filed by ex-employees.[32]

But even this distinction did not long suit the Supreme Court. When the case of Monares v. CNS Enterprises [33] reached the Supreme Court, Mr. Chief Justice Ricardo Paras found it necessary to draw a further distinction between cases involving money claims filed by ex-employees who also seek their reinstatement from cases involving money claims filed by ex-employees who do not seek their re-employment. With this second demarcation line, the Supreme Court felt that the position it has theretofore taken on the problem of the limits of the jurisdiction of the Court of Industrial Relations would be-

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[29] G.R. No. L-15904, November 23, 1960.

[30] Luis Recato Dy *et al.* v. Court of Industrial Relations, G.R. No. L-17788, May 25, 1962; *Philippine Engineers' Syndicate, Inc. v. Jose S. Bautista et als.*, G.R. No. L-16440, February 29, 1964.

[31] Isaac Peral Bowling Alley v. United Employees Welfare Association *et al.*, G.R. No. L-9831, October 30, 1957; National Shipyard and Steel Co. v. Almin *et al.*, G.R No. L-9055, November 28, 1958; Price Stabilization Corporation v. Court of Industrial Relations *et al.*, G.R. No. L-13806, May 23, 1960.

[32] Santiago Aguilar v. Jose Salumbides, G.R. No. L-10124, December 28, 1957; Roman Catholic Archbishop of Manila v. Yanson *et al.*, G.R. No. L-12341, April 30, 1958; Elizalde & Co., Inc. v. Yanson *et al.*, G.R. No. L-12345, April 30, 1958; Chua Workers Union v. City Automotive Company *et al.*, G.R. No. L-11655, April 29, 1959; Benito Sy Huan v. Jose S. Bautista, G.R. No. L-16115, August 29, 1961.

[33] G.R. No. L-11749, May 29, 1959.

come clear to the bench and the bar. Thus, in the case of Price Stabilization Corporation v. Court of Industrial Relations,[34] the Supreme Court, through Mr. Justice Jesus G. Barrera, held:

> "[W]here the employer-employee relationship is still existing or is sought to be reestablished because of its wrongful severance (as where the employee seeks reinstatement), the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with, employment, such as those related to the Minimum Wage Law and the Eight-Hour Labor Law. After the termination of the relationship and no reinstatement is sought, such claims become mere money claims, and come within the jurisdiction of the regular courts."

(a) The Sy Huan v. Bautista Case

But the "confusion" about the scope of the jurisdiction of the Court of Industrial Relations would not simply clear up.

In the case of Benito Sy Huan v. Jose S. Bautista,[35] the Supreme Court felt that a general statement of the scope of the jurisdiction of the Court of Industrial Relations would suffice by simply combining together the holding in Paflu v. Tan [36] and the holding in Price Stabilization Corporation v. Court of Industrial Relations *et al.*[37] Thus, speaking through Mr. Justice Felipe Natividad, the Supreme Court came out with this composition:

> "The jurisdiction of the Court of Industrial Relations, under the law and the jurisprudence, extends only to cases involving (a) labor disputes affecting an industry which is indispensable to the national interest and so certified by the President to the Court, Section 10, Republic Act No. 875; (b) controversy about the minimum wage under the Minimum Wage Law, Republic Act No. 602; (c) hours of employment under the Eight-Hour Labor Law, Commonwealth Act No. 444; and (d) unfair labor practices, Section 5(a), Republic Act No. 875. Paflu v. Tan. . . . And such disputes and controversies, in order that they may fall under the *jurisdiction of the Court of Industrial Relations*, must arise while the employer-employee relationship between the parties exists, or the employee seeks reinstatement. When such relationship is over and the employee does not seek reinstatement, all claims become money claims that fall under the jurisdiction of the regular courts. Price Stabilization Corporation v. Court of Industrial Relations, *et al.*"

But the decision in Paflu v. Tan and in Price Stabilization Corporation v. Court of Industrial Relations are not simply nor mutually complementary. Indeed they involve different matters in different contexts. Their combination only aggravated the confusion. If an illustration is needed, consider the class of cases involving unfair

[34] G.R. No. L-13806, May 23, 1960.
[35] G.R. No. L-16115, August 29, 1961.
[36] G.R. No. L-9115, August 31, 1956, 52 O.G. (13) 5836.
[37] G.R. No. L-13806, May 23, 1960.

labor practices, more specifically, discriminatory dismissals. Note that in this particular class of cases, reinstatement with or without backpay is an affirmative step which the Court of Industrial Relations is required to take in order to effectuate the policies of the Act. But the nagging question is, does it make any difference that the dismissed employees discriminated against had failed to include a prayer for their reinstatement? And if they had not included it, should the unfair labor practice case be dismissed and filed before a "regular court"?

(b) The Campos v. Manila Railroad Case

Despite these problems, the Supreme Court, in a decision by Mr. Justice Felix Bautista Angelo, reiterated the view expressed in the Sy Huan v. Bautista case in the subsequent case of Ignacio Campos v. Manila Railroad Company.[38] The Court even announced that it was made "for the benefit of the bench and the bar". But this time the Court dropped altogether the reference to the combination of the holding in Paflu v. Tan and the holding in Price Stabilization Corporation.

There are two things that detract a great deal from this view of the scope of the jurisdictional competence of the Court of Industrial Relations. First, the controversy involved in the Campos v. Manila Railroad Company case was not even a money claim. Second, the validity of the requirement that there must be a claim for reinstatement if the employer-employee relationship is no longer existing must depend on some specific provision in the Industrial Peace Act. But there is none. What pertinent provisions there are point to the contrary. Section 2(j) in relation to Section 9(f)(1) and (2) in defining the term "labor dispute" does so regardless of whether the disputants stand in a proximate relation of employer and employee. The reason for this is that a labor dispute may exist even without this relationship. Indeed, an "employee" as defined in Section 2(d) need not be an employee of a particular employer. And Section 5(a) which pre-empts jurisdiction over unfair labor practice cases to the Court of Industrial Relations does not even differentiate on whether the employer-employee relationship is existing or not, and it does not qualify as to whether a claim for reinstatement has been made or not.

But the combined Sy Huan-Campos rule was, nevertheless, applied subsequently in Sergio Naguiat v. Jacinto Arcilla,[39] Luz Bar-

[38] G.R. No. L-17905, May 25, 1962.
[39] G.R. No. L-16602, February 28, 1963.

ranta v. International Harvester of the Philippines,[40] Araullo v. Monte de Piedad,[41] Pedro Gallardo v. Corominas, Richards Navigation Company, Inc.,[42] *Kim Kee Chua Yu & Co., Inc. v. Court of Industrial Relations*,[43] *National Waterworks & Sewerage Authority v. NWSA Consolidated Unions*,[44] and in *Santiago Mercado v. Elizalde & Company, Inc.*[45]

Thus, what started out as a clarification of the jurisdiction of the Court of Industrial Relations over *money claims* surprisingly became a statement of the general scope of the jurisdictional competence of the Court of Industrial Relations!

3. THE EMASCULATION OF THE SY HUAN-CAMPOS RULE

In 1964, a significant change occurred in the thinking of the Supreme Court on the scope of the jurisdiction of the Court of Industrial Relations.

In the case of *Philippine Engineers' Syndicate, Inc. v. Jose S. Bautista*,[46] the employer questioned the jurisdiction of the Court of Industrial Relations over claims for additional compensation for night work. Relying heavily on the Sy Huan-Campos rule, the employer argued that even though the respondents were his employees, nevertheless, their claim for additional compensation for night work is not one of the four specific cases mentioned in Paflu v. Tan, beyond which the Court of Industrial Relations cannot act. It looked like his argument was unbeatable. But the Supreme Court realized the inadequacy of the Sy Huan-Campos rule in cases involving money claims arising out of and in connection with an employment relation. This forced the Supreme Court to ignore the Sy Huan-Campos rule. According to Mr. Chief Justice Cesar Bengzon, who spoke for the Supreme Court, "to hold . . . this case . . . beyond the powers of the industrial court to decide, would amount to a further curtailment of the jurisdiction of said court to an extent which would defeat the purpose of the [Industrial Peace Act] to the prejudice of labor." Mr. Justice Felix Bautista Angelo expressed a similar fear in Luis Recato Dy *et al.* v. Court of Industrial Relations.[47]

Thus, the Supreme Court once again disowned Paflu v. Tan. Said the Court:

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[40] G.R. No. L-18198, April 22, 1963.
[41] G.R. No. L-17840, April 23, 1963.
[42] G.R. No. L-17453, December 26, 1963.
[43] G.R. No. L-16803, June 29, 1964.
[44] G.R. No. L-18938, August 31, 1964.
[45] G.R. No. L-18962, December 23, 1964.
[46] G.R. No. L-16440, February 29, 1964.
[47] G.R. No. L-17788, May 25, 1962.

> "True, in Paflu *et al.* v. Tan *et al., supra,* and in a series of cases thereafter, we held that the broad powers conferred by Commonwealth Act 103 on the CIR have been curtailed by Republic Act 875 which limited them to the four categories therein expressed, in line with the public policy of allowing settlement of industrial disputes via the collective bargaining process; but we find no cogent reason for concluding that a suit of this nature—for extra compensation for night work—falls outside the domain of the industrial court."

In the case of *Philippine Air Lines Employees' Association v. Philippine Air Lines, Inc.*[48] one of the defenses put up by the defendant employer was the lack of jurisdiction of the Court of First Instance of Manila to entertain the complaint involving differential pay arising out of and in connection with employment. The defendant company cited the ruling in the case of Price Stabilization Corporation v. Court of Industrial Relations.[49] Again, the case for the defendant company seemed incontrovertible for under the prevailing rule at that time money claims filed by employees fall within the jurisdiction of the Court of Industrial Relations. But the Supreme Court was faced with an altogether different situation, for the case involved mainly the applicability of Republic Act No. 1880 to the respondent's employees in view of the provision of the law changing the 48-hour work week to a 40-hour work week for employees in government-owned and controlled corporations. In a decision by Mr. Justice Roberto Concepcion, the Supreme Court categorically opposed the holding in the Price Stabilization Corporation case. As in the case of *Philippine Engineers' Syndicate, Inc. v. Jose S. Bautista*[50] the Court hedged by saying:

> "It is true that in Prisco v. CIR (*supra*) we held that 'where the employer-employee relationship is still existing . . . the Court of Industrial Relations has jurisdiction over all claims arising out of or in connection with the employment, such as those related to the Minimum Wage Law and the Eight-Hour Labor Law.' *This notwithstanding,* the aforementioned cases are not decisive in favor of defendant's pretense . . ." (Emphasis added).

There is an interesting turn to this particular problem. In *Manila Railroad Company v. Union de Maquinistas, Fogoneros y Motormen et al.*[51] and *Manila Railroad Company v. Union de Empleados de Trenes et al.*[52] the main issue involved also the applicability of Republic Act No. 1880 and the claim of the employees for differential pay for services rendered in excess of the 40-hour work week. The

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[48] G.R. No. L-18559, June 30, 1964.
[49] G.R. No. L-13806, May 23, 1960.
[50] G.R. No. L-16440, February 29, 1964.
[51] G.R. No. L-18160, January 31, 1964.
[52] G.R. No. L-18249, January 31, 1964.

Manila Railroad Company argued that the Court of Industrial Relations was not the proper court. But the Supreme Court, in a decision by Mr. Justice Sabino Padilla, upheld the authority of the Court of Industrial Relations to hear and decide the controversy on the ground that claims for compensation for overtime pay which an employer refuses to pay is a dispute that might lead to or be the cause of a strike. In holding that the Court of Industrial Relations had jurisdiction in this case the Supreme Court revived the holding in the Price Stabilization Corporation case, which it had refused to apply in the *Philippine Air Lines* case decided earlier in 1964.

In the face of these four contrasting decisions, what is the status of the Sy Huan-Campos rule? It would seem that the Supreme Court will not apply the Sy Huan-Campos rule when the main issue in a case falls within the jurisdiction of another court even though a money claim arising out of and in connection with employment might be involved. In other words, if the money claim arising out of and in connection with employment, such as those related to the Minimum Wage Law or the Eight-Hour Labor Law, is merely an incident to the main issue then the court having jurisdiction over the main cause of action may also grant the relief incidental thereto. But if the money claim is a dispute that might lead to or be the cause of a strike then the entire case is cognizable by the Court of Industrial Relations.

C. Jurisdictional Competence of the Court of Industrial Relations

Commonwealth Act No. 103 exemplifies the era of active governmental intervention in labor relations. Under this law the jurisdiction of the Court of Industrial Relations was quite broad. It covered both industrial workers and employees as well as agricultural workers and tenants. It also included the power to compulsorily arbitrate all kinds of questions arising between employers and employees as well as landholders and tenants or farm workers.

But the regime of active governmental intervention has given way to the era of unionization and collective bargaining upon the enactment in 1953 of Republic Act No. 875. Under this legislation, the scope of the jurisdiction of the Court of Industrial Relations was considerably reduced. Subsequent legislation, like Republic Act No. 1267, as amended, otherwise known as the Court of Agrarian Relations Act, and Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, have further reduced the jurisdictional competence of the Court of Industrial Relations.

Under existing legislation, the Court of Industrial Relations has the power to hear and decide cases under Commonwealth Act No. 103 (Court of Industrial Relations Act), Commonwealth Act No. 444 (Eight-Hour Labor Law), Republic Act No. 602 (Minimum Wage Law), Republic Act No. 875 (Industrial Peace Act), and Republic Act No. 1052 (Termination Pay Law), as amended.

In 1964, no cases concerning the jurisdiction of the Court of Industrial Relations under Commonwealth Act No. 103 and Republic Act No. 1052 reached the Supreme Court.

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

Under Republic Act No. 875, the Court of Industrial Relations has jurisdiction over the following:

(1) Cases involving unfair labor practices under Section 5(a) and (d), and contempt of court in unfair labor practice cases under Section 5(e).

(2) Cases involving injunctions in unprotected union activities under Section 9(d)(1), and cases involving injunctions in labor disputes in industries indispensable to the national interest, under Section 10.

(3) Cases involving the fixing of working conditions and terms of employment in labor disputes in industries indispensable to the national interest, under Section 10.

(4) Cases involving determination and redetermination of appropriate collective bargaining units, under Section 12(a).

(5) Cases involving representation of employees, under Section 12(b), (c), (d), and (e).

(6) Cases involving appeals from certification elections, under Section 12(f).

(7) Cases involving the interpretation and enforcement of collective bargaining contracts for the vindication of the rights of employers and employees, under Sections 13 and 16.

(8) Cases involving violations of internal labor organization procedures, under Section 17.

(9) Cases involving revival of registration and permit of labor organizations, under Section 23(d).

(10) Cases pending before the Court of Industrial Relations at the time of the passage of the Industrial Peace Act, under Section 27.

In 1964, only cases which have to do with the jurisdiction of the Court of Industrial Relations involving unfair labor practices, interpretation and enforcement of collective bargaining contracts, and representation of employees reached the Supreme Court.

A. JURISDICTION OVER UNFAIR LABOR PRACTICE CASES

One of the means utilized by the Industrial Peace Act to protect the rights guaranteed to labor in Section 3 is to characterize as unfair labor practices certain acts whether resorted to by labor, by management or by both.

1. JURISDICTIONAL FACTS

With the exception of yellow dog contracts,[53] company unionism,[54] discrimination to encourage or discourage union membership,[55] refusal to bargain collectively,[56] and feather-bedding,[57] certain requisites must be met before the Court of Industrial Relations may assume jurisdiction over unfair labor practice cases. First, the aggrieved employees must be employees with the meaning of that term in Section 2(d) of the Industrial Peace Act. Second, if a labor organization is a party to an action, the filing requirements provided in Section 23(b) of the Industrial Peace Act must be complied with.

2. PROCEDURE IN UNFAIR LABOR PRACTICE CASES

(a) Preliminary Investigation

Section 5(b) of the Industrial Peace Act requires a preliminary investigation of any charge of unfair labor practice.[58] The unfair labor practice charge may be withdrawn,[59] adjusted,[60] dropped,[61] or the investigating officer of the Court of Industrial Relations may file a complaint.[62]

In *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations et al.*,[63] the Court of Industrial Relations itself conducted a preliminary hearing on a charge of unfair labor practice. After a *prima*

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[53] Section 4(a)(2), Republic Act No. 875.
[54] Section 4(a)(3), Republic Act No. 875.
[55] Section 4(a)(4), Republic Act No. 875.
[56] Sections 4(a)(6) and 4(b)(3), Republic Act No. 875.
[57] Section 4(b)(4), Republic Act No. 875.
[58] 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. (13) 5858.
[59] Section 5(c), Republic Act No. 875.
[60] Section 5(a) and (b), Republic Act No. 875.
[61] Section 5(b), Republic Act No. 875.
[62] Section 5(b), Republic Act No. 875.
[63] G.R. Nos. L-19273 and L-19274, February 29, 1964.

facie case was established, the court referred the matter to its Prosecution Division with instructions that the corresponding complaint be filed. The respondent employer strongly objected to this procedure. Unsuccessful in the court below, he appealed to the Supreme Court. There he argued that it was error on the part of the Court of Industrial Relations to proceed in the manner it did. In disposing the question, the Supreme Court, through Mr. Justice Alejo Labrador, ruled that the hearing conducted by the Court of Industrial Relations can be considered as a preliminary investigation in satisfaction of the requirement of the Industrial Peace Act. Under Section 5(b) of the Act, the Court of Industrial Relations is expressly empowered to conduct preliminary investigations of charges of unfair labor practices. However, the Court of Industrial Relations does not ordinarily engage in this type of activity but designates one of its agents to conduct the preliminary investigation.

(b) Prevention of Unfair Labor Practices

There are some innovations introduced by the Industrial Peace Act for the prevention of unfair labor practices. One of these is the provision that the exclusive power of the Court of Industrial Relations to prevent the commission of unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by an agreement, code, law or otherwise," [64] nor shall the procedure for the exercise of such power include any "resort to mediation and conciliation as provided in Section 4 of Commonwealth Act No. 103, as amended, or to any pretrial procedure." [65] Back of these limitations is the public policy of eliminating the causes of industrial unrest and of promoting a sound stable industrial peace.

The case of *Pasumil Workers Union v. Court of Industrial Relations et al.*,[66] is perhaps the first case decided by the Supreme Court touching on these limitations on the jurisdiction of the Court of Industrial Relations over cases involving unfair labor practices.

In this case, the National Labor Union filed a complaint for unfair labor practice under Section 4(a)(3) of the Industrial Peace Act against the Pasumil Workers Union for having received financial assistance from the Pampanga Sugar Mills. One of the proofs offered to support the charge of unfair labor practice was the compromise agreement between the Pampanga Sugar Mills and the Pasumil Workers Union which they entered into on September 26, 1959.

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[64] Section 5(a), Republic Act No. 875.
[65] Section 5(b), Republic Act No. 875.
[66] G.R. No. L-19628, April 30, 1964.

In this document, the Pampanga Sugar Mills agreed to assist and make available to the Pasumil Workers Union the sum of ₱4,500.00 which the union may use for whatever worthy projects it may undertake. The Pasumil Workers Union contended that the money was given in settlement of a claim for payment of vacation leave for some of its members. But the Court of Industrial Relations rejected this defense as well as the compromise agreement, and ruled that the sum received by the union from the company was assistance within the meaning of Section 4(a)(3) of the Industrial Peace Act and ordered the dis-establishment of the union.

On appeal, the Supreme Court reversed the lower court and held that on the basis of the evidence in the record of the case the amount of money which the company gave to the union was in fact payment for vacation leave for 1953 and 1954. But in reversing the lower court, the Supreme Court, in an opinion by Mr. Justice Alejo Labrador, made the following observations:

> "The compromise, instead of being rejected by the court below, should have been accepted in view of the direct provisions of the law, namely, Art. 2028 of the New Civil Code, and Rule 20, Sec. 1 of the Rules of Court which direct that parties and attorneys should also 'consider the possibilities of an amicable settlement' and Sec. 3 of Rule 21 which directs the court at the pre-trial to persuade the litigants to agree upon some fair compromise."

This is rather disturbing and may even confuse the administration and application of Section 5(a) and (b) of the Industrial Peace Act!

(c) Analysis of the Provisions on Prevention of Unfair Labor Practices

As stated above, the Industrial Peace Act has limited the power of the Court of Industrial Relations to check the commission of unfair labor practices and to prevent persons from engaging in any unfair labor practices. It is expressly provided in the Act that this power shall not be affected by any other means of adjustment or prevention that has been or may be established by an agreement, code, law or otherwise,[67] and that in the exercise of this power the court shall not resort to any pre-trial procedure or to the mediation and conciliation procedure provided in Section 4 of Commonwealth Act No. 103.[68]

There is a simple principle underlying these limitations. Unfair labor practice cases involve much more than conflicts of private

[67] Section 5(a), Republic Act No. 875.
[68] Section 5(b), Republic Act No. 875.

interests. They involve the productive economy and the public policy of promoting a sound stable industrial peace. This explains why the exclusive jurisdiction of the Court of Industrial Relations is not to be affected by any pre-trial procedure and by any process of adjustment or prevention, mediation and conciliation *other than* the means of adjustment or prevention of unfair labor practices allowed in Section 5 of the Industrial Peace Act, especially that part which has to do with the complete ventilation of the alleged unfair labor practice.[69]

The observation made by the Supreme Court in the *Pasumil Workers Union* case is not in harmony with Section 5(a) and (b) of the Industrial Peace Act! For instance, it is not accurate for the Court to say that a compromise agreement adjusting an unfair labor practice case should be accepted by the Court of Industrial Relations on the strength of the provisions of Article 2028 of the Civil Code of the Philippines and Section 1 of Rule 20 of the Rules of Court, which direct the parties and their attorneys to consider the possibility of an amicable settlement of the case. The Court is not precise either in saying that the Court of Industrial Relations has the right to summon the litigants to a pre-trial proceeding and there persuade them to agree upon same fair compromise or adjustment of an unfair labor practice case, on the strength of the provisions to that effect contained in Section 3 of Rule 21 of the Rules of Court. These steps are precisely the kind of governmental intervention that are explicitly avoided in Section 5(a) and (b) of the Industrial Peace Act! In a word, these methods of governmental intervention are not allowed by the Industrial Peace Act because of the national policy to expose every unfair labor practice so that a general cease and desist order may be issued and appropriate affirmative steps taken by the Court of Industrial Relations to undo both the public and private harm occasioned by the unfair labor practice and to prevent its repetition.

(d) Remedial Orders in Unfair Labor Practice Cases

In the case of *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations et al.*,[70] the issues revolved on whether the Court of Industrial Relations can order the employer to reinstate his employees and to pay their back wages in order to affirm or put into effect the policies of the Industrial Peace Act.

Section 5(c) of the Industrial Peace Act provides in part as follows:

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[69] *Ibid.*

[70] G.R. No. L-19778, September 30, 1964.

". . . If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative step as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without backpay and including rights of the employees prior to dismissal including security. . . ."

The authority granted by the Industrial Peace Act to the Court of Industrial Relations to formulate affirmative remedies in order to purge and to prevent the commission of unfair labor practices necessarily has a broad reach.[71] But this power is limited in some respects by the Act itself.[72]

The Supreme Court of the Philippines holds to this view in Big Five Products Workers Union v. Court of Industrial Relations *et al.*[73] and in *Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations et al.*[74] Speaking through Mr. Justice Roberto Regala in the second case, the Supreme Court held that the discretion of the Court of Industrial Relations to determine the remedy to be applied in unfair labor practice cases is not unbounded. Quoting from Rothenberg,[75] the Supreme Court said that this discretion cannot be exercised beyond the point which the object of effectuation of the Act requires.

(1) Restrictions on the Power of the Court of Industrial Relations to Fashion Affirmative Remedies

The first restriction is general in nature. In Section 5(c) of the Industrial Peace Act, the Court of Industrial Relations is required to take only such affirmative step or steps that will affirm and put into effect the policies of the Industrial Peace Act. This requirement was applied by the Supreme Court in the *Cromwell Commercial Employees and Laborers Union* case.

The second restriction, which is also contained in Section 5(c) of the Industrial Peace Act, is special in character because it operates only when the unfair labor practice involves unlawful discrimination of employees. In such a case, the law expressly provides that the Court of Industrial Relations must also include, among other

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[71] National Labor Relations Board v. Link-Belt Co., 311 U.S. 584, 85 L. Ed. 368, 61 S. Ct. 358 (1941).

[72] National Labor Relations Board v. District 50, United Mine Workers of America, 355 U.S. 453, 2 L. Ed. 2d 401, 78 S. Ct. 386 (1958).

[73] G.R. No. L-17600, July 31, 1963.

[74] G.R. No. L-19778, September 30, 1964.

[75] Labor Relations, 573-574.

affirmative steps it may decide to take, reinstatement with or without backpay, rights prior to dismissal, and seniority. There is a very good reason behind this 3-fold affirmative step to undo the harm done as a result of unlawful discrimination against employees. Nothing will more heal the ruptured employer-employee relationship and stabilize it quicker than the reinstatement of the employees unlawfully discriminated against, whether with or without backpay, and the restoration of whatever rights they may have enjoyed prior to their dismissal, *e.g.*, full-time working condition, as well as their seniority status.

(2) Exceptions to Remedy of Reinstatement of Employees

The requirement of Section 5(c) of the Industrial Peace Act to include the reinstatement of employees is not an inflexible rule, however.

In two cases, namely, *Consolidated Labor Association of the Philippines v. Marsman & Co., Inc.*[76] and *Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations et al.*,[77] the Supreme Court held that the requirement in Section 5(c) of the Industrial Peace Act to reinstate discriminatorily dismissed employees is not absolute.

Speaking through Mr. Justice Querube C. Makalintal in the *Consolidated Labor Association* case, and through Mr. Justice Roberto Regala in the *Cromwell Employees and Laborers Union* case, the Supreme Court held that the Court of Industrial Relations has no authority to order the reinstatement of discriminatorily dismissed employees who have been convicted of violence upon the employer's property during a strike or of unlawful acts, such as the utterance of obscenities. While the Court of Industrial Relations has some discretion in determining the remedy to be applied in case of unlawful discrimination against employees, the Supreme Court felt that the step taken by the Court of Industrial Relations requiring the reinstatement of employees who were previously convicted of unlawful acts or of violence upon the employer's property is no longer an affirmance but a negation of the orientation of the Industrial Peace Act. According to Mr. Justice Regala this is a step that goes beyond the point which the object of effectuating the policies of the Act requires. Mr. Justice Makalintal and Mr. Justice Regala are so right here in contrast to the unqualified statement involving a similar matter expressed by the Supreme Court in the case of *Itogon-Suyoc Mines, Inc. v. Jose Baldo et als.*[78]

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[76] G.R. No. L-17038, July 31, 1964.
[77] G.R. No. L-19778, September 30, 1964.
[78] G.R. No. L-17739, December 24, 1964.

The other exception to the requirement in Section 5(c) of the Industrial Peace Act to reinstate discriminatorily dismissed employees is found in Section 2(d) of the Industrial Peace Act. When an employee who has been unlawfully discriminated against has found a substantially equivalent and regular employment and on the basis of the evidence presented the Court of Industrial Relations finds that his reinstatement will not effectuate the policies of the Industrial Peace Act, then the Court of Industrial Relations must not take this step. This is the holding in *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations et al.*[79] citing Phelps Dodge Corporation v. National Labor Relations Board.[80]

(e) Appeal to the Supreme Court

One aspect of this subject which is of interest to the bench and the bar was indirectly taken up in the decision of the Supreme Court in *Government Service Insurance System v. GSIS Employees' Association et al.*[81]

To begin with, this case was not an unfair labor practice case. It involved only certain demands of the respondent union which the employer had not acted upon for some time. As a result of this inaction a strike was called by the labor union. After the Court of Industrial Relations had rendered a decision favorable to the union, the employer elevated the case to the Supreme Court.

In an opinion by Mr. Justice Sabino Padilla, the Supreme Court dismissed the employer's appeal on the ground that the petition for certiorari was not filed within the period prescribed in Section 1 of Rule 44 of the Rules of Court, Section 14 of Commonwealth Act No. 103, and Section 6 of Republic Act No. 875.

The reference to the period of ten days prescribed in Section 6 of the Industrial Peace Act is not in order because the case does not involve the prevention of an unfair labor practice. Section 6 of the Industrial Peace Act refers expressly and exclusively to appeals in unfair labor practice cases.

3. DISCRIMINATION AGAINST EMPLOYEES ON GROUNDS OF UNION ACTIVITIES

Section 4(a)(4) of the Industrial Peace Act provides, among other things, that it shall be an 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.

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[79] G.R. No. L-19778, September 30, 1964.
[80] 313 U.S. 177, 85 L. Ed. 1271, 61 S. Ct. 845 (1941).
[81] G.R. No. L-17185, February 28, 1964.

This provision does not do away with the inherent right of an employer to hire, lay off, transfer, promote, demote, or discharge his employees. Indeed, he may discharge his employees not only in the interest of efficiency but even on the ground of "personal animosity or sheer caprice." [82]

But there is a definite prohibition against unlawful discrimination, that is to say, discrimination resulting from union affiliation or union activity. An employer cannot pervert his freedom to hire and discharge employees by interfering with the countervailing right of his employees to engage in unionization and collective bargaining.

In *Manila Railroad Company et al. v. Kapisanan ng mga Manggagawa sa Manila Railroad Company et al.*[83] and *Marsman & Co., Inc. v. Consolidated Labor Association of the Philippines et als.*,[84] the decisions of the Supreme Court turned on the antipathy of the employers against their respective employees because of their union affiliations or union activities. On these grounds, the Manila Railroad Company refused to transfer its employees to the category of permanent employees. For the same reason, Marsman & Co., Inc. refused to readmit its employees. Mr. Justice Felix Bautista Angelo, who penned the decision for the Supreme Court in the *Manila Railroad Company* case, noted that the other casual employees who entered the company's service much later than the complaining employees have already been given permanent status. In the *Marsman Company* case, the Supreme Court, speaking through Mr. Justice Querube C. Makalintal, found that it was not business exigency that prompted the company to refuse the reinstatement of some of its striking employees but the fact that they were active unionists. Finding that the discriminatory acts of the employers in these cases were based on the union affiliation and union activities of their respective employees, the Supreme Court held the employers guilty of unfair labor practice under Section 4(a) (4) of the Industrial Peace Act.

B. JURISDICTION OVER CASES INVOLVING THE INTERPRETATION AND ENFORCEMENT OF COLLECTIVE BARGAINING CONTRACTS.

1. PREVIOUS DECISIONS

In Dee Cho Lumber Workers Union v. Dee Cho Lumber Co.[85] the Supreme Court, through Mr. Justice Pastor M. Endencia, emphatically stated that the Court of Industrial Relations cannot take cog-

[82] NLRB, Second Annual Report, 69-70 (1937).
[83] G.R. No. L-19728, July 30, 1964.
[84] G.R. No. L-17057, July 31, 1964.
[85] G.R. No. L-10080, April 30, 1957, 55 O.G. (3) 434.

nizance of suits for the enforcement of collective bargaining agreements. But in Benguet Consolidated Mining Company v. Coto Labor Union,[86] the Supreme Court, in an opinion by Mr. Justice Felix Bautista Angelo, reversed itself on this question and held that the Court of Industrial Relations has jurisdiction to enforce collective bargaining contracts. Five months later, in the case of Philippine Sugar Institute v. Court of Industrial Relations *et als.*,[87] the Supreme Court, speaking this time through Mr. Justice Sabino Padilla, discarded its pronouncement in the Coto Labor Union case and returned to its previous position in the Dee Cho Lumber case.

But the issue simply would not remain settled. A year later, in the case of Elizalde Paint & Oil Factory, Inc. v. Jose S. Bautista, *et al.*,[88] the Supreme Court, faced with the same problem of whether the Court of Industrial Relations has jurisdiction over suits concerning the interpretation and enforcement of collective bargaining contracts, once again reacted by changing its position. In a decision by Mr. Justice Felix Bautista Angelo, the Supreme Court rescinded its holding in the Philippine Sugar Institute case and reaffirmed its Coto Labor Union decision that the Court of Industrial Relations has jurisdiction over suits involving the interpretation and enforcement of collective bargaining contracts but wrote in his pet theory that this power of the Court of Industrial Relations is limited to suits where the subject matter refers to any of the four types of cases enumerated in PAFLU v. Tan.

2. THE CONTRASTING 1964 DECISIONS

But even this new posture taken by the Supreme Court in the Elizalde Paint & Oil Factory case did not last long. In *Manila Electric Company v. Pascual Ortañez et als.*,[89] Mr. Justice Alejo Labrador, speaking for the full Court, rejected the limitation introduced by Mr. Justice Felix Bautista Angelo in the Elizalde Paint & Oil Factory decision, and struck out a new path by laying down a different qualification or condition. This time, the Supreme Court ruled that a case involving the application or enforcement of a collective bargaining contract is cognizable by the Court of Industrial Relations if the collective bargaining contract was made under its supervision. This is surprising! Every policy undergirding the Industrial Peace Act strains to shield collective bargaining from governmental intervention, whether direct or indirect, except only in the three cases expressly mentioned in Section 7 of the Industrial Peace Act.

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[86] G.R. No. L-12394, May 29, 1959.
[87] G.R. No. L-13098, October 29, 1959.
[88] G.R. No. L-15904, November 23, 1960
[89] G.R. No. L-19557, March 31, 1964.

Seven months after the promulgation of this decision, the same question reached the Court in *National Mines & Allied Workers' Union v. Philippine Iron Mines, Inc. et al.*[90] In an opinion by Mr. Justice Roberto Regala, the Supreme Court threw overboard the qualification set by Mr. Justice Alejo Labrador, and vigorously reiterated the holding in the Elizalde Paint & Oil Factory case, that the Court of Industrial Relations has jurisdiction to apply or enforce collective bargaining contracts only if the subject matter of the labor contract sought to be applied or enforced involves minimum wages, hours of work, unfair labor practices, or labor disputes affecting industries indispensable to the national interest and are so certified by the President to the Court of Industrial Relations.

3. BASIS OF THE POWER OF THE COURT OF INDUSTRIAL RELATIONS

Within the purview of Sections 13 and 16 of the Industrial Peace Act, the Court of Industrial Relations has jurisdiction over cases involving the interpretation and enforcement of collective bargaining contracts for the vindication of the rights of employers and employees.

The right of employees and employers concerning bargainable matters are "a major focus of the negotiation and administration of collective bargaining [and] to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contracts in which they are based."[91] Violations of collective bargaining contracts involve administration of labor contracts and handling of grievances. Under Section 13 of the Industrial Peace Act, the duty to bargain collectively includes also the obligation to meet and confer promptly and expeditiously and in good faith for the purpose of adjusting any grievance or question arising under the collective bargaining agreement. Now, under Section 16 of the Act, the grievances or questions that may be adjusted by collective bargaining include questions that may arise from the *interpretation or application* of the collective bargaining agreement.

C. JURISDICTION OVER CASES INVOLVING REPRESENTATION OF EMPLOYEES

The basic principle in the matter of representation of employees is laid down in Section 3 of the Industrial Peace Act. There the employees are given, among other rights, the privilege to form, join

[90] G.R. No. L-19372, October 31, 1964.
[91] Doyle Smith v. Evening News Association, 371 U.S. 195, 9 L. Ed. 2d 246, 83 S. Ct. 267 (1962).

or assist labor organizations of their own choosing for the purpose of collecting bargaining through representatives of their own choosing. The labor relations terms used in this provision, namely, "employee," "representative," and "labor organization" are defined in Section 2 of the Act.

1. DESIGNATION OR SELECTION OF BARGAINING AGENT

The cases of *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations et al.*[92] and *Tagkawayan Labor Union v. Sta. Cecilia Sawmills* [93] are perhaps the first two cases decided by the Supreme Court involving the question of selection of the employees' bargaining agent.

From the facts recorded in these two cases, it appears that since the early part of March 1964, the Tagkawayan Labor Union made several economic demands on the employer. On March 19, the employer replied that it has already entered into a collective bargaining contract with the National Labor Union. However, it does not appear that the National Labor Union was selected by a majority of the employees. The Court of Industrial Relations ruled that the collective bargaining contract agreed upon by the employer and the National Labor Union was entered into to frustrate the economic demands of the members of the Tagkawayan Labor Union. From this decision the employer appealed, advancing as one of his grounds that the lower court erred in holding "that the company committed an unfair labor practice because the National Labor Union was not certified by the Court of Industrial Relations."

Reacting to this argument, the Supreme Court, through Mr. Justice Alejo Labrador, said:

> "The import of the decision [of the lower court] is that since the National Labor Union was not chosen by all the employees of the company in a certification election, its agreement was not binding on the members of the Tagkawayan Labor Union. We find no error in this ruling."

The concurrence of the Supreme Court with the decision of the Court of Industrial Relations is open to question on at least two points. First, the suggestion that a labor union must be "chosen by all the employees of the company" to become a bargaining agent is not legally defensible. Second, the idea that a collective bargaining agent can only be "chosen . . . in a certification election" is not also supported by the Industrial Peace Act.

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[92] G.R. No. L-19273, February 29, 1964.
[93] G.R. No. L-19274, February 29, 1964.

2. THE QUESTION OF DESIGNATION OR SELECTION OF BARGAINING REPRESENTATIVES

The Industrial Peace Act does not require a unanimous choice. Section 12(a) and (b) requires only that the labor organization to represent the employees must be chosen by the majority of the employees. And it is not precise either to say that a labor union can only be designated or selected as the employees' bargaining agent in a certification election.

These are two methods open to employees in selecting or designating their bargaining representative. The first is without the intervention of the Court of Industrial Relations, pursuant to Section 12 (a) of Republic Act No. 875. The second is possible only with the intervention of the Court of Industrial Relations, pursuant to Section 12(b), (c), (d), and (e) of Republic Act No. 875.

But in both methods, there are several conditions for the validity of the selection or designation, namely, (1) the employees must belong to an appropriate collective bargaining unit, (2) the labor union so selected must not be a company union and must be in compliance with the filing requirements of Section 23(b) of Republic Act No. 875, (3) the labor union selected or designated must be chosen by a majority of the employees, and (4) that the manner of designation or selection must be fairly advertised and properly conducted without any interference or coercion from any quarters.[94]

Before considering the 1964 cases dealing with the question of selection of bargaining representatives, it is important to consider the prerequisite conditions for the validity of the designation or selection of the bargaining representative.

In the case of *Victorias-Manapala Workers Organization v. Emiliano Tabigne et als.*,[95] the Supreme Court, through Mr. Justice Jesus G. Barrera, sustained the decision of the Court of Industrial Relations certifying the Vicmico Industrial Workers Association as the sole and exclusive bargaining representative of the employees of the Victorias Milling Co., Inc. This concurrence was based on the finding that (1) there was no existing employee unit in the company at the time of the filing of the petition of Vicmico Industrial Workers Association which could be certified as the bargaining representative, (2) it was to the best interest of the parties that a bargaining representative be designated for the employees, there being no current collective bargaining contract, and (3) that the Vicmico Indus-

[94] National Labor Relations Board v. Standard Lime & Stove Co., 149 F. 2d 435 (1945).

[95] G.R. No. L-19658, December 28, 1964.

trial Workers Association had 1,345 members representing 83.5% of the rank and file personnel of the company.

It will be noted that except for the requirement that the collective bargaining union was designated or selected by a majority of the employees, there is no finding that the other three prerequisites have been met. Indeed, the Court of Industrial Relations even found that there was no existing bargaining unit when the petition of Vicmico Industrial Workers Association for certification as the exclusive bargaining representative was filed. Furthermore, the prior determination of the appropriate collective bargaining unit is one of the basic issues in cases involving petitions for certification of bargaining representatives.[96] This is required by both subsections (a) and (b) of Section 12 by the Industrial Peace Act.

The prerequisite that the labor union so designated or selected must not be a company union is expressive of the national policy of free collective bargaining. Company unionism and free collective bargaining are incompatible concepts and in a situation where the former prevails the latter is a delusion and a snare.[97] Paternalism in labor relations is not conducive to the growth of free unionism.

The other prerequisite that the filing requirements under Section 23(b) of the Industrial Peace Act must be met is dictated by Section 24 of the Act. This section provides that only legitimate labor organizations shall have the right, among others, to be certified as the exclusive representative of the employees in an appropriate collective bargaining unit as provided for in Section 12 of the Act. Under Section 2, a legitimate labor organization is characterized as a labor organization registered by the Department of Labor. And under Section 23, registration entails the filing of the information called for in subsection (b) (1), (2), and (3) of Section 23 of the Industrial Peace Act.

The last prerequisite that the selection or designation must be fairly advertised and properly conducted without any interference from any quarters is also in line with the objectives of the Industrial Peace Act.[98]

(a) Selection Under Section 12(a) of the Industrial Peace Act

The first subsection of Section 12 of the Industrial Peace Act provides as follows:

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[96] NLRB, Fourth Annual Report, 82 (1939).

[97] American Enka Corporation v. National Labor Relations Board, 119 F. 2d 60 (1941).

[98] National Labor Relations Board v. Standard Lime & Stove Co., 149 F. 2d 435 (1945).

"(a) The labor organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or group of employees shall have the right at any time to represent grievances to their employer."

This provision contemplates a situation where there is no question as to the representation of the employees. Subject only to the four conditions discussed earlier, there is no need for a certification election in this situation nor any need for the Court of Industrial Relations to certify thereafter the winning labor organization before there can be a collective bargaining on working conditions and terms of employment.[99] If an employer has no valid excuse, he runs the risk of an unfair labor practice charge should he refuse to bargain collectively with the labor organization designated or selected under the circumstances contemplated by Section 12(a) of the Industrial Peace Act. A somewhat similar situation was recognized by the Supreme Court in the case of Binalbagan-Isabela Sugar Co., Inc. v. Philippine Association of Free Labor Unions.[100] There the Court held that after an employer has recognized the bargaining representative it was perfectly in order for the employer and the labor organization designated by a majority of the employees to negotiate a collective bargaining contract without seeking the intervention of the Court of Industrial Relations. Thus, in the situation contemplated in Section 12(a) of the Industrial Peace Act, an employer, without further action from the Court of Industrial Relations, comes under a legal duty to bargain collectively with the bargaining representative of his employees.[101]

(b) Selection Under Section 12(b) of the Industrial Peace Act

This subsection provides:

"Whenever a question arises concerning the representation of employees, the Court may investigate such controversy and certify to the parties in writing the name of the labor organization that has been designated or selected for the appropriate bargaining unit. In any such investigation, the Court shall provide for a speedy and appropriate hearing upon due notice and if there is any reasonable doubt as to whom the employees have chosen as their representative for purposes of collective bargaining, the Court shall order a secret ballot election to be conducted

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[99] NLRB, 28th Annual Report, 46 (1963); Manoff, Labor Relations Law, 16-17 (1955).

[100] G.R. No. L-18732, August 29, 1963.

[101] II Teller, Labor Disputes and Collective Bargaining, 686.

> by the Department of Labor, to ascertain who is the freely chosen representative of the employees, under such rules and regulations as the Court may prescribe, at which balloting representatives of the contending parties shall have the right to attend as inspectors. Such a balloting shall be known as a 'certification election' and the Court shall not order certifications in the same unit more often than once in twelve months. The organization receiving the majority of votes cast in such election shall be certified as the exclusive bargaining representative of such employees."

The manner of selecting the bargaining representative of the employees allowed under this provision can be used only when a question concerning the representation of employees arises. Questions of this nature may be brought to the Court of Industrial Relations by an employee, by a labor organization, or by the employer himself.

But even if there is a question concerning the representation of employees, the Court of Industrial Relations is not supposed to order a "certification election" right away. Under Section 12(b) of the Industrial Peace Act, the Court of Industrial Relations is first required to investigate the controversy concerning the representation of employees. If the Court of Industrial Relations has no doubt as to whom the employees have designated or chosen as their bargaining representative, then Section 12(b) requires the Court of Industrial Relations to "certify to the parties in writing the name of the labor organization that has been designated or selected for the appropriate collective bargaining unit." But if the Court of Industrial Relations has a "reasonable doubt as to whom the employees have chosen as their representative for purposes of collective bargaining" even after conducting the investigation required by Section 12(b) of the Act, then it has no alternative but to order the holding of a "certification election" under the auspices of the Department of Labor.

After the Department of Labor has submitted its report, and assuming there is no appeal on it, the Court of Industrial Relations must certify to the parties in writing the name of the labor organization receiving the majority of the votes cast in the certification election as the exclusive bargaining representative of all the employees, provided that the other three conditions are present, namely, the employees belong to an appropriate collective bargaining unit, the labor organization designated or selected is not a company union and has complied with the filing requirements of Section 23(b) of the Industrial Peace Act, and that the certification election was fairly advertised and properly conducted without any interference or coercion from any quarters.

The case of *Victorias-Manapala Workers Organization v. Emiliano Tabigne et als.*[102] illustrates very well the operation of Section 12(b) of the Industrial Peace Act. In this case a question of representation of the employees of the Victorias Milling Co., Inc. arose between the employer and several labor unions. After conducting a hearing, the Court of Industrial Relations certified one of the labor unions involved in the case as the bargaining representative of all the employees. Not satisfied with the order of certification, the Victorias-Manapala Workers Organization took the case to the Supreme Court. In a decision by Mr. Justice Jesus G. Barrera, it was held that the Court of Industrial Relations committed no error in certifying the Vicmico Industrial Workers Association as the sole and exclusive bargaining representative of the employees.

In so far as the procedural aspect of the designation of the Vicmico Industrial Workers Association under Section 12(b) of the Industrial Peace Act is concerned, nothing more can be desired.

III. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS UNDER THE EIGHT-HOUR LABOR LAW

A. GENERAL CONSIDERATIONS

The national policy concerning issues involving hours of work and compensation for overtime work is expressed in Section 7 of the Industrial Peace Act. It provides that 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 employer and his employees by means of collective bargaining, no court of the Philippines shall have the power to set hours of work or conditions of employment except as in Commonwealth Act No. 444 is otherwise provided. Thus, the Court of Industrial Relations is empowered to decide these questions when they fall within the pertinent provisions of Commonwealth Act No. 444.

The non-applicability of the provisions of Section 4 of Commonwealth Act No. 103 which requires that a complaint or petition must be filed by more than thirty employees and that such dispute be submitted in writing to the Court of Indusrial Relations by the Secretary of Labor or by either or both of the parties to the controversy has already been settled in a number of decisions.[103]

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[102] G.R. No. L-19658, December 28, 1964.

[103] Luis Recato Dy *et al.* v. Court of Industrial Relations *et al.*, G.R. No. L-17788, May 25, 1962; Philippine Wood Products v. Court of Industrial Relations, G.R. No. L-16279, June 13, 1961; and Price Stabilization Corporation v. Court of Industrial Relations *et als.*, G.R. No. L-13806, May 23, 1960.

B. Condition for Exercise of Jurisdiction

The decisions of the Supreme Court in *Moncada Bijon Factory v. Court of Industrial Relations et al.*[104] and *Jose Serrano v. Luis Serrano* [105] continue the rule expressed in the 1963 cases [106] that labor disputes under the Eight-Hour Labor Law fall within the jurisdiction of the Court of Industrial Relations if they arise while the employer-employee relationship exists between the parties or, absent such relationship, the complainant seeks his reinstatement.

C. Types of Cases Within Court's Jurisdiction

There are two types of cases under the Eight-Hour Labor Law that fall within the jurisdiction of the Court of Industrial Relations.

The first deals with questions involving the legal working day. Section 1 of Commonwealth Act No. 444 provides that the legal working day for any person employed by another shall not be more than eight hours and that when the work is not continuous the time during which the laborer is not working and can leave his working place and can rest completely shall not be counted. No case of this type reached the Supreme Court in 1964. But in 1963 the Supreme Court decided a case involving this question in San Miguel Brewery, Inc. v. Democratic Labor Organization.[107] There the non-applicability of the Eight-Hour Labor Law on persons on a piece work or commission basis was upheld by the Supreme Court.

The second type of cases under the Eight-Hour Labor Law falling within the jurisdiction of the Court of Industrial Relations pertains to claims for compensation for overtime work under Sections 3 and 4 of Commonwealth Act No. 444. Under these provisions, when work is performed beyond eight hours a day or during Sundays and legal holidays, the laborers and employees shall be entitled to receive compensation for the overtime work performed at the same rate as their regular wages or salary, plus at least twenty-five per centum additional.

In the case of *Moncada Bijon Factory v. Court of Industrial Relations et al.*,[108] the Supreme Court upheld the jurisdiction of the Court of Industrial Relations to take cognizance of this type of cases.

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104 G.R. No. L-16037, April 29, 1964.

105 G.R. No. L-19562, May 23, 1964.

106 Edmundo Gracella v. El Colegio de Hospicio de San Jose, Inc., G.R. No. L-15152, January 31, 1963; American Steamship Agencies, Inc. v. Court of Industrial Relations *et al.*, G.R. No. L-17878, January 31, 1963; Alfredo B. Perez v. Court of Industrial Relations, G.R. No. L-18182, February 27, 1963; Sergio F. Naguiat v. Jacinto Arcilla *et al.*, G.R. No. L-16602, February 28, 1963; and Bank of America v. Court of Industrial Relations *et al.*, G.R. No. L-16904, December 26, 1963.

107 G.R. No. L-18353, July 31, 1963.

108 G.R. No. L-16037, April 29, 1964.

But when is a demand for wages for overtime work a money claim and therefore within the jurisdiction of the regular courts and when is it a claim for compensation for overtime work and therefore within the competence of the Court of Industrial Relations? In the case of *Manila Electric Company v. Pascual Ortañez et als.*,[109] the Supreme Court in a decision by Mr. Justice Alejo Labrador, observed that the employees did not ask for any specific amount in their claim for compensation for overtime work. On this basis, the Court ruled that the case is not merely one for the recovery of a sum of money which would have brought it within the competence of the regular courts. The Supreme Court concluded that the case involves a violation of the Eight-Hour Labor Law which makes it cognizable by the Court of Industrial Relations.

IV. 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 employment or employer organizations which sometimes extend beyond the operations of a single employer. A labor organization, for example, may enter into a collective bargaining agreement with an association of employers. Because of this involved labor relations, employees are many times brought into economic relations with employers who may not be their own employers.

In 1964, the Supreme Court decided one case dealing with the second type of persons that fall within the definition of the term "employee" in the Industrial Peace Act.

A. THE QUESTION OF SUBSTANTIALLY EQUIVALENT EMPLOYMENT

In the case of *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations et al.*,[110] the Court of Industrial Relations ruled that strikers need not be reinstated if they have obtained "substantial employment" elsewhere regardless of the fact that they were unlawfully discriminated against because of their

[109] G.R. No. L-19557, March 31, 1964.
[110] G.R. No. L-19778, September 30, 1964.

union affiliation and activities. The only hint that the Court of Industrial Relations paid attention to the national policy of promoting sound stable industrial peace was a pat statement in the dispositive portion of its decision that the step it has taken permitting the employer not to offer re-employment to those who may have obtained "substantial employment" elsewhere will effectuate the policy of the Industrial Peace Act.

On appeal to the Supreme Court, the labor union assailed this ruling of the Court of Industrial Relations as erroneous. But by an 8-to-2 vote, the Supreme Court approved the disposition of the issue made by the Court of Industrial Relations on the ground that there was no showing that the lower court abused its discretion. Speaking through Mr. Justice Roberto Regala, the majority held:

> "The same thing may be said of the denial of reinstatement to those who might have found substantial employment elsewhere.
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> "We agree with the union that under the ruling of Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 85 L. Ed. 1271 (See also Cox and Bok, Cases on Labor Law, 259, 5th ed.), the mere fact that strikers or dismissed employees have found such employment elsewhere is not necessarily a bar to their reinstatement. But it is just as true to say that the *Phelps Dodge* case did not rule that *in any event* discriminatorily dismissed employees must be ordered reinstated even though they have in the meanwhile found substantially equivalent employment somewhere else. While denying that employees who have obtained equivalent employment are ineligible as a matter of law to reinstatement, the Supreme Court of the United States at the same time denied also that the definition of the term "employee" can be disregarded by the National Labor Relations Board in exercising its power under Section 10(c) of the Wagner Act, which corresponds to Section 5(c) of our Industrial Peace Act, to direct the taking of affirmative action by an employer to remedy unfair labor practices. According to the Court, it is for the Board in each case to weigh the particular facts and to determine in the exercise of wise administration discretion, whether the Act would best be effectuated directing reinstatement despite the fact that the given employees have found equivalent employment.
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> "Obviously it was after considering the facts in this case that the Court of Industrial Relations predicated the reinstatement of the employees concerned on the fact that they had not found substantially equivalent employment elsewhere. Thus, it made clear in the dispositive portion of its decision that it was ordering the taking of affirmative acts "which the Court finds will effectuate the policy of the Act." The union has not shown that in so doing the Court of Industrial Relations abused its discretion."

This is a splendid analysis of the holding in the Phelps Dodge Corporation case. But surprisingly enough the Supreme Court did not apply it fully to the solution of the problem of whether to order

an employer guilty of illegal discrimination to offer re-employment to his employees who may have obtained subsequent employment elsewhere. Instead the Supreme Court held simpliciter that those who are guilty of misconduct or violence during a strike and those who have found "substantial employment" elsewhere are not eligible for re-employment. It is very difficult to tell from the decision of the Supreme Court why the Court of Industrial Relations ruled that strikers who have found "substantial employment" elsewhere are ineligible for reinstatement and why such a ruling was affirmed.

It is important to note that in the *Cromwell* case neither the Court of Industrial Relations nor the Supreme Court considered the "equivalence" and "regularity" of the jobs which some of the strikers had found elsewhere during the pendency of the strike. Yet these factors are important in the promotion of the policies of the Industrial Peace Act, and for that reason are explicitly required by Section 2(d) of the Industrial Peace Act. It should also be noted that no mention was made as to whether the strikers exerted any effort to secure suitable available employment during the period of the long-drawn strike. This is required by Article 2203 of the Civil Code of the Philippines and the Supreme Court applied it in *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations et al.*,[111] and, in previous years, in Far Eastern University v. Court of Industrial Relations *et als.*,[112] and in Western Mindanao Lumber Co., Inc. v. Mindanao Federation of Labor *et al.*[113] This is also the holding in National Labor Relations Board v. Southern Silk Mills, Inc.[114]

The Court of Industrial Relations can order an employer to offer re-employment to those whom he may have illegally discriminated against even if they have found substantially equivalent and regular employment elsewhere, provided that the Court of Industrial Relations *finds* that this step will effectuate the policies of the Industrial Peace Act. This is based on the interrelation of the general remedial power conferred on the Court of Industrial Relations by Section 5(c) of the Industrial Peace Act and the definition of the term "employee" given in Section 2(d).

The pertinent provision of Section 5(c) is as follows:

> ". . . If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its finding of fact and shall issue and cause to be served on such person an order requiring

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[111] G.R. Nos. L-19273 & L-19274, February 29, 1964.
[112] G.R. No. L-17620, August 31, 1962.
[113] G.R. No. L-10170, April 25, 1957, 54 O.G. (4) 1005.
[114] 242 F. 2d 697 (1957).

> such person to cease and desist from such unfair labor practice and take such affirmative action as will effectuate the policies of the Act, including (but not limited to) reinstatement of *employees* with or without backpay and including rights of the employees prior to dismissal including seniority. . . ." (Emphasis supplied)

On the other hand, the provision of Section 2(d) bearing on "employees" is as follows:

> "The term 'employee' shall include any employee and shall not be limited to the employee of a particular employer unless the Act explicitly states otherwise and shall include 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 the case of Phelps Dodge Corporation v. National Labor Relations Board,[115] the Supreme Court of the United States expressed the view that Section 10(c) and Section 2(3) of the Wagner Act (corresponding to Section 5(c) and Section 2(d) of the Industrial Peace Act respectively) in combination permit of three possible interpretations. First, the National Labor Relation Board lacks the power to order an employer to reinstate those whom he may have unlawfully discriminated against if they have already obtained substantially equivalent and regular employment elsewhere. This construction is possible by reading the restrictive phrase of Section 2(3) into Section 10(c). Since Section 10(c) specifically refers to "employees" only and the term "employee" as defined in Section 2(3) excludes a worker who has subsequently obtained a substantially equivalent and regular employment, then there can be no reinstatement of a discriminatorily dismissed worker who has in fact obtained such employment. According to Mr. Justice Felix Frankfurter, the syllogism is perfect but it is only a bit of verbal logic from which the essential policy of the Act, *i.e.*, the promotion of a sound stable industrial peace, has evaporated. The second possible interpretation of these two provisions is arrived at by viewing them individually and separately. This means that the factor of "substantially equivalent and regular employment" is not to be considered as a hindrance to the reinstatement of workers who may have lost employment because of the employer's unlawful discrimination. This interpretation is not desirable either because it does not give due regard to the national policy of the Act. The third possible interpretation is an avoidance of the view that *either* the Board has the power *or* it has not. This *either-or* reading of these provisions can be avoided by pursuing the main key to the exercise of the remedial power of the Board

[115] 313 U.S. 177, 85 L. Ed. 1271, 61 S. Ct. 845 (1941).

to order an employer to reinstate employees. And this clue is the affirmation, effectuation and enforcement of the policies of the Act. According to Mr. Justice Frankfurter, the power to neutralize illegal discrimination is not lost merely because the employees have obtained substantially equivalent and regular employment elsewhere. To be sure, reinstatement may not be needed anymore because there may not be any economic loss to the workers that needs to be repaired. They have found substantially equivalent and regular employments. It is even possible that they may have found better and regular employments. But Mr. Justice Frankfurter notes that the problem involves more than just monetary considerations. The rights and other benefits enjoyed by the employees prior to their unlawful dismissal, such as seniority which do not immediately attach to the new found employment, are very relevant matters in the pursuit of the policies of the Act. Therefore, the factor of "substantially equivalent and regular employment" does not by itself preclude the Board from undoing the unlawful discriminatory acts of the employer nor does it prevent the issuance of an order requiring the employer to offer re-employment to such workers. As Mr. Justice Frankfurter aptly said, "without the remedy of reinstatement industrial peace might be endangered because workers would be resentful of their inability to return to jobs to which they may have been attached and from which they were wrongfully discharged."

It does not mean, however, that the remedial action of reinstatement of employees who have found substantially equivalent and regular employment follows as a matter of course when the employer has been found to have committed unlawful discriminatory acts. The government agencies entrusted with the application and construction of the Act must proceed on the basis of the relevant facts in each case. It cannot just order reinstatement or non-reinstatement based only on a naked statement or subjective feeling that such a step will effectuate the national policy of the Act. The relevant facts must be present. In other words, there must be a *finding* that such a step will affirm or put into effect the policy of the Act. Indeed, the Supreme Court of the United States in the Phelps Dodge Corporation case did not look with favor on the failure of the National Labor Relations Board to consider the "appropriateness" of the remedial step taken in that case. If the relevant facts are lacking then the Court of Industrial Relations can not order reinstatement.

In the *Cromwell Commercial Employees and Laborers Union* case, the Supreme Court of the Philippines confirmed the step taken by the Court of Industrial Relations on the ground that there was no showing that the lower court abused its discretion. Why the step

taken by the Court of Industrial Relations would not effectuate the policy of the Act was untouched. So also were the factors of "equivalence" and "regularity" of the subsequent jobs. The same is true with regard to the impact of the presence or absence of efforts of the unlawfully discriminated employees to seek suitable available employment during the long-drawn strike. Of course, if the Court of Industrial Relations found that "substantially equivalent and regular employment" had not been obtained then it can order the employer to offer re-employment in accordance with the objective of making whole the employees' loss in wages and other working conditions. And even if the Court of Industrial Relations finds that "substantially equivalent and regular employment" have been obtained by the unlawfully discriminated employees, it could still order the employer to offer re-employment if it *finds* from the facts of the case that to do so would effectuate, affirm and enforce the policies of the Industrial Peace Act.

Thus, the better approach in the *Cromwell* case would have been to remand the case to the Court of Industrial Relations for further findings on: (1) whether the jobs secured by the workers discriminated against meet the standard of "substantially equivalent and regular employment" laid down in Section 2(d) of the Industrial Peace Act, and (2) whether the policies of the Industrial Peace Act would be affirmed and enforced by the denial of reinstatement to those who may have found such kind of employment. As said by the Supreme Court of the United States in the Phelps Dodge Corporation case, the "administrative process will be best vindicated by clarity in its exercise and one way is to require the disclosure of the basis of an order not only to avoid needless litigation but also to enforce such order effectively and expeditiously."

B. The Duty to Mitigate Pecuniary Loss

Article 2203 of the Civil Code of the Philippines provides that the party suffering loss and injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question. Section 2(d) of the Industrial Peace Act defines the term "employees" to 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.

These two provisions in combination bring to the fore the question of a person's endeavor to secure *desirable new employment* in order to keep his self-respect and to minimize his own pecuniary

loss and that which may be caused the employer. This involves also the question of securing *available suitable employment* when there is lack of a desirable new employment.

It is not surprising for discriminatorily dismissed employees to seek desirable new employment, that is to say, positions which are at least equivalent to their prior positions both as to salary and other working conditions. However, desirable new employment is not always easy to come by. When this is lacking, the discharged employee must "lower his sights or else face a long period of idleness" and consider other available suitable employment.[116] Suitable employment, of course, means work that is fit to the employee's abilities and skills. Thus, a person's search for desirable new employment must continue only for a reasonable period of time beyond which he cannot expect from his employer full backpay.

This issue reached the Supreme Court for the first time in the case of *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations et al.*[117] What is a reasonable period of time within which to seek for new employment? Speaking through Mr. Justice Alejo Labrador, the Supreme Court stated that an employee should do what a reasonable man would do in the circumstances, that is to say, "find employment as soon as an employment had been lost, especially when the employment has to depend on a litigation" and "minimize the loss that may be caused to the employer." For this purpose, the Supreme Court held that a period of three months should be enough time for a laborer to "locate another work—different from that from which he was separated" and that the back wages that should be awarded should be limited to this period.

This holding is vague on at least two counts and for that reason may cause difficulty in the application of the Industrial Peace Act. First, the Supreme Court failed to identify the kind of employment that an employee must look for and accept within the period of three months. The general pronouncement of the Supreme Court that within three months an employee must "locate another work—different from that from which he was separated," seems to imply that a person whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice must compress within three months, after employment has been lost, his search for desirable new employment or, when this is lacking, suitable employment or, when even this is unavailable, any other job.

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[116] National Labor Relations Board v. Southern Silk Mills, Inc., 242 F. 2d 697 (1957).

[117] G.R. Nos. L-19273 & L-19274, February 29, 1964.

In a country where work opportunities are not on a high level, the period of three months set by the Supreme Court to accomplish all these may be too short. In any case, the alternative step given to employees who may have lost their jobs through no fault of their own to locate work no matter how different it is from their former jobs disregards the concept of "suitable employment." To require a person whose work has ceased because of a current labor dispute or any unfair labor practice to accept just any job without regard to his abilities and skills and to say to him that if he did not do so he can not expect back wages beyond three months is not in accordance with, nor affirmative of, the policies of the Industrial Peace Act. The better rule is to punish an employee for his refusal to accept available suitable employment. Only if he refuses to accept available suitable employment should loss of earning be classified as willfully incurred and therefore non-compensable.[118]

V. COLLECTIVE BARGAINING

The objectives of the Industrial Peace Act are to eliminate the causes of industrial unrest, to promote sound stable industrial peace, to advance the settlement of issues, and to avoid or minimize differences between employers and employees. The achievement of these objectives is placed principally on the process of collective bargaining. In each of the four subsections of Section 1 of the Industrial Peace Act, collective bargaining is recognized as a means of realizing the policies of the Act.

A. PROCEDURE OF COLLECTIVE BARGAINING

There is need to scrutinize the opinion of the Supreme Court in the case of *National Union of Restaurant Workers v. Court of Industrial Relations et al.*,[119] regarding the significance of the 10-day period provided in Section 14(a) of the Industrial Peace Act.

It appears in this case that it was not until after the expiration of the period fixed in Section 14(a) of the Industrial Peace Act that the employer called the bargaining union to a meeting to discuss the latter's economic proposals. The Supreme Court felt that the delay was not a refusal to bargain collectively on the part of the employer and ruled that this was not an unfair labor practice under Section 4(a)(6) of the Industrial Peace Act. In an opinion by Mr. Justice Felix Bautista Angelo, the Supreme Court made the following observations:

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[118] National Labor Relations Board v. Southern Silk Mills, Inc., 242 F. 2d 697 (1957).

[119] G.R. No. L-20044, April 30, 1964.

"The inference that respondents did not refuse to bargain collectively with the complaining union because they accepted some of the demands while they refused the others even leaving open other demands for future discussion is correct, especially so when those demands were discussed at a meeting called by respondents themselves precisely in view of the letter sent by the union on April 29, 1960. It is true that under Section 14 of Republic Act 875 whenever a party serves a written notice upon the employer making some demands the latter shall reply thereto not later than 10 days from receipt thereof, *but this condition is merely procedural and as such its non-compliance cannot be deemed to be an act of unfair labor practice.* The fact is that respondents did not ignore the letter sent by the union so much so that they called a meeting to discuss its demands, as already stated elsewhere." (Emphasis supplied)

Section 14(a) of the Industrial Peace Act provides that whenever a party desires to negotiate an agreement it shall serve a written notice upon the other party with a statement of its proposals to which the other party shall make a reply not later than 10 days from receipt of such proposals.

The ruling of the Supreme Court that the 10-day period fixed in Section 14(a) of the Industrial Peace Act is "merely procedural and as such its non-compliance cannot be deemed to be an act of unfair labor practice" fails to take into account the purpose and intention of the lawmaking body in fixing that period.

The key to the significance of the 10-day period in the collective bargaining process is to be found in the first sentence of Section 13 of the Act. There it is provided that in the absence of an agreement or other voluntary arrangement providing for a *more expeditious manner* of collective bargaining it shall be the duty of an employer and the representative of his employees to bargain collectively in accordance with the provisions of this Act.

It has always seemed to me that this provision, although found in Section 13, has a direct relationship with the procedure of collective bargaining in Section 14 of the Industrial Peace Act. Congress has decided that the 10-day period will expedite the contract negotiation and promote the public policy of maintaining a sound stable industrial peace and the advancement of the best interests of the employers and the employees.[120] It is for the achievement of these objectives that the Industrial Peace Act has encouraged the parties to voluntarily agree on a procedure of collective bargaining that is *more expeditious* than the collective bargaining procedure provided in Section 14 of the Act. Surely, the more expeditious the collective bargaining procedure is the greater the possibility of minimizing or avoiding differences which arise between the parties in the negotiation of collective bargaining agreements.

[120] Section 1(b), Republic Act No. 875.

Thus, neither the courts nor the parties can ignore the procedure of collective bargaining detailed in Section 14 of the Industrial Peace Act. There are only two instances when this procedure may lawfully be disregarded. First, when there is a voluntary arrangement agreed upon by the parties providing for a procedure of collective bargaining that is *more expeditious* than that provided in Section 14 of the Industrial Peace Act. Second, when the Court of Industrial Relations extends the time provided in Section 14 in the presence of unusual circumstances, *e.g.*, when the economic proposals are varied and involved.

When neither of these circumstances is present, it shall be the duty of the parties to bargain collectively in accordance with the procedure of collective bargaining provided in Section 14 of the Act. Specifically, this means that the reply to the economic proposals of the other party must be answered not later than ten days from receipt of such proposals. In case differences arise on the basis of the proposal and reply, a conference must begin not later than ten days from the date the request for a conference was made. To disregard or extend the time limits provided in Section 14 of the Industrial Peace Act on other grounds would be a violation of the policy of the Industrial Peace Act of *expediting* the settlement of economic issues between the parties respecting terms and conditions of employment. In other words, disregard of either of the two 10-day periods fixed in Section 14 without a valid reason means refusal to bargain collectively and therefore an unfair labor practice.

B. The Duty to Bargain Collectively

In its concern to promote a sound and stable industrial peace, the Industrial Peace Act has characterized refusal to bargain collectively in accordance with Sections 13 and 14 of the Industrial Peace Act as an unfair labor practice.[121]

1. THE FAIR DEALING CALLED FOR BY THE ACT

The responsibility to bargain collectively is characterized in Section 13 of the Industrial Peace Act as a legal duty. As such, it means the performance of the mutual obligation *to meet and confer promptly and expeditiously and in good faith*, for the purpose of: (1) 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 (2) for the purpose of adjusting any grievance or question arising under such agreement.[122]

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[121] Sections 4(a)(6) and 4(b)(3), Republic Act No. 875.
[122] Section 13, Republic Act No. 875.

Collective bargaining is not simply an occasion for meetings between employer and the bargaining agent of his employees. The law requires them to consult, to compare views, and to give due regard to their conflicting claims and demands. Plainly, bargaining does not mean going through the motions only. This is indicative only of an attitude of disinterestedness. The law requires much more when it laid down the standard of good faith, promptness and expeditiousness whenever the parties meet either to negotiate an agreement or to adjust any grievance or question arising from such agreement. It demands from the parties a serious intention or desire to reach an ultimate decision as to working conditions and terms of employment. That is why Sections 4(a)(6) and 4(b)(3) of the Industrial Peace Act make reference to Section 13 and 14 of the Act in characterizing refusal to bargain collectively as an unfair labor practice.

But in the case of *National Union of Restaurant Workers v. Court of Industrial Relations*,[123] the Supreme Court leaves the impression that the duty to bargain collectively is met once a party accepts some of the economic demands and rejects others. Speaking through Mr. Justice Felix Bautista Angelo on this point, the Supreme Court made the following observations:

> "Anent the first issue, the court *a quo* found that in the letter sent by the union to respondents containing its demands, marked in the case as Exhibit 1, there appears certain marks, opposite each demand, such as a check for those demands to which Mrs. Felisa Herrera was agreeable, a cross signifying the disapproval of Mrs. Herrera, and a circle regarding those demands which were left open for discussion on some future occasion that the parties may deem convenient. Such markings were made during the discussion of the demands in the meeting called by respondents on May 3, 1960 at their restaurant in Quezon City. The court *a quo* concluded that the fact that respondent Herrera had agreed to some of the demands shows that she did not refuse to bargain collectively with the complaining union.
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> "We can hardly dispute this finding, for it finds support in the evidence. The inference that respondents did not refuse to bargain collectively with the complaining union because they accepted some of the demands while they refused the others even leaving open other demands for future discussion is correct, especially so when those demands were discussed at a meeting called by respondents themselves precisely in view of the letter sent by the union on April 20, 1960."

With all due respect, the findings of both courts are not in consonance with the concept of fair dealing called for by Sections 13 and 14 of the Industrial Peace Act.

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[123] G.R. No. L-20044, April 30, 1964.

The action of the employer of merely crossing out the economic demands which she disapproved of and drawing a circle around the numbers identifying the demands which she postponed to some future date convenient to her was not a frank and sincere approach to come to terms on those demands which she rejected outright and those which she postponed indefinitely. By her action she only showed her predetermination not to yield the initial position she had taken on the economic demands which she had opposed. The fact that she called the labor union to a meeting is not enough to establish the fair dealing called for by the Industrial Peace Act. Even assuming that the employer should be given credit for calling the labor union to a meeting still that act, standing alone, does not satisfy the fair dealing required by the Industrial Peace Act in the negotiation of a labor contract. The fair dealing which the service of good faith calls for is determined only by the willingness of the parties to confer and discuss freely and fully the subjects or items for negotiations.[124] Short of this, a party may sit at the bargaining table and discuss and even agree with some of the proposals but still be in bad faith and thus guilty of an unfair labor practice. The action of the employer in the *National Union of Restaurant Workers* case in flatly disapproving some of the economic demands made on her and putting off others for some future occasion at her own convenience is a negative attitude.

VI. UNION SECURITY AND STRENGTH

To undergird the public policy of encouraging trade unionism and to provide some measure of union security, Congress tucked a proviso to Section 4(a) (4) of Republic Act No. 875 authorizing the closed-shop employment arrangement. The proviso states that nothing in the Industrial Peace 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 pursuant to any of the methods of election provided in Section 12 of the Act.

A. The Scope and Function of the Closed-Shop

The issue that has bothered the Supreme Court over the last four years is whether the closed-shop arrangement authorized under Section 4(a) (4) of the Industrial Peace Act covers not only those who are already employed on or before the date of the execution of

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[124] National Labor Relations Board v. George P. Pilling & Son Co., 119 F. 2d 32 (1941).

a collective bargaining agreement but also those who are already members of other labor organizations.

In 1964, two cases dealing with this issue reached the Supreme Court, and the Court reacted by reversing itself once more.

1. THE CONFLICTING INTERPRETATIONS

In the case of Confederated Sons of Labor v. Anakan Lumber Company *et als.*,[125] the Supreme Court carefully analyzed the scope of the shop arrangement embodied in the labor contract. The shop arrangement agreed upon gave the union the exclusive right to supply the laborers, employees and workers which the company may require, except the highly technical and confidential personnel. On the other hand, the company agreed to employ or hire only such persons who are members of the bargaining union.

On two grounds, the Supreme Court, in a decision by Mr. Justice Roberto Concepcion, held that the shop arrangement established by the parties was not *the* closed-shop authorized under Section 4(a) (4) of the Industrial Peace Act. First, the shop or employment clause in the labor contract did not provide that the employees must remain union members in good standing to keep their jobs. Second, the parties did not also provide in the shop arrangement clause that discontinuance of membership in the bargaining union is a ground of dismissal. The Supreme Court felt that this omission was fatal to the establishment of the closed-shop arrangement authorized in Section 4(a) (4) of the Industrial Peace Act. Conformably thereto, the Supreme Court construed the shop arrangement agreed upon by the parties as one requiring membership in the bargaining union only at the time of the commencement of the employer-employee relation. This means that only those engaged by the employer after the signing of the labor contract are required to become members of the bargaining labor union and did not affect those already employed on or before the signing of the labor contract. The significance of this holding will be discussed in the section devoted to the analysis of the scope of the closed-shop arrangement.

It was in Local 7, Press & Printing Free Workers *et als.* v. Emiliano Tabigne *et als.*,[126] that the Supreme Court first generalized the view that the closed-shop agreement authorized under Section 4(a)-(4) of the Industrial Peace Act is not applicable to persons who are already employed on or before the execution of the labor contract regardless of whether they are union members or not. To support this interpretation, the Supreme Court, speaking through Mr. Jus-

[125] G.R. No. L-12503, April 29, 1960.
[126] G.R. No. L-16093, November 29, 1960.

tice Jesus G. Barrera, cited Teller,[127] and the holding of the National Labor Relations Board in the case of Electric Vacuum Cleaner Co.[128] The fact that neither the Electric Vacuum Cleaner Co. case nor Ludwig Teller's opinion support the interpretation of the Supreme Court will also be discussed in the section dealing with the analysis of the scope of the closed-shop arrangement.

In the next two and a half years, two important changes occurred in the thinking of the Supreme Court on the issue of the scope of the closed-shop arrangement authorized under Section 4(a)-(4) of the Industrial Peace Act.

The first change consisted in the expansion of the holding in Local 7, Press & Printing Free Workers *et als.* v. Emiliano Tabigne *et als.*[129] This occurred in the cases decided on this point from 1961 to August 31, 1963, namely, Freeman Shirt Manufacturing Co., Inc. *et als.* v. Court of Industrial Relations, *et als.*,[130] Talim Quarry Company, Inc. *et als.* v. Gavino Bartola *et als.*,[131] Findlay Millar Timber Company v. Philippine Land-Air-Sea Labor Union *et als.*,[132] Kapisanan ng mga Manggagawa ng Alak (NAFLU) v. Hamilton Distillery Company *et als.*,[133] Industrial Commercial and Agricultural Workers Organization v. Jose S. Bautista *et als.*,[134] United States Lines Company v. Associated Watchmen and Security Union *et als.*,[135] Big Five Products Workers Union v. Court of Industrial Relations,[136] and National Brewery & Allied Industries Labor Union v. San Miguel Brewery, Inc.[137] The sum of the holding of the Supreme Court in these cases is that the closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act cannot operate *de respicit* so as to compel employees who are already members of other labor unions to join the collective bargaining union with whom the employer has a closed-shop arrangement but only *de prospicit* so as to apply only to those who were employed by the employer after the execution of the collective bargaining contract and are not yet members of other labor organizations. This interpretation is a far cry from the view expressed by Mr. Justice Roberto Concepcion in the case of Confederated Sons of Labor v. Anakan Lumber Co., *et als.*[138]

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[127] Labor Disputes and Collective Bargaining, Vol. II, 867-868.
[128] 18 NLRB 75 (1939).
[129] G.R. No. L-16093, November 29, 1960.
[130] G.R. No. L-16561, January 28, 1961.
[131] G.R. No. L-15768, April 29, 1961.
[132] G.R. Nos. L-18217 & L-18222, September 29, 1962.
[133] G.R. No. L-18112, October 30, 1962.
[134] G.R. No. L-15639, April 30, 1963.
[135] G.R. No. L-15508, June 29, 1963.
[136] G.R. No. L-17600, July 31, 1963.
[137] G.R. No. L-18170, August 31, 1963.
[138] G.R. No. L-12503, April 29, 1960.

In this case, the Supreme Court held that if the shop clause in the collective bargaining contract does not explicitly provide that the employees must continue to remain union members in good standing to keep their jobs and that discontinuance of membership in the bargaining union is a ground for dismissal from employment then only a "limited closed-shop" is established by the parties and not *the* closed-shop arrangement that is authorized in Section 4(a)(4).

The other modification in the thinking of the Supreme Court is the change in its reasoning. In all the cases decided in 1961, 1962, 1963, and 1964 the Supreme Court dropped entirely its reference to Teller's opinion,[139] and the case of Electric Vacuum Cleaner Co.[140] This matter will be discussed further in the section dealing with the analysis of the scope of the closed-shop arrangement. Suffice it to say at this point that Teller's authority was discarded not because his view was wrong but because the Supreme Court had misread what Teller said.

The new explanation of the Supreme Court was first articulated in Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations *et als.*[141] There the Court, speaking through Mr. Justice Jose Gutierrez David, said:

> "The closed-shop agreement 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. It is inapplicable to those already in the service who 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])."

The Supreme Court further reasoned that Section 12(b) of the Industrial Peace Act, which allows the Court of Industrial Relations to order a certification election when there is any reasonable doubt as to whom the employees have chosen as their representative for purposes of collective bargaining, would be rendered useless. The Court felt that once a union is certified and enters into a collective bargaining contract containing a closed-shop arrangement covering all employees without distinction, then the question of majority representation among the employees would be forever closed resulting in the perpetuation of the union as the bargaining agent. Whether

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139 Labor Disputes and Collective Bargaining, Vol. II, 867-868.
140 18 NLRB 75 (1939).
141 G.R. No. L-16561, January 28, 1961.

this new reasoning supports the view of the Court will be discussed in the section analyzing the concept and scope of the closed-shop arrangement.

Not long after the Freeman case, the Supreme Court reversed itself on the question of the scope of the closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act. Speaking through Mr. Justice Alejo Labrador in Victorias Milling Co., Inc. v. Victorias-Manapala Workers Organization-Paflu *et als.*[142] and Victorias-Manapala Workers Organization v. Court of Industrial Relations *et al.*,[143] the Supreme Court revoked the decision of the Court of Industrial Relations which the latter based on the holding in the Freeman case. In overruling the interpretation theretofore followed, the Supreme Court accurately stated that the privilege of joining, forming or assisting a labor organization for the purpose of collective bargaining is not inflexible for it is limited by the proviso of Section 4(a)(4) of the Industrial Peace Act which authorizes the parties to agree on the closed-shop arrangement. To buttress this approach, the Supreme Court cited the decision of the Supreme Court of the United States on a similar issue in the case of Colgate-Palmolive-Peet v. National Labor Relations Board.[144] There the Supreme Court of the United States held:

> "One of the oldest techniques in the art of collective bargaining is the closed-shop. It protects the integrity of the union and provides stability of labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed-shop would interfere with the freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. Nevertheless, with full realization that there was a limitation by the proviso of Sec. 8(3) [of the National Labor Relations Act, corresponding to Section 4(a)(4) of the Industrial Peace Act] upon the freedom of Sec. 7 [corresponding to Section 3 of the Industrial Peace Act], Congress inserted the proviso of Sec. 8(3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. That policy cannot be defeated by the Board's policy, which would make an unfair labor practice out of that which is authorized by the Act. The Board cannot ignore the plain provisions of a valid contract made in accordance with the letter and the spirit of the statute and reform it to conform to the Board's idea of correct policy. To sustain the Board's contention would be to permit the Board under the guise of administration to put limitations in the statute not placed there by Congress."

But hardly had the ink dried on the decisions promulgated in the two Victorias-Manapala Workers Organization cases when the Supreme Court reversed itself for the second time on this issue in

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[142] G.R. No. L-18467, September 30, 1963.
[143] G.R. No. L-18470, September 30, 1963.
[144] 338 U.S. 355, 94 L. Ed. 161, 70 S. Ct. 166 (1949).

the twin cases of *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations et als.*[145]

There are two astonishing things in the decision in the *Sta. Cecilia Sawmills* cases. One is that the justice who penned the decisions of the Supreme Court in the two Victorias-Manapala Workers Organization cases is the same justice who wrote the decisions in the two Sta. Cecilia Sawmills cases. The other stimulating thing about the Sta. Cecilia Sawmills cases is the observation of the Court that the closed-shop agreement cannot affect persons who are already employed after admitting in the same breath the validity of the closed-shop arrangement agreed upon by the parties in the collective bargaining contract.

With these two 1964 decisions, the Supreme Court has returned to the holding in the case of Local 7, Press & Printing Free Workers *et al.* v. Emiliano Tabigne *et als.*,[146] but fortunately not to the reasoning in that case. For this the Supreme Court used the arguments advanced by Mr. Justice Jose Gutierrez David in the case of Freeman Shirt Manufacturing Co., Inc. *et al.* v. Court of Industrial Relations *et al.*[147] that:

> "The closed-shop agreement 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. It is inapplicable to those already in the service who 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 organizations 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. 111, sec. 1[6])."

2. ANALYSIS OF THE SCOPE OF THE CLOSED-SHOP AUTHORIZED IN THE INDUSTRIAL PEACE ACT

The closed-shop arrangement authorized in Section 4(a)(4) of Republic Act No. 875 is simply an employment arrangement agreed upon by an employer and the bargaining representative of his employees in which no person can be employed in the former's shop or enterprise unless he is a member of the bargaining labor union and continues to remain a member thereof in good standing for the duration of the labor contract to keep his job.

The consent of the parties to establish this kind of shop or employment arrangement is explicitly required in the proviso to Section

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145 G.R. Nos. L-19273 & L-19274, February 29, 1964.
146 G.R. No. L-16073, November 29, 1960.
147 G.R. No. L-16561, January 28, 1961.

4(a)(4) of the Industrial Peace Act. And it is this mutual agreement together with the fact that the labor organization is the authorized bargaining representative of an appropriate collective bargaining unit undergird the non-inclusion of the closed-shop agreement from the catalogue of unfair labor practices in Section 4(a) and (b) of the Industrial Peace Act. Nevertheless, there is still discrimination and some degree of compulsion involved in this particular type of shop or employment arrangement. Therefore, as a counterbalance, the Supreme Court, in the Confederated Sons of Labor v. Anakan Lumber Company case, required two further conditions: (1) that the elements of *the* closed-shop arrangement must be expressed unequivocally in the labor contract and the employees informed of the nature of the shop or employment arrangement agreed upon, and (2) that non-membership in the bargaining labor organization must be stated clearly in the labor contract as a ground for dismissal from employment.

Section 4(a)(4) of the Industrial Peace Act, which authorizes the closed-shop provides as follows:

> 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, but such agreement shall not cover members of any religious sects which prohibits affiliation of their members in any such labor organization. (Emphasis supplied).

The significance of the first reservation in the foregoing section of the Industrial Peace Act is two-fold. First, it is a limitation on the privilege of the employees to refrain from exercising the right granted to them in Section 3 of the Industrial Peace Act to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining. Put in another way, the protection extended by the Industrial Peace Act to employees when they refrain from exercising their privilege of forming, joining or assisting a labor organization for the purpose of collective bargaining is withdrawn by operation of law once the parties agree on the closed-shop arrangement. The other implication of the first proviso in Section 4(a)(4) of the Industrial Peace Act is that non-union men who want to be employed or employees who want to remain in employment must be members in good standing of the labor organization selected or designated by a majority of the employees in an appropriate collective bargaining unit.

The impact of this proviso in Section 4(a)(4) of the Industrial Peace Act on the rights enumerated in Section 3 and on the unfair labor practice defined in Section 4(a)(4) and Section 4(b)(2) cannot be overemphasized. The right to self-organization and to form, join or assist a labor organization for the purpose of collective bargaining recognized and protected in Section 3 of the Industrial Peace Act yields to an agreement which closes the employer's shop or enterprise to non-union members and that such an agreement or practice even though discriminatory is not characterized as an unfair labor practice and is thus removed from the catalogue of unfair labor practices.

But with the decisions in the *Sta. Cecilia* cases, the Supreme Court is back where it started in Local 7, Press & Printing Free Workers, *et als.* v. Emiliano Tabigne *et als.*[148] and in Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations *et als.*[149] In the Press & Printing Free Workers case, the Supreme Court held that the closed-shop arrangement is inapplicable to persons who are already employed on or before the execution of the collective bargaining contract containing the closed-shop arrangement. To support this interpretation, the Supreme Court, through Mr. Justice Jesus G. Barrera, used the opinion of Ludwig Teller, expressed in II Labor Disputes and Collective Bargaining at 867-868, and the decision in the case of Electric Vacuum Cleaner Co. is cited. But Teller's opinion and the holding in the Electric Vacuum Cleaner case do not really support the position taken by the Supreme Court. For what Teller actually said on this point is this:

> The *mere fact* that a closed-shop agreement has been entered into, even though the proper bargaining agency be therein involved and the union is bona fide and unassisted, does not justify discharge for failure to join the union. It *must further appear* that membership in the union is by the terms of the agreement required as a condition of employment. Thus, a contract which requires employees to become members of the union, or, in the alternative, authorizes the deduction of the equivalent of union dues from the salary of the employee, does not justify a discharge for refusal to become a member of the union . . . And a closed-shop agreement which applies *only to new employees* may not be applied to existing employees at the time the agreement was entered into. (Emphasis supplied).

The first sentence does seem to support the conclusion reached by the Supreme Court. But that is not all that Teller said. He also added that to justify an employee's discharge from employment for failure to join the bargaining union "it must further appear" in the labor contract "that membership in the bargaining union is by the terms of the closed-shop agreement required as a condition of

[148] G.R. No. L-16093, November 29, 1960
[149] G.R. No. L-16561, January 28, 1961.

employment." In other words, it is not enough to merely state in the labor contract that the parties have agreed on a closed-shop arrangement of employment. To make his point clear, Teller stated that a contract which requires employees to become union members but fails to provide therein that *membership* in the bargaining union is a condition of employment does not justify the employee's discharge for refusal to become a member of the bargaining union. Therefore, if the labor contract, in addition to the agreement to enter into a closed-shop arrangement, *also* provides that *membership* in the contracting union is required as a condition of employment, then the discharge from employment for failure to join the bargaining union is justified.

It is on this point that Mr. Justice Roberto Concepcion was so right in his analysis of the text of the closed-shop clause of the labor contract involved in the case of Confederated Sons of Labor v. Anakan Lumber Company *et als.*[150] There Mr. Justice Concepcion said that a shop clause in a labor contract does not establish *the* closed-shop authorized in Section 4(a)(4) of the Industrial Peace Act if it does not incorporate therein a provision that *membership* in the bargaining union is a condition of employment. Lacking this condition, Mr. Justice Concepcion stated that only "a closed-shop in a very limited sense" is established. And a limited closed-shop applies only to persons hired by the employer after the signing of the labor contract and does not affect the right of the company to retain those already employed even if they are non-union members. Note that Mr. Justice Concepcion said that it is the *limited* closed-shop, and not *the* closed-shop authorized under Section 4(a)(4) of the Industrial Peace Act, that applies to persons hired after the signing of the labor contract. Apparently, the Supreme Court in its subsequent decisions on this matter missed this important distinction drawn by Teller and Concepcion. Unfortunately, Mr. Justice Concepcion himself failed to call the attention of his brethren in the Court to this significant point in the subsequent cases.

With regard to the Electric Vacuum Cleaner Company case, it is obvious from the last sentence of the citation from Teller that the parties in that case agreed that the shop arrangement was to *apply only to new employees.* Obviously, only a limited closed-shop was agreed upon. Naturally, it could not have been applied to persons who were already employed at the time the agreement was entered into even if they were non-union members. In other words, nothing could have prevented the application of the closed-shop agreement to the old employees had the parties agreed on it, provided that

[150] G.R. No. L-12503, April 29, 1960.

the agreement contained a covenant that membership in the bargaining union is a condition for employment.

These considerations appear to me to be the reason why the Supreme Court dropped its citation of Teller's opinion in all the cases decided in 1961, 1962, 196: , and 1964. Thus, looking back at the holding of the Supreme Court in Local 7, Press & Printing Free Workers case, one cannot avoid the feeling that it was perhaps this misreading of Teller that caused the Supreme Court to trip on the issue of the scope of the closed-shop arrangement which Congress expressly authorized in Section 4(a) (4) of the Industrial Peace Act. Otherwise, the Supreme Court would have probably stayed with the opinion expressed by Mr. Justice Concepcion in the case of Confederated Sons of Labor v. Anakan Lumber Company, *et als.*[151]

During the years that followed the Press & Printing Free Workers case up to August 31, 1963, the Supreme Court used a different reasoning to support its interpretation of the scope of the closed-shop arrangement. This was first articulated in Freeman Shirt Manufacturing Co., Inc v. Court of Industrial Relations *et als.*,[152] where the Supreme Court, speaking through Mr. Justice Jose Gutierrez David, stated:

> "The closed-shop agreement 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. It is inapplicable to those already in the service who 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 organizations 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. 111, sec. 1[6]).
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> "Section 12 of the Industrial Peace Act providing that when there is reasonable doubt as to who the employees have chosen as their representative the Industrial Court can order a certification election, would also become useless. For once a union has been certified by the court and enters into a collective bargaining agreement with the employer a closed-shop clause applicable to all employees be they union or non-union members, the question of majority representation among the employees would be closed forever. Certainly, there can no longer exist any petition for certification election, since eventually the majority or contracting union will become a perpetual labor union. This alarming result could not have been the intention of Congress."

Here the Supreme Court is banking heavily on: (1) the closed-shop arrangement authorized under Section 4(a) (4) of the Industrial

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151 *Ibid.*

152 G.R. No. L-16561, January 28, 1961.

Peace Act is contrary to Section 3 of the same Act, which recognizes and protects the right of self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining, (2) the closed-shop arrangement is contrary to Article III, Section 1(6) of the Constitution, which recognizes and protects the right to form associations for purposes not contrary to law, and (3) the closed-shop arrangement negates Section 12(b) of the Industrial Peace Act, which allows the Court of Industrial Relations to order a certification election when there is a reasonable doubt as to whom the employees have chosen as their bargaining representative, because the bargaining union would thereby become a perpetual contracting union.

Let us consider these arguments of the Supreme Court in their reverse order.

The contention that Section 12(b) which deals with the election of bargaining representatives would be rendered useless by the closed-shop arrangement on the ground that it would perpetuate the elected bargaining representative loses sight of the fact that a union member can leave a labor organization and join another any time he wants to. The right to disaffiliate from a labor organization was succintly stated by the Supreme Court itself in Pagkakaisa Samahang Manggagawa ng San Miguel Brewery v. Juan P. Enriquez *et als.*,[153] as follows:

> "When a laborer or employee joins a labor union, he does not make any commitment or assume an undertaking to continue his membership therein for any fixed period of time, much less indefinitely. In this respect he is a free agent. It may be that his separation from the union will not and could not affect any bargaining agreement entered into by the union and management while he was a member of said union . . . but as to his right to separate from a labor union and join another, it seems there can be no question."

The notion that the closed-shop arrangement results in the perpetuation of the bargaining labor union was also discredited by the Supreme Court itself in the case of Findlay Millar Timber Company v. Philippine Land-Air-Sea Labor Union *et als.*[154] and explicitly rejected in Victorias Milling Co., Inc. v. Victorias-Manapala Workers Organization *et als.*,[155] and in Victorias-Manapala Workers Organization v. Court of Industrial Relations *et al.*[156] In these two cases, the Supreme Court flatly declared that "it is not true" that the closed-shop arrangement would perpetuate the labor organization

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153 G.R. No. L-12999, July 26, 1960.
154 G.R. Nos. L-18217 & L-18222, September 29, 1962.
155 G.R. No. L-18467, September 30, 1963.
156 G.R. No. L-18470, September 30, 1963.

which secured it for the simple reason that the closed-shop agreement is enforceable only for a certain definite period or until another collective bargaining agreement is entered into. There is still another consideration against the idea that the closed-shop perpetuates the bargaining union. The closed-shop arrangement under the contract-bar rule is not never-ending. Under the contract-bar rule, as it operates here, a labor contract with a fixed period or with an indefinite duration constitutes a bar to another election to determine a collective bargaining representative only for as much of its term as does not exceed the first two years. In other words, the employees themselves are not deprived of their privilege and opportunity to have a change in their bargaining representation after the first two years of a labor contract.

The next argument of the Supreme Court is that the closed-shop arrangement authorized under Section 4(a)(4) of the Industrial Peace Act "would render nugatory" the right of the employees to self-organization and to form, join or assist labor organizations of their own choosing, a right that is guaranteed by Article 111, Section 1(6) of the Constitution. What makes the appeal to the Constitution unsatisfactory is the attempt to make it appear that the right to self-organization and to form, join or assist labor organizations for the purpose of collective bargaining is absolute. But the right to form associations is not inflexible for it is always subject to the exercise of the police power of the State. Thus, it can be limited by a valid public purpose that is more important than the interest of the individual, provided that it has a substantial relation to the end to be achieved.[157] The proviso in Section 4(a)(4) of the Industrial Peace Act authorizing the closed-shop arrangement undoubtedly meets these conditions.

The last argument of the Supreme Court is that the closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act is contrary to the right to self-organization and to form, join or assist labor organizations of their own choosing. In different words, it is urged that the proviso of Section 4(a)(4) of the Industrial Peace Act may not be given full effect because to do so would mean the circumvention of Section 3 of the Act.

In my previous surveys of the decisions of the Supreme Court dealing with the closed-shop arrangement,[158] I advanced the view

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[157] SINCO, V. G., CONSTITUTIONAL LAW, 2nd Ed., 127. For analogous cases, see Ongsiako v. Gamboa, 86 Phil. 50 (1950); Primero v. Court of Industrial Relations *et al.*, 54 O.G. (20) 5509.

[158] 38 *Philippine Law Journal*, 29 (1963); 39 *Philippine Law Journal*, 31 (1964); 28 The Lawyers Journal, 81 (1963); 29 The Lawyers Journal, 241 (1964).

that this argument is contrary to the Industrial Peace Act itself because the right of the employees under Section 3 of the Industrial Peace Act is not absolute. The proviso of Section 4(a)(4) of the Industrial Peace Act in unmistakable terms stipulates an exception to the application of Section 3 of the Act, as follows:

> "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." (Emphasis supplied)

Undoubtedly, this deliberate policy covers even Section 3 of the Industrial Peace Act. Thus, the proviso of Section 4(a)(4) of the Industrial Peace Act would read, in another way of putting it, as follows:

> *Provided*, That nothing in Section 3 of 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 12.

This is well settled by the labor history that lies behind such reservation. Even before the two Victorias-Manapala Workers Organization cases, the Supreme Court had recognized this in National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc. *et als.*[159] There the Supreme Court, through Mr. Justice Roberto Regala, said:

> The right of employees "to self-organization and to form, join or assist labor organizations of their own choosing" (Sec. 3, Republic Act No. 875) is a fundamental right that yields only to the proviso "that nothing in this 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." (Sec. 4[a][7]).

In the United States, the Supreme Court has consistently rejected the contention that the National Labor Relations Board may not give full effect to the proviso of Section 8(a)(3) of the National Labor Relations Act (similar to the proviso of Section 4[a][4] of the Industrial Peace Act) because it would nullify the right to self-organization and to form, join or assist labor organizations for the purpose of collective bargaining which is guaranteed in Section 7 of the National Labor Relations Act (corresponding to Section 3 of the Industrial Peace Act). In the case of Colgate-Palmolive-Peet

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[159] G.R. No. L-18170, August 31, 1963.

Company v. National Labor Relations Board *et al.*,[160] which was cited by our Supreme Court in the two Victorias-Manapala Workers Organization cases, the Supreme Court of the United States took the view that:

> "The proviso in Section 8(a)(3) of the National Labor Relations Act, that nothing in the Act or in any other statute of the United States 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 authorized representative of the employees, is, and was intended by Congress to be, a limitation upon the right of employees, guaranteed in Section 7 of the Act, to self-organization and to collective bargaining, through representatives of their own choosing."

The Supreme Court of the United States further said that there is no need to justify congressional policy for it is enough that the congressional policy is clearly stated in the statute and warned that "the legislative policy cannot be defeated by what others think is the correct policy for that plainly would be putting limitations in the statute not placed there by Congress."

In the latest case decided by the Supreme Court of the United States on this point, Local Lodge No. 1424, International Association of Machinists v. National Labor Relations Board,[161] that Court reiterated its view that "Section 7 of the National Labor Relations Act [equivalent to Section 3 of the Industrial Peace Act], dealing with employees' rights to self-organization, is in terms limited by the scope of the Section 8(a)(3) proviso [the same as the proviso in Section 4(a)(4) of the Industrial Peace Act], dealing with union security clauses in collective bargaining agreements." The Court then repeated its warning "that Section 8(a)(3) of the National Labor Relations Act, including its proviso relating to union security clauses in collective bargaining agreements, represents the congressional response to the competing demands of employee freedom of choice and union security; it is not for the administrators of the congressional mandate to approach either side of the line grudgingly."

One final note on this issue should be sounded. In the case of Findlay Millar Timber Company v. Philippine Land-Air-Sea Labor Union,[162] the Supreme Court made a rather startling observation, as follows:

> We see no error in the action of respondent court in passing on the view expressed by the trial judge on the legal effects of the closed-shop provision if it finds that the same do not accord with *the law and jurisprudence in this jurisdiction*. It may be true that the trial judge's views

[160] 338 U.S. 355, 94 L. Ed. 161, 70 S. Ct. 166 (1949).
[161] 362 U.S. 411, 4 L. Ed. 2d 832, 80 S. Ct. 822 (1960).
[162] G.R. Nos. L-18217 & L-18222, September 29, 1962.

> may be in accord with American law and jurisprudence, as in fact those views were correct if considered in the light of American authorities. But said views, while correct at the time they were expressed, no longer hold water today for they run counter to decisions recently rendered by this Court. (Emphasis supplied)

The law in this jurisdiction is clear. It is the decisions that are conflicting and appear to be contrary to the law itself. With all due respect, I think that the view of the trial judge in the Findlay Millar case is the correct one not only at the time it was expressed when the case was still in the court *a quo* but even now. If my personal views count at all, I think that the decisions in Confederated Sons of Labor v. Anakan Lumber Company *et als.*,[163] Victorias Milling Co., Inc. v. Victorias-Manapala Workers Organization-PAFLU *et als.*,[164] and Victorias-Manapala Workers Organization-PAFLU v. Court of Industrial Relations *et al.*[165] express the correct view of the scope and function of *the* closed-shop arrangement authorized under Section 4(a)(4) of the Industrial Peace Act.

VII. UNION CONCERTED ACTIVITIES AND EMPLOYER COUNTERMEASURES

A. Strikers and the Question of Back Wages

There is need to distinguish between economic strikes and unfair labor practice strikes on the issue of back wages.

In an economic strike, the employees voluntarily, although temporarily, quit work. It is for this reason that they are not entitled to back wages. This is not the case in an unfair labor practice strike because the employees do not want to stop work but were forced to on account of the unfair labor practices of the employer.[166] Thus, in Dinglasan v. National Labor Union,[167] the Supreme Court held that there is no legal basis or justification for back wages for the duration of the period that the strikers refused to return to work where the cessation of the business operation of the employer was the result of the voluntary and deliberate refusal of the employees to work and not due to a lockout or any discriminatory act on the employer's part.

In the case of *Consolidated Labor Association of the Philippines v. Marsman & Co., Inc. et al.*[168] and *Marsman & Co., Inc. v. Consol-*

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[163] G.R. No. L-12503, April 29, 1960.
[164] G.R. No. L-18467, September 30, 1963.
[165] G.R. No. L-18470, September 30, 1963.
[166] Philippine Marine Radio Officers' Association v. Court of Industrial Relations *et als.*, G.R. Nos. L-10095 & L-10115, October 31, 1957.
[167] G.R. No. L-14183, November 28, 1959.
[168] G.R. No. L-17038, July 31, 1964.

idated Labor Association of the Philippines et als.,[169] the strike was economic in nature when the employees stopped work. But it became an unfair labor practice strike after the employer refused to reinstate the strikers who were active in the unionization of the company's employees. In an opinion by Mr. Justice Querube C. Makalintal, the Supreme Court held that during the time that the strike was economic in nature the strikers are not entitled to backpay because the employees voluntarily quit work. But the Supreme Court did not say whether the strikers were entitled to backpay from the time the strike changed its character. This was clarified, however, in the subsequent case of *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations et al.*[170] In an opinion by Mr. Justice Roberto Regala, to which Mr. Justice Makalintal concurred, the Supreme Court denied backpay to the strikers because the stoppage of work was not the result of any unfair labor practice on the part of the employer.

The significance, therefore, of a change in the characterization of a strike from an economic strike to an unfair labor practice strike lies in the liability of the employer for back wages for the duration of the unfair labor practice strike.

B. LOCKOUTS

Section 2(m) of the Industrial Peace Act defines a lockout as the temporary refusal of an employer to furnish work as a result of an industrial dispute. There is nothing illegal therefore about the refusal of an employer to permit his employees to work when the elements called for in Section 2(m) are present. Thus, depending on the circumstances involved, an employer may engage in this kind of activity in order to apply economic pressure on a labor organization to grant better terms to the employer than that proposed by the union. Indeed, an employer may replace his employees in order to keep his plant going in anticipation of union collective action. The reason for this is that the power of a labor union to initiate a strike is no more equaled by the power of the employer to refuse or permit all or some of his employees to work.[171] But the employer may not exercise his right to lock out his employees under all circumstances. An employer runs the risk of an unfair labor practice charge under Section 4(a)(4) of the Industrial Peace Act every time he engages in this economic activity.

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[169] G.R. No. L-17057, July 31, 1964.
[170] G.R. No. L-19778, September 30, 1964.
[171] Leonard v. National Labor Relations Board, 205 F. 2d 355 (1953).

This section provides, among other things, that it shall be an 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. The test, therefore, of whether the employer's lockout of his employees is an unfair labor practice or not is the absence or presence of an industrial dispute and the intention to avoid his legal responsibilities under Section 4(a)(1) of the Industrial Peace Act. This particular section requires him not to interfere with, restrain or coerce his employees in the exercise of their rights guaranteed in Section 3 of the Act. Put in a different way, an employer's temporary refusal to furnish work to his employees is an unfair labor practice if it was not the result of an industrial dispute but motivated by a desire to interfere with, restrain or coerce his employees in the exercise of their rights recognized and protected in Section 3 of the Industrial Peace Act.[172]

In the case of *Rizal Cement Workers Union et als. v. Madrigal and Co. et als.*,[173] the Supreme Court, in an opinion by Mr. Justice Jesus G. Barrera, considered the refusal of the corporation to furnish work to 21 of its employees only in terms of its effect on the union affiliation and activities of the employees. Said the Court on this point:

> "It is not herein controverted that the complainants were locked out or denied work by the respondent Company. Under Republic Act 875, however, for the discrimination by reason of union membership to be considered an unfair labor practice, the same must have been committed to encourage or discourage such membership in the union."

While there is no question that the refusal of the corporation to furnish work to some of its employees was the result of an industrial dispute, nevertheless, it must also be established that the employer's lockout was not done merely to avoid his responsibiliies under Section 4(a)(1) of the Industrial Peace Act. Of course, it might be said that in the absence of an industrial dispute the refusal of an employer to furnish work is not a lockout but an unfair labor practice because it was obviously done to encourage or discourage membership in a labor organization. But the converse does not follow. If there is no industrial dispute involved in the employer's refusal to furnish work then the discriminatory act done by the employer does not fall under Section 4(a)(4) but under Section 4(a)(1) of the Industrial Peace Act. This is the reason for the line drawn

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[172] National Labor Relations Board v. Norma Mining Corporation, 206 F. 2d 38 (1953).

[173] G.R. No. L-19767, April 30, 1964.

by the Industrial Peace Act between unfair labor practices defined in Section 4(a)(1) and those defined in Section 4(a)(4) of the Act. The latter refers only to unfair labor practices having to do with "hire or tenure of employment or any term or condition of employment" which "encourages or discourages membership in any labor organization." This is not the case with the unfair labor practices defined in Section 4(a)(1) of the Industrial Peace Act. This difference between Section 4(a)(1) and Section 4(a)(4) explains why violations of any of the more specific categories of employer unfair labor practices, that is to say, from Sections 4(a)(2), (3), (4), (5), and (6) of the Industrial Peace Act, are always interference with, restrain or coercion as provided in Section 4(a)(1) of the Act. But the converse is not true because violations of Section 4(a)(1) are not necessarily violations of the other subdivisions of Section 4(a) of the Act.[174] If an example is necessary, it is provided by labor espionage or surveillance. This is a 4-a-1 unfair labor practice but not a violation of the other subparagraphs of Section 4(a) of the Industrial Peace Act. This distinction becomes sharper in a situation where it is not clear whether a given labor dispute has been precipitated by a strike or a lockout. According to Teller, in disputes where a lockout is involved it is often that the lockout was set in motion in hurried anticipation of the other. This was exactly the situation involved in the 1964 *Rizal Cement Workers Union* case. There the labor union staged a strike at the plant of the respondent corporation in Binangonan, Rizal. The employer's reaction to this union activity was to lock out its employees in Paco, Manila, where its warehouses are located in order to forestall or prevent any possible sabotage in the employer's warehouses.

[174] Teller, I Labor Disputes and Collective Bargaining, pp. 762-763.