A CRITICAL SURVEY OF DECISIONS IN LABOR RELATIONS LAW

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INTRODUCTION

Several important questions in labor relations law confronted the Supreme Court in 1965. Among these are the issue of the scope of jurisdiction of the Court of Industrial Relations, the problem of whether or not the polling or interrogation of employees is an unfair labor practice, the kind of evidence necessary to support the findings of fact of the Court of Industrial Relations, the relation between the subsection (a) and (d) of Section 9 of the Industrial Peace Act, the role of Sections 9(b) and 24 of the Industrial Peace Act in union activities in relation to the penal laws on combinations in restraint of trade and commerce, the nature of representation cases, the issue as to the propriety of an order for the holding of a certification election, the concept of bar to repeated representation elections, and the nature and scope of the closed-shop employment arrangement.

In some of these cases, the Court's decisions are of first impression in this jurisdiction. In two of these cases, the Court missed

the opportunity of developing judicial guidelines for decisions of similar questions. And in the other cases, the decisions of the Court still lend themselves to scrutiny.

I hasten to add that this survey is critical only in the sense that it tries to analyze the Court's decisions in relation to current legislation, jurisprudence and the industrial history that lies behind the labor relations concepts involved.

I. THE COURT OF INDUSTRIAL RELATIONS

Under Section 1 of Commonwealth Act No. 103, the Court of Industrial Relations is a court of record. Even so, under Section 5(b) of the Industrial Peace Act, the court is not bound solely by evidence presented during the hearing or by technical and strict rules of evidence and procedure.

In 1965, the Supreme Court, decided a case which goes a long way in clarifying this proposition. In the case of *Free Employees and Workers Association v. Court of Industrial Relations*,[1] the employer instituted a case for certification election because of the conflicting claims of the labor unions that they each have a majority of his employees. On the day set for the hearing of the case, counsel for one of the unions moved for continuation because of an urgent business in connection with an electoral case which required his personal attention. This was denied by the Court of Industrial Relations, upon opposition by the other party. The court then proceeded to receive his evidence. Later, the court granted a motion to cross-examine the sole witness who testified during the hearing. But on the date set, the witness did not appear which prompted counsel to move to strike from the records the testimony of this witness. Action on the motion was, however, deferred by the court. But later on, without ruling on the motion, the trial judge ordered the holding of a certification election. Over the vigorous objection of the party concerned, the court *en banc* sustained the trial judge holding that the right of cross-examination may be dispensed with on the proposition that representation cases are non-adversary in nature.

On petition for review by certiorari, the Supreme Court chided the lower court for deciding the case without allowing the reserved cross-examination and without announcing the deferred ruling on the motion to strike testimony. Speaking through Mr. Justice J.B.L. Reyes, the Supreme Court clarified the proposition that the Court of Industrial Relations is a quasi-judicial body and not bound by the strict rules of evidence and procedure. According to the Court this does not mean that the Court of Industrial Relations can disregard "even the most substantial rules and those which experience

[1] G.R. No. L-20862, July 30, 1965.

has shown to be essential to an enlightened system of arriving at the true facts of a case." Since the cross-examination of witnesses is basic in testing the sufficiency of their testimony, the Supreme Court concluded that the lower court erred in ignoring this procedural rule.

A. Pleadings

1. Basis for Determination of Court's Jurisdiction

It is a long standing rule in our jurisdiction, going as far back as *Suanes v. Almeda-Lopez*,[2] that the question of jurisdiction is determined by the allegations in the complaint or petition.

In the year under survey, the Supreme Court reiterated this position in *Aurelia Abo v. Philame Employees and Workers Union*,[3] *Associated Labor Union v. Judge Modesto R. Ramolete*,[4] *Cipriano Tuvera v. De Guzman*,[5] *The Edward J. Nell Company v. Ricardo Cubacub*,[6] and *Atlantic Gulf and Pacific Company of Manila, Inc. v. Hilarion Olivar*.[7] This was the position of the Supreme Court in the intervening years as expressed in *Campos Rueda Corporation v. Bautista*,[8] and *Administrator of Hacienda Luisita Estate v. Alberto*.[9] Put differently, the question of jurisdiction of the Court of Industrial Relations should not be resolved by considering the allegations in the complaint or petition in relation to the contrary averments of the other party. Thus, in *Aurelia Abo v. Philame Employees and Workers Union*,[10] *Associated Labor Union v. Modesto R. Ramolete*,[11] *Cipriano Tuvera v. Pastor de Guzman*,[12] and *Hernando Layno v. Rafael de la Cruz*,[13] the Supreme Court reiterated the rule that only the allegations in the complaint or petition determine the question of whether the Court of Industrial Relations has jurisdiction or not. This means that the truth of the allegations in the complaint or petition must be theoretically admitted in determining this question.[14] Thus, it was held in the case of *Edward J. Nell Corporation v. Cubacub*,[15] that the allegations in the complaint are to be deemed admitted in resolving the issue of lack of jurisdiction tendered by a motion to dismiss. The implication of this holding

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[2] 73 Phil. 573 (1942).
[3] G.R. No. L-19912, Jan. 30, 1965.
[4] G.R. No. L-23527, March 31, 1965.
[5] G.R. No. L-20547, April 30, 1965.
[6] G.R. No. L-20842, June 23, 1965.
[7] G.R. No. L-19526, Sept. 30, 1965.
[8] G.R. No. L-18453, Sept. 29, 1962.
[9] G.R. No. L-12133, Oct. 31, 1958.
[10] G.R. No. L-19912, Jan. 30, 1965.
[11] G.R. No. L-23527, March 31, 1965.
[12] G.R. No. L-20547, April 20, 1965.
[13] G.R. No. L-20636, April 30, 1965.
[14] *Insular Sugar Refining Corporation v. Court of Industrial Relations*, G.R. No. L-19247, May 31, 1963.
[15] G.R. No. L-20842, June 23, 1965.

is that the Court of Industrial Relations may proceed with a case when the allegations in the complaint or petition appear to be sufficient,[16] until such time as the facts gathered in hearing show that it is clearly beyond the jurisdiction of the Court of Industrial Relations.[17]

2. Postponement of Court Action on Motion to Dismiss

When a motion to dismiss a complaint or petition is filed with the Court of Industrial Relations on the ground that the Court has no jurisdiction over the case, the usual reaction of the court has been to defer action on the motion until the trial on the merits on the theory that all legal and factual questions raised in the pleadings should be determined in a single proceeding, pursuant to Rule 8, Section 3, of the Rules of the Court. During the year in review, the Supreme Court did not look at this procedural approach with favor. In 1965, the Supreme Court held that if the Court of Industrial Relations has no jurisdiction over a case on the basis of the allegations in the complaint or petition, then the question of jurisdiction should be resolved immediately since the allegations are to be deemed admitted for purposes of resolving this issue. Thus, in *Aurelia Abo v. Philame Employees and Workers Union*,[18] and *Edward J. Nell Company v. Ricardo Cubacub*,[19] the Supreme Court, speaking through Mr. Justice Roberto Regala in the first case, and through Mr. Justice Querube C. Makalintal in the second, held that the resolution of a motion to dismiss on the ground of lack of jurisdiction should be resolved on the basis of the allegations in the complaint or petition and should not be postponed by the Court of Industrial Relations until the termination of the trial on the merits in the expectation or hope that the evidence submitted may turn up other qualifying or concurring data and bring the case under the court's jurisdiction. This reiterates the view articulated by the Supreme Court, through Mr. Justice (now Chief Justice) Cesar Bengzon, in *Administrator of Hacienda Luisita Estate v. Alberto*.[20]

B. The Court's "No-Extension" Rule

Under Section 20 of Commonwealth Act No. 103, the Court of Industrial Relations is empowered to adopt its own rules of procedure. In accordance with this authority, the court promulgated certain rules governing motions seeking reconsideration of its orders or decisions.[21] In *Visayan Bicycle Manufacturing Co., Inc. v. Na-*

[16] *Jose Serrano v. Luis Serrano*, G.R. No. L-19562, May 23, 1964.
[17] *Manila Electric Company v. Ortañez*, G.R. No. L-19557, March 31, 1964.
[18] G.R. No. L-19912, Jan. 30, 1965.
[19] G.R. No. L-20842, June 23, 1965.
[20] G.R. No. L-12133, Oct. 31. 1958.
[21] Sections 15-17, Rules of the Court of Industrial Relations.

tional Labor Union,[22] the Supreme Court, speaking through Mr. Justice Jose P. Bengzon, ruled that the denial by the Court of Industrial Relations of a motion to extend the 10-day period to file arguments on the basis of a standing rule of the Court of Industrial Relations against such extensions is not an abuse of discretion. The rationale of the rule against extension of the period for filing motions is found in the 1963 decisions of the Court in *Luzon Stevedoring Co., Inc. v. Court of Industrial Relations*[23] and *Manila Caps and Tin Cans Manufacturing Co., Inc. v. Court of Industrial Relations*.[24] In these cases the Supreme Court said that the "no-extension" rule was adopted by the Court of Industrial Relations in order to speed up the flow of cases, which is a reasonable exercise of its power to promulgate rules on pleading and procedure.

II. THE PROBLEM OF THE SCOPE OF JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

In three cases decided in 1965, the Supreme Court reiterated the view expressed in the early case of *PAFLU v. Tan*[25] that the broad jurisdictional competence granted by Commonwealth Act No. 103 to the Court of Industrial Relations has been diminished considerably with the enactment of the Industrial Peace Act. Speaking through Mr. Justice J. P. Bengzon in *Oriental Tin Cans Workers' Union v. Court of Industrial Relations*,[26] through Mr. Justice Makalintal in *Edward J. Nell Company v. Ricardo Cubacub*,[27] and through Mr. Chief Justice C. Bengzon in *Atlantic Gulf & Pacific Company of Manila, Inc. v. Hilarion Olivar*,[28] the Court fell back on its decision in the 1962 case of *Campos v. Manila Railroad Company*[29] where the Court expressed the view that as the law now stands, the jurisdiction of the Court of Industrial Relations is confined to cases involving labor disputes occurring in industries indispensable to the national interest and certified by the President to the Court of Industrial Relations, cases involving charges of unfair labor practice, and cases involving claims arising either under the Minimum Wage Law or the Eight-Hour Labor Law, provided that in this type of cases there exists an employer-employee relationship between the parties litigant or, in the event such relationship no longer exists, the plaintiff or claimant seeks his reinstatement.

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[22] G.R. No. L-19997, May 19, 1965.
[23] G.R. No. L-16682, July 6, 1963.
[24] G.R. No. L-17578, July 31, 1963.
[25] G.R. No. L-9115, Aug. 31, 1956, 52 O.G. (13) 5836.
[26] G.R. No. L-17695, Feb. 26, 1965.
[27] G.R. No. L-20842, June 23, 1965.
[28] G.R. No. L-19526, Sept. 20, 1965.
[29] G.R. No. L-17905, May 25, 1962.

A. The *Campos* Decision

There are two serious objections to the soundness of the decision of the Supreme Court in the *Campos v. Manila Railroad* case.

First, the view that the Court of Industrial Relations has no jurisdictional competence beyond the three types of cases specified in the *Campos* case, *supra*, does not coincide with the public policy expressed in Section 7 of the Industrial Peace Act. 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 section is the provision that no court whatsoever of the Philippines has the power to *compulsorily arbitrate* questions which have to do with wages, rates of pay, hours of employment, and other working conditions and terms of employment. The reason underlying this rule is the legal concept that these matters are the original concern of labor and management across the bargaining table on the basis of the public policy that agreement on bargainable issues, freely entered into by and between the parties by means of collective bargaining, goes a long way in preventing undue restriction of free enterprise for labor and management and in encouraging the most democratic method of regulating the relations between employer and employee.

But the withdrawal from the Court of Industrial Relations of the power to compulsorily arbitrate the bargainable matters mentioned in Section 7 of the Industrial Peace Act is not inflexible. As provided in the same section of the Act, the court is still empowered to compulsorily arbitrate questions involving bargainable matters when they get involved in a labor dispute in an industry indispensable to the national interest, present all conditions provided in Section 10 of the Industrial Peace Act; or when such bargainable matters get entangled in a dispute concerning minimum wages above the applicable statutory minimum or get enmeshed in an actual strike, present all conditions respectively provided for them in subsection (b) and (c) of Section 16 of Republic Act No. 602; or when such bargainable matters get involved in a 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. The reasons why these issues in these situations become the business of the Court of Industrial Relations for compulsory arbitration are obvious to detail here.

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. As I said in the Institute on Labor Relations Law last year,[30] there are other types of cases involving other labor legislation over which the Court of Industrial Relations has jurisdiction. Under the Industrial Peace Act alone, there are more classes of disputes over which the Court of Industrial Relations has jurisdictional competence than all the types of cases enumerated in the *Campos v. Manila Railroad Company* case. Indeed, in 1965, the Supreme Court itself in *Young Men Labor Union Stevedores v. Court of Industrial Relations*,[31] demonstrated the inadequacy of the generalization made in the *PAFLU v. Tan* case, upon which the *Campos* decision was based. In the 1965 case of Young Men Labor Union Stevedores, the petitioner labor union, in assailing the jurisdiction of the Court of Industrial Relations over a case involving a certification election, based his argument on the decision of the Supreme Court in *PAFLU v. Tan*, where the Court enumerated the three types of cases which it felt the Court of Industrial Relations has jurisdiction over. But the full Court, speaking through Mr. Justice Felix Bautista Angelo (the same Justice who penned the *PAFLU v. Tan* decision) held in effect that the enumeration in *PAFLU v. Tan* is not exclusive.

The second criticism against the holding in the *Campos v. Manila Railroad Company* case centers on the judicial requirement that there must be a claim for reinstatement when the employer-employee relationship no longer exists between the parties litigants. If this is valid, then it must have some basis in some specific provision of the Industrial Peace Act. I don't think there is any. As a matter of fact, the pertinent provisions of the Act on this matter point to the contrary. Note that two of the three types of cases enumerated in the *Campos v. Manila Railroad Company* case refer to labor disputes in industries indispensable to the national interest and to cases involving unfair labor practices. Now, Section 2(j) of the Industrial Peace Act, in relation to Section 9(f)(1) and (2), in defining the terms "labor dispute" states very clearly that it includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the dis-

[30] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW (1964), U.P. Law Center, 228.

[31] G.R. No. L-20307, Feb. 26, 1965.

putes stand in the proximate relation of employer and employee. There is realism in this labor policy. A labor dispute may exist even without this relationship. As a matter of fact, an "employee," as defined in Section 2(d) of the Industrial Peace Act, need not be an employee of a particular employer for the simple reason that under modern business or industrial relations employees are brought into economico-legal relationship with employers who are not their own employers.[32]

The idea of the Supreme Court that there must be an employer-employee relationship between the parties-litigants or that the plaintiff must seek his reinstatement in the event this relationship no longer exists is not also in accord with the provision of Section 2(d) of the Act, where the term "employee" is defined to include even an individual whose work has ceased as a consequence of any unfair labor practice. And Section 5(a) of the Industrial Peace Act, 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 still exists or not, nor does it qualify as to whether a claim for reinstatement has been made by the plaintiff in the complaint or not.

B. Jurisdictional Competence of the CIR

1. Jurisdiction Under Existing Legislation

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. 358 (Government Seizure of Public Utilities and Business 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).

In 1965, the only cases which reached the Supreme Court on the question of jurisdiction were those which had to do with Commonwealth Acts Nos. 103 and 444, and Republic Acts Nos. 602 and 875.

2. Jurisdiction Under Commonwealth Act No. 103

Under this law, the Court of Industrial Relations has authority to reconcile and induce the parties to settle disputes; to modify or reopen an award, order or decision; to terminate the effectiveness of an award, order or decision; to determine the meaning or interpretation of its award, order or decision; and to implement and

[32] U.S. Senate Committee on Education and Labor, Report No. 573, 74th Congress, 1st Sessions, 6-7 (1935).

enforce its award, order or decision which has become final and executory.

In 1965, only the jurisdiction of the Court of Industrial Relations to modify or reopen an order, award or decision reached the Supreme Court in the case of *Philippine Land-Air-Sea Labor Union v. Cebu Portland Cement Company*.[33]

The pertinent provision of Commonwealth Act No. 103 on this point is found in Section 17, which reads as follows:

> That at any time during the effectiveness of an award, order or decision the Court may, on application of an interested party, and after due hearing alter, modify in whole or in part, or set aside such award, order or decision, or reopen any question involved therein.

a. Objective of Court's Authority

What purpose does Section 17 of Commonwealth Act No. 103 serve in the cases decided by the Court of Industrial Relations? In *Price Stabilization Corporation v. Court of Industrial Relations*,[34] the Supreme Court, in an opinion by Mr. Justice Regala, stated that this provision of law gives the Court of Industrial Relations continuing control over cases within its jurisdiction and enables it, in the interest of a sound and stable industrial peace, to give substantial justice to the parties.

b. Conditions for Reopening a Case or Proceeding

In the 1965 case of *Philippine Land-Air-Sea Labor Union v. Cebu Portland Cement Company*,[35] the Supreme Court, through Mr. Justice Reyes, summarized the decisions of the Court on the conditions which must exist before an award, order or decision, or any question involved therein may be reopened by the Court of Industrial Relations. First, the reopening must be based upon grounds which have not been directly or indirectly litigated and such grounds must not have been available to the parties in the previous proceeding.[36] Second, the reopening must not affect the period which has already elapsed at the time the order, award or decision to be reopened was issued.[37]

I wonder why the Supreme Court did not take into account its decisions in the cases of *San Pablo Oil Factory, Inc. v. Court of Industrial Relations*[38] and *Northwest Airlines, Inc. v. Northwest Airlines Employees Association*.[39] In these cases the Court considered a

[33] G.R. No. L-20987, June 23, 1965.
[34] G.R. No. L-14613, Nov. 30, 1962.
[35] G.R. No. L-20987, June 23, 1965.
[36] *Pepsi-Cola Bottling Company v. Philippine Labor Organization*, G.R. No. L-3506, Jan. 31, 1951.
[37] *Nahag v. Roldan*, 94 Phil. 88 (1953).
[38] G.R. No. L-18270, Nov. 28, 1962.
[39] G.R. No. L-17378, April 30, 1962.

very relevant condition to the reopening of an award, order or decision of the Court of Industrial Relations. But I do not think the Supreme Court meant to ignore this important condition in deciding the 1965 *Philippine Land-Air-Sea Labor Union* case. A restatement of the conditions for the reopening of an award, order or decision follows: First, the invocation of the reopening of a case or proceeding must be made during the effectiveness of an award, order or decision by means of a petition of an interested party and upon due notice and hearing.[40] In this connection, an award, order or decision is deemed to be effective for a period of at least three years from the date of such award, order or decision, unless a shorter or longer period is fixed therein by the Court of Industrial Relations. Second, the reopening must be based only upon grounds coming into existence after the order, award or decision was rendered by the Court of Industrial Relations and not upon grounds which have been directly or indirectly litigated and decided by the court or available to the parties in the former proceeding but not used by any of them.[41] Third, the subsequent matter must be incidental or related to the original or main case.[42] And, fourth, the reopening must not affect the period which has already elapsed at the time the order, award or decision to be reopened was issued.[43]

3. Jurisdiction Under Commonwealth Act No. 444

Under this legislation, the cases that reached the Supreme Court in 1965 dealt with prescription of actions. Section 7-A of Commonwealth Act No. 444, as amended by Rep. Act No. 1993, provides:

> Any action to enforce any cause of action under this Act shall be commenced within three years after the cause of action accrued, otherwise, such action shall be forever barred; *Provided, however,* that actions already commenced before the effective date of this Act shall not be affected by the period herein prescribed.

The proviso took effect on June 22, 1957.

In *Billones v. Court of Industrial Relations*[44] and *Villardo v. Court of Industrial Relations,*[45] the issue before the Court was whether Republic Act No. 1993, which introduced the amendment to Section 7-A of Commonwealth Act No. 444, is a valid exercise of legislative power and if so whether it has retroactive effect or not.

The Supreme Court ruled that the very wording of the amendment indicates that it has a retroactive effect. In other words,

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[40] Section 17, Com. Act No. 103.

[41] *Pepsi-Cola Bottling Company v. Philippine Labor Organization,* G.R. No. L-3506, Jan. 31, 1951; *San Pablo Oil Factory, Inc. v. Court of Industrial Relations,* G.R. No. L-18270, Nov. 28, 1962.

[42] *Northwest Airlines, Inc. v. Northwest Airlines Philippines Employees Association,* G.R. No. L-17378, April 30, 1962.

[43] *Nahag v. Roldan,* 94 Phil. 88 (1953).

[44] G.R. No. L-17566, July 30, 1965.

[45] G.R. No. L-17567, July 30, 1965.

actions filed prior to June 22, 1957, the date when the amendments took effect, are not affected by the 3-year period provided in the amendment. The prescriptive period in such cases is still governed by the statute of limitations existing prior to June 22, 1957. But actions filed under Commonwealth Act No. 444 after June 22, 1957 are governed by the new 3-year prescriptive period counted from the time the cause of action has accrued.

4. Jurisdiction Under Republic Act No. 602

In several cases decided before 1965,[46] the Supreme Court ruled that actions to enforce check-off agreements fall within the jurisdiction of the Court of Industrial Relations. In 1965, the Court encountered the same problem in *Oriental Tin Cans Employees' Union v. Court of Industrial Relations*[47] and, in an opinion by Mr. Justice J. P. Bengzon, reversed its position in the former cases.

In the *Oriental Tin Cans Employees' Union* case, the employees agreed to check-off their union dues by means of individual authorizations. It does not appear, however, whether the check-off was also agreed upon as a condition of the collective bargaining agreement. In any event, the employer refused to deduct the union dues from the salaries of his employees, which prompted the union to file a case to force the employer to check-off the union dues. A motion to dismiss based on the ground of lack of jurisdiction of the Court of Industrial Relations over the subject matter was sustained by a 3-to-2 vote of the Court of Industrial Relations sitting *en banc*. Not satisfied with the action of the lower court, the union appealed to the Supreme Court on a question of jurisdiction, affirming the proposition that jurisdiction to enforce check-off authorized by employees pertains to the Court of Industrial Relations, pursuant to the decision of the Supreme Court in *Campos v. Manila Railroad Company*[48] that controversies arising under the Minimum Wage Law fall within the jurisdiction of the Court of Industrial Relations. But the Court stated that its decision in the 1962 *Campos* case should not be taken to mean that every case arising under the Minimum Wage Law falls within the jurisdiction of the Court of Industrial Relations.

The Supreme Court is right. In the previous case of *Philippine Sugar Institute v. Court of Industrial Relations*,[49] the Court specifically stated that only controversies involving claims of minimum wages under the Minimum Wage Law come within the juris-

[46] *A. L. Ammen Transportation Co., Inc. v. Bicol Transportation Employees Mutual Association*, 91 Phil. 649 (1952); *Manila Trading & Supply Company v. Manila Trading Labor Association*, 93 Phil. 288 (1953); *Price Stabilization Corporation v. Court of Industrial Relations*, G.R. No. L-9797, Nov. 29, 1957.

[47] G.R. No. L-17695, Feb. 26, 1965.

[48] G.R. No. L-17905, May 25, 1962.

[49] G.R. No. L-13098, Oct. 29, 1959.

dictional competence of the Court of Industrial Relations. Even this was too broad, and in the subsequent cases of *Valleson, Inc. v. Tiburcio*[50] and *Magdalena Estate, Inc. v. Bañgilan*[51] the Court clarified its holding in the *Philippine Sugar Institute* case.

In these post *Campos* cases, the Supreme Court stated that pursuant to Section 16(b) and (c) only claims for minimum wages above the applicable statutory minimum and claims for minimum wages involved in an actual strike fall within the jurisdictional competence of the Court of Industrial Relations.

Going back to the 1965 *Oriental Tin Cans Workers' Union* case, the Supreme Court noted that the issue involved the enforcement of check-off authorized by the employees. Since this type of cases does not fall within Section 16(b) and (c) of the Minimum Wage Law, although it arises under Section 10 of said Act, then it is outside the jurisdiction of the Court of Industrial Relations and falls within the authority of the regular courts, pursuant to Section 16(a) of the said Act.

But there is need to clarify the ruling of the Supreme Court in the 1965 *Oriental Tin Can Employees' Union* case. It is not quite precise to say that all actions for the enforcement of check-off do not fall within the jurisdiction of the Court of Industrial Relations. If check-off is a term or condition of a collective bargaining contract, then the Court of Industrial Relations retains jurisdiction over a case involving its enforcement under its power to enforce collective bargaining agreements.

5. Jurisdiction Under Republic Act No. 875

Under Republic Act No. 875, the Court of Industrial Relations has authority to hear and decide 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).
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> (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.
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> (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.
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> (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).

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[50] G.R. No. L-18185, Sept. 28, 1962.
[51] G.R. No. L-16357, April 22, 1963.

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

(7) Cases involving the interpretation and enforcement of collective bargaining 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 1965, the decisions of the Supreme Court touching on the jurisdiction of the Court of Industrial Relations under the Industrial Peace Act involved only the first, second and fifth class of cases in the foregoing list.

a. Over Cases Involving Unfair Labor Practices

There is no question that under Section 5(a) of the Industrial Peace Act of the Court of Industrial Relations is given the exclusive jurisdiction over this type of cases. No useful purpose will be served by discussing a matter about which you are all familiar with. It is enough to enumerate the unfair labor practice cases decided by the Supreme Court in 1965, namely, *Visayan Bicycle Manufacturing Co., Inc. v. NLU*,[52] and *Manila Pencil Company, Inc. v. Court of Industrial Relations*.[53]

But it is important to note a very substantial aspect of the grant of jurisdiction to the Court of Industrial Relations, although this point was not involved in the 1965 cases. Under Section 5(a) and (b) of the Industrial Peace Act, the exclusive jurisdiction granted to the Court of Industrial Relations to prevent or adjust an unfair labor practice can be carried out only in the manner provided in Section 5(b) and (c) and Section 18 of the Act. The authority of the court cannot be affected by any other means of adjustment or prevention even thought it may have been established by the agreement of the parties, by some provision of a code, law or otherwise, nor by any pre-trial procedure or mediation and conciliation as provided in Section 4 of Commonwealth Act No. 103. The purpose of this strict provision is to guarantee a thorough ventilation of the unfair labor practice charge so that proper remedial measures may be provided and applied. This is in line with the national policy of the Industrial Peace Act of creating, maintaining, and promoting industrial peace. This is unlike the situation obtaining in ordinary conflicts of private claims, wants or demands

[52] G.R. No. L-16903, Aug. 31, 1965.
[53] G.R. No. L-19997, May 19, 1965.

which may be adjusted or prevented by resorting to mediation or pre-trial procedure. The basis of the difference in approach is obvious. Conflicts involving unfair labor practices implicate also the productive economy of the country.

(1) Unfair Labor Practices

(a) Interrogation or Polling of Employees

Section 4(a) (1) of the Industrial Peace Act provides that it shall be an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of their right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection.

There are many independent types of this particular employer unfair labor practice. That which has to do with interrogation or polling employees concerning their union affiliation or activities figured in the 1965 case of *Philippine Steam Navigation Co. v. Philippine Marine Officers Guild.*[54]

As far as I know, this is the second time that this particular independent form of 4(a)(1) ULP reached the Supreme Court. The first was the 1956 case of *Scoty's Department Store v. Micaller.*[55] But then, as in 1965, the Court missed the opportunity of laying down the principles for the solution of the problems involved in this particular independent type of employer unfair labor practice. In particular, the Court, in applying the holding in the 1956 *Scoty's Department Store* case to the 1965 *Philippine Steam Navigation* case, overlooked the substantial variance between interrogations conducted by executive officials (the fact involved in the 1956 *Scoty's Department Store* case) from interrogations made by supervisory employees (with which the 1965 *Philippine Steam Navigation Co.* case was concerned) as well as the material distinction between the purpose of the interrogation in the 1956 *Scoty's Department Store* case (to interfere with and restrain the employees in their union activities) and the objective of the interrogation in the 1965 *Philippine Steam Navigation* case (to ascertain the alleged majority command of the union in order to negotiate with it if true). Obviously, the actual or likely effect of interrogations made by different types of management personnel upon the employees constitute varying degrees of interference with, restraint or coercion of the rights of employees protected in Section 3 of the Industrial Peace Act.

[54] G.R. Nos. L-20667 and L-20669, Oct. 29, 1965.
[55] G.R. No. L-8116, Aug. 25, 1956, 52 O.G. (11) 5119.

But in both cases the Supreme Court generalized the solution of a problem that clearly calls for conditional answers. In the 1956 *Scoty's Department Store* case, the Court speaking through Mr. Justice Bautista Angelo, ruled:

> The industrial court had made a careful analysis of the evidence and had found that petitioners have really subjected complainant and her co-employees to a series of questioning regarding their membership in the union or their union activities which in contemplation of law are deemed acts constituting unfair labor practice [Section 4(a)(4), Republic Act No. 875].

And in the 1965 *Philippine Steam Navigation* case, the Supreme Court, in an opinion by Mr. Justice J. P. Bengzon, held:

> The rule in this jurisdiction is that subjection by the company of its employees to a series of questioning regarding their membership in the union or their union activities in such a way as to hamper the exercise of free choice on their part, constitutes unfair labor practice.

The material facts in these two cases are important to a proper understanding and application of the principles governing this particular independent form of employer unfair labor practice. I shall, therefore, state them briefly.

In the *Scoty's Department Store* case, Nena Micaller organized the employees of Scoty's Department Store into a labor organization, which later affiliated with the National Labor Union. Nena Micaller and her co-employees were interrogated by no less than the owners and operators of Scoty's Department Store concerning their union membership and activities. At various times these interrogations occurred right in the manager's office. In Nena Micaller's case she was also interrogated in the office of the lawyer of the owners-operators of Scoty's Department Store. At one time she was interrogated right in her own home and was even made to sign a statement of withdrawal from the union. And as final step, the manager of Scoty's Department Store, who is also one of the owners, interrogated right in his office each and every employee concerning their union activities and membership and threatened to close the store if they did not stop and withdraw from or dissolve the labor union. In the *Philippine Steam Navigation Company* case, the labor union transmitted a set of economic proposals to the company, with a request for collective bargaining. At the end of the 10-day period provided by law to reply to the union's demands, the employer asked the union to prove its majority command before negotiating with it. On the same day, the employer, through its supervisory employees, interrogated the rank and file employees solely to check if they had joined the union or had authorized it to represent them for purposes of collective bargaining. The union,

however, insisted that the employer first bargain with it before submitting proof of its majority representation. Since the employer refused to yield on this point, the union filed a notice of strike on the ground that the employer had refused to bargain with it, and thereafter, went on a strike.

Under the facts of the *Scoty's Department Store* case, there is no question that the interrogation of the employees concerning their union affiliation and activities was an unfair labor practice on the part of the employers. The interrogation interfered with and restrained the employees in the excercise of their rights under Section 3 of the Industrial Peace Act.

But I have serious doubts about the holding of the Supreme Court in the *Philippine Steam Navigation case.* The material facts of the *Scoty's Department Store* case are so different from those of the *Philippine Steam Navigation* case that the application by the Supreme Court of the holding in the former case is suspect in the latter case. First, the interrogation in the *Scoty's Department Store* case was done by the owners-operators themselves, while the interrogation in the *Philippine Steam Navigation* case was done by supervisory employees only. Second, in the *Scoty's Department Store* case, the owners-operators exhibited their pronounced anti-union background (a very important negative element in this type of employer unfair labor practice) when they forced Nena Micaller to withdraw from the union and threatened all their employees with economic reprisal for having joined the union and refusing to withdraw therefrom or dissolve it. In the *Philippine Steam Navigation* case, the supervisory employees admitted interrogating the rank and file about their union affiliation but only to ascertain the alleged majority command of one of the competing labor unions in order to see whether the company has a legal duty to bargain with it. This is a valid, legitimate purpose. Indeed, Section 12(a) of the Industrial Peace Act allows it.

Let us now examine the abiding principles governing this independent form of 4(a)(1) employer unfair labor practice.

It is not unlawful *per se* to interrogate employees or to poll them about their union loyalties. It becomes an unfair labor practice only "if *under all the circumstances,* such interrogation reasonably tends to interfere with, restrain or coerce employees in the exercise of their rights under the Act."[56] Thus, if under all the circumstances, that is to say, considering the total conduct of the employer the interrogation was done in the context of employer anti-unionism and has had a coercive economic impact on the employees, then the

[56] *A. L. Gilbert Company,* 110 NLRB 2067 (1955); *Blue Flash Express, Inc.,* 109 NLRB 591 (1954).

interrogation is an unfair labor practice. Tested by these principles, the employers in the 1956 *Scoty's Department Store* case had undoubtedly committed an unfair labor practice. As stated above, the interrogation of the employees concerning their union affiliation and activities was systematic, the interrogation was conducted by the owners-operators themselves, the purpose of the interrogation was to interfere with and restrain the employees in the exercise of their rights under Section 3 of the Industrial Peace Act, and the employers intimidated the employees with economic reprisal by threatening to close the store if they did not withdraw from and dissolve their union.

On the basis of foregoing principles, the employer in the 1965 *Philippine Steam Navigation* case, should have been absolved of the charge of 4(a)(1) ULP. The Supreme Court itself found that there was no coercive effect of the interrogation conducted by the supervisors of the company, no intimidation of economic reprisal, that is to say, threat of loss of jobs, and that the reason for asking the employees about their union affiliation was merely to verify the claim of the labor union that it had a majority command of the employees to clear the way for its recognition and hasten collective bargaining. The Court, however, felt that it was fatal to the employer's cause that the interrogation was conducted on the same day that the company asked the union to prove its claim of majority control. But this is not crucial. The Industrial Peace Act does not draw any distinction on this point. Indeed, Section 12(a) of the Act encourages employers to recognize unions who represent a majority of their employees and bargain with them even without the intervention of the Court of Industrial Relations. What is odd indeed is for the union claiming to have a majority command to refuse to prove it to the employer. Thus, it had been held in many cases that interrogation of employees on matters into which the employer has a legitimate cause to inquire is not an unfair labor practice. Furthermore, the Court itself accepted the test expressed in the *Gilbert* and *Blue Flash* cases, that the unfairness of the interrogation of employees concerning their union affiliation and activities depends not on the timing of the interrogation but on the illegality of purpose and the threat of economic reprisal. In other words, the coerciveness of the interrogation depends not on just one factor but on totality of the conduct of the employer. This problem cannot really be solved without having to go into such matters as the place of interrogation, *i.e.*, whether in the office of authority or in the regular place of work; the time of interrogation, *i.e.*, whether on company time or on employee time; the information sought, *i.e.*, whether on matters hostile to unionism or merely matters of normal inquiry; the manner of attendance of the employees, *i.e.*, whether com-

pulsory or voluntary; and the attitude of the employer, *i.e.*, whether there is a threat of economic reprisal or assurance against reprisals.

(b) Discrimination on Grounds of Union Activities

Section 4(a)(4) of the Industrial Peace Act provides 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.

Obviously, not every employer discrimination is unfair labor practice. The law contemplates only those discriminatory acts which interfere with the rights of employees guaranteed in Section 3 of the Industrial Peace Act. In other words, under Section 4(a)(4) of the Industrial Peace Act, an employer may discriminate for any reason whatsoever, except when he does so on grounds of union affiliation and activities.

There are, of course, several requisites for a finding of illegal discrimination. First, the aggrieved employee must be an "employee" within the meaning of the term in Section 2(d) of the Industrial Peace Act. Second, the aggrieved employee must be in the lawful exercise of his right under the Act. Third, the discriminatory act encourages or discourages union affiliation and activities.

The third requisite figured in the case of *Visayan Bicycle Manufacturing Co., Inc. v. National Labor Union.*[57] In this case, the problem of whether or not the discriminatory act of the employer discouraged union affiliation and activity was further complicated by the fact that the employees were dismissed for allegedly fighting with other employees. But the Supreme Court, upon examining the record of the case, concluded that there was substantial evidence therein to support the finding of the Court of Industrial Relations the dismissal of the aggrieved employees was really based on their union affiliation and activities and not on the allegation that they violated company rules against fighting among employees on company premises. It turned out that it was the employer himself who staged-managed the fight between the dismissed employees and the employees who were hired only the week prior to the incident. The Supreme Court ruled that since there is substantial evidence in the record that the employer's motivation in discriminating against his employees was to get rid of them because of their union affiliation or activities, then the employer's use of another reason, whatever its semblance of validity may be, cannot prevail.

But there is an equally important question in this connection which was not brought out in the case under review. And I think

[57] G.R. No. L-19997, May 19, 1965.

it is too important to bear passing without being considered here. The question is whether it is indispensable for a finding of violation of Section 4(a) (4) of the Industrial Peace Act that there be direct evidence on the employer's intent to encourage or discourage membership in a labor organization. The law is silent about this. There are, of course, certain types of illegal discriminatory acts which, when proved, sufficiently exhibit the motivation of the employer to discourage or encourage union affiliation and activities. It is in this case that there is no need to show encouragement or discouragement of union membership by direct evidence. It is enough that the discriminatory act tends to encourage or discourage union membership. And it is immaterial that the employer did not intend the result of his illegal discriminatory act on the principle that a person is considered to have intended the foreseeable consequences of his conduct. It is when the employer has no anti-union background that direct evidence is necessary for a finding of illegal discrimination against his employees.

(2) Appeals in Unfair Labor Practice Cases

The review of the decisions of the Court of Industrial Relations in unfair labor practice cases by the Supreme Court is based on Section 6 of the Industrial Peace Act. It is therein provided that the findings of the Court of Industrial Relations with respect to questions of fact if supported by substantial evidence on the record shall be conclusive.

A serious question is involved in this seemingly innocent provision. Is it enough that there is evidence to support the findings of fact made by the Court of Industrial Relations, regardless of the possibility, not entirely remote, that there may be contrary evidence in the record of the unfair labor practice case? Is there no standard for reviewing the reasonableness or validity of the findings of fact of the Court of Industrial Relations in unfair labor practice cases?

A few years back,[58] the Supreme Court reiterated the rule expressed in *Dee C. Chuan v. Nahag*,[59] that "as long as there is evidence to support the decision of the Court of Industrial Relations, this Court should not interfere, nor modify or reverse it, just because it is not based on overwhelming or preponderant evidence." Obviously, this pronouncement takes in less than it should due to its singularity. Nevertheless, the Supreme Court continued to hold that the findings of fact of the Court of Industrial Relations should be considered conclusive "as long as the same is supported by evi-

[58] *National Labor Union v. Court of Industrial Relations*, G.R. No. L-14975, May 15, 1962; *National Development Co. v. Court of Industrial Relations*, G.R. No. L-15422, Nov. 30, 1962.

[59] G.R. No. L-7201, Sept. 22, 1954.

dence"[60] on the ground that the rule of substantial evidence rather than the rule of preponderance of evidence prevails in the Court of Industrial Relations.[61] The decisions of the Supreme Court in 1965 on this matter have not been consistent either. In *National Shipyard and Steel Corporation v. Court of Industrial Relations*,[62] the Supreme Court, speaking through Mr. Justice Regala, reiterated the view that the Court will not disturb the findings of fact of the Court of Industrial Relations so long as there is "sufficient" evidence in the record to support it. Then in two later cases, *Manila Pencil Company, Inc. v. Court of Industrial Relations*,[63] and *Philippine Steam Navigation Co. v. Philippine Marine Officers Guild*,[64] the Court, in an opinion by Mr. Justice Makalintal, in the first case, and by Mr. Justice J. P. Bengzon, in the second, held that the findings of fact of the Court of Industrial Relations are conclusive on and cannot be reserved by the Court if they are supported by substantial evidence on the record.

But these rulings do not solve the question for it is safe to say that no findings of fact of the Court of Industrial Relations will beg for evidence in the record of the case to support it. The answer to the question is really tied up with the consideration of contrary evidence in the record.

It seems to me that, on the whole, Section 6 of the Industrial Peace Act does not preclude the review of the findings of fact of the Court of Industrial Relations when such findings are not supported by "substantial" evidence in the record, that is, relevant evidence which a reasonable mind would accept as adequate to support a conclusion.[65] This can only mean that the Supreme Court is not without responsibility for the reasonableness or validity of the findings of fact of the Court of Industrial Relations. The clearest implication of this is that the Supreme Court cannot just disregard contrary evidence in the record.

Before the amendment of the American prototype of the Industrial Peace Act, it was provided that the findings of fact of the National Labor Relations Board if supported by evidence shall be conclusive.[66] The Supreme Court of the United States interpreted the word "evidence" to mean "substantial evidence."[67] Thus, the

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[60] *Industrial, Commercial and Agricultural Workers Organization v. Jose S. Bautista*, G.R. No. L-15639, April 30, 1963.

[61] *Iloilo Chinese Commercial School v. Fabrigar*, G.R. No. L-16600, Dec. 27, 1961.

[62] G.R. No. L-20838, July 30, 1965.

[63] G.R. No. L-16903, Aug. 31, 1965.

[64] G.R. Nos. L-20667 and L-20669. Oct. 29, 1965.

[65] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635.

[66] Section 10(e) and (f), National Labor Relations Act (1936).

[67] *Washington V. & M. Coach Company v. National Labor Relations Board*, 301 U.S. 142, 81 L. Ed. 965, 57 S. Ct. 648 (1937).

reviewing court must take into account whatever in the record of the case fairly detracts from the evidence on which the findings of fact of the court *a quo* is based. Plainly it would not be "substantial evidence" if contrary evidence in the record of the case is not taken into account. This is the state of the American federal legislation on the matter when Section 6 of the Industrial Peace Act was patterned after it.

Our Supreme Court in adopting the American interpretation in the early case of *United States Lines v. Associated Watchmen and Security Union*[68] held that the term "substantial evidence" does not mean just any evidence but that it means "more than a scintilla, and must do more than create a suspicion of the existence of the fact established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[69] I take this to mean that the evidence, though in the record, would not be adequate unless it prevails over contrary evidence which is also in the record of the case.

b. Over Cases Involving Labor Injunctions

Several cases involving labor injunctions reached the Supreme Court in 1965, namely, *Young Men Labor Union Stevedores v. Court of Industrial Relations*,[70] *BCI Employees and Workers Union v. Pio Marcos*,[71] and *Malayang Manggagawa sa ESSO v. ESSO Standard Eastern, Inc.*[72]

(1) Lawful and Unlawful Union Activities

The treatment of injunctive relief in labor relations cases is not the same as in ordinary cases. Different rules apply. But it can become complicated when an attempt is made to get a labor injunction from a Court of First Instance by omitting any reference to the existence of a labor dispute or unfair labor practice. This may be due to a deliberate attempt to secure an injunctive relief at all cost or to a misconception of the rules in labor relations law applicable to the issuance of labor injunctions.

The key to a proper understanding of this problem lies in the relation, or perhaps the lack of it, between Section 9(a) and Section 9(d) of the Industrial Peace Act.

Section 9(a) of the law provides that no court or administrative agency shall have jurisdiction, except as provided in Section 10 of the Act, to issue any injunction in any case involving or growing out of a labor dispute to prohibit any person from doing, whether

[68] G.R. No. L-12208, May 21, 1958.
[69] See *National Labor Relations Board v. Columbian Enameling and Stamping Co.*, 306 U.S. 292, 83 L. Ed. 660, 58 S. Ct. 501 (1939).
[70] G.R. No. L-20307, Feb. 26, 1965.
[71] G.R. No. L-21016, July 30, 1965.
[72] G.R. No. L-24224, July 30, 1965.

singly or in concert, any of the activities enumerated therein. There is only one explanation to the policy of the law prohibiting the issuance of injunctions in these activities. A close examination of Section 9(a) shows that all the acts mentioned therein are *lawful activities.* In such a situation, the law would rather have the parties themselves resolve their differences involving or growing out of a labor dispute than allow governmental intervention in the form of labor injunctions. But note that the prohibition applies only to cases involving or growing out of a labor dispute, as this concept is defined in Section 9(f)(1) in relation to Section 2(j) of the Industrial Peace Act. In other words, an injunction may be issued when the case does not involve or grow out of a labor dispute or when the parties involved in the case are neither participants nor persons interested in the labor dispute.

Section 9(d) of the Industrial Peace Act, on the other hand, allows the issuance of labor injunctions even in a case involving or growing out of a labor dispute because the acts involved are *unlawful activities.* But note, too, that the law, even in this situation, exacts five conditions before an injunction may be issued. This, no doubt, stems from the policy of unionization and collective bargaining and the withdrawal of governmental intervention in any case involving or growing out of a labor dispute.

But the line drawn by the Industrial Peace Act between lawful and therefore protected activities, which are enumerated in Section 9(a), and unlawful and hence unprotected activities contemplated in Section 9(d) was not quite clear to some of the parties in *Young Men Labor Union Stevedores v. Court of Industrial Relations,*[73] *BCI Employees and Workers Union v. Pio Marcos,*[74] and in *Malayang Manggagawa sa ESSO v. ESSO Standard Eastern, Inc.*[75] In these cases, an attempt was made to apply the conditions enumerated in Section 9(d) of the Industrial Peace Act to the lawful union activities involved in these three cases. Fortunately the Supreme Court did not allow this approach.

The Court, however, in the *ESSO Standard Eastern* case, cannot entirely be free from criticism. While the Court correctly disposed the issue between the parties in said case, it unduly generalized on the relation of Section 9(a) and Section 9(d) of the Industrial Peace Act. In that case, the Supreme Court was dealing with a union activity that is recognized and protected by law. Furthermore, there was no finding of any unlawful acts on the part of the union members. These facts would have sufficed in dissolving the writ of injunction issued by the Court of First Instance of Manila.

[73] G.R. No. L-20307, Feb. 26, 1965.
[74] G.R. No. L-21016, July 30, 1965.
[75] G.R. No. L-24224, July 30, 1965.

But the Court continued in the very next breath with a discussion of the conditions enumerated in Section 9(d) of the Industrial Peace Act. If the Court did not mean to confuse Section 9(a) and Section 9(d) of the Act, so much the better. In any case, its discussion on the issuance of an injunction in a case involving or growing out of a labor dispute subject to the five conditions enumerated in Section 9(d) of the Industrial Peace Act can be dismissed as *obiter dictum*.

(2) Nature of Jurisdiction

The decisions in these cases further bolster the generally accepted rule that the Court of Industrial Relations has jurisdiction to grant labor injunction in cases falling within its exclusive jurisdictional competence. The cases of *PAFLU v. Tan*[76] and *Cueto v. Ortiz*[77] point to the rule that jurisdiction to issue injunction belongs to the regular courts, if the parent case does not come with the authority of the Court of Industrial Relations.

(3) Type of Cases Where Injunction May Issue

This matter was not raised in the cases that reached the Supreme Court in 1965. But there is need to mention it briefly to complete the discussion.

Generally, no labor injunction may be issued by the Court of Industrial Relations under the provision of Section 9 of the Industrial Peace Act. But the Act provides two exceptions: (1) in cases where the subject matter is a labor dispute occurring in an industry indispensable to the national interest, and (2) in cases where the subject matter involves an unlawful and, therefore, unprotected activity.

The requisites for the grant of a labor injunction in the first exception are found in Section 10 of the Industrial Peace Act while the conditions for the issuance of a labor injunction in the second exception are found in Section 9(d) of the Act.

c. Over Cases Involving Representation of Employees

As I stated at the Second Annual Instiute on Labor Relations Law,[78] the basic principle on the matter of representation of employees is found in Section 3 of the Industrial Peace Act. This provision gives the employees, among others, the right to form, join, or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing.

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[76] G.R. No. L-9115, Aug. 31, 1956, 52 O.G. (13) 5836.
[77] G.R. No. L-11555, May 31, 1960.
[78] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW (1964), U.P. Law Center, 251.

(1) Nature of Jurisdiction

In the 1965 cases of *Young Men Labor Union Stevedores v. Court of Industrial Relations*,[79] *Free Employees and Workers Association v. Court of Industrial Relations*,[80] and *Malayang Manggagawa sa ESSO v. ESSO Standard Eastern, Inc.*,[81] the Supreme Court applied Section 12(b) of the Industrial Peace Act which provides that cases concerning the representation of employees fall within the exclusive jurisdiction of the Court of Industrial Relations.

(2) Condition for Certification Election

At the Second Annual Institute on Labor Relations Law[82] I also advanced the proposition that:

> "[E]ven 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."

In the case of *Free Employees and Workers Association v. Court of Industrial Relations*,[83] the Supreme Court, speaking through Mr. Justice Reyes, agreed that:

> The law (jam quot.) does not contemplate the holding of a certification election unless the preliminary inquiry shows a reasonable doubt as to which of the contending unions represents a majority.

III. LABOR DISPUTES

Section 2(j) of the Industrial Peace Act provides as follows:

> The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condi-

[79] G.R. No. L-20307, Feb. 26, 1965.
[80] G.R. No. L-20862, July 30, 1965.
[81] G.R. No. L-24224, July 30, 1965.
[82] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW (1964), U.P. Law Center, 257.
[83] G.R. No. L-20862, July 30, 1965.

> tions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

This provision figured in the case of *Malayang Manggagawa sa ESSO v. ESSO Standard Eastern, Inc.*[84] The question was whether or not a certification election ordered by the Court of Industrial Relations falls within the definition of the term "labor dispute." The Supreme Court, speaking through Mr. Justice Makalintal, held that it does, relying on the early case of *Balaquezon Transportation Labor Union v. Muñoz-Palma.*[85] According to the Court the controversy between the rival unions as to which of them should be the bargaining representative of the employees is a "labor dispute" because it is a controversy concerning the representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms and conditions of employment. The Court brushed aside the argument of ESSO Standard Eastern that the representation case is between the two contending labor unions and that the result of the certification election between them was a matter of unimportance to it. The Court stated that, in any case, the fact was that ESSO Standard Eastern became virtually a disputant when it intervened in the representation case by filing with the Court of First Instance of Manila an *ex parte* petition for preliminary injunction to restrain the strike and picketing of one of the contending labor unions and making common cause with the other union by asking for the dismissal of the petition for certification election.

The Court's decision is in line with Section 12(f) of the Industrial Peace Act, which recognizes the fact that a question concerning the representation of employees may culminate in the holding of a certification election by the Department of Labor whenever the Court of Industrial Relations has a reasonable doubt as to whom the employees have chosen as their bargaining representative despite investigation which it has conducted on the matter.

IV. UNION ACTIVITIES AND PENAL LAWS ON COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE

Were it not for two provisions in the Industrial Peace Act, no union concerted activities would have been safe from the debonaire manner in which labor injunctions were issued under the general terms of Public Act No. 3247 and Article 186 of the Revised Penal Code, as amended by Republic Act No. 1956. These laws prohibit and penalize monopolies and combinations in restraint of trade.

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[84] G.R. No. L-24224, July 30, 1965.
[85] G.R. No. L-12587, Nov. 27, 1959.

Under Public Act No. 3247, which was revived by means of a rider to the Public Service Commission Reorganization Law,[86] it is provided, among other things, that every combination in restraint of trade and commerce is declared illegal and punishable by fine or imprisonment. Under Article 186 of the Revised Penal Code, as amended, a fine or imprisonment, or both shall be imposed upon any person or persons who shall enter into any contract or agreement or shall take part in any conspiracy or combination in restraint of trade and commerce and that whenever this offense is committed by any association, any officer or member thereof who shall have knowingly permitted or failed to prevent such offense shall be held liable as principal.

In the enactment of the Industrial Peace Act, Section 9(b) and Section 24 were included for no other purpose than to remove union activities, whether done singly or in concert, from the application and effects of the laws on combination or conspiracy in restraint of trade and commerce. So long as union activities involve or grow out of a labor dispute, as this term is defined in Section 2(j) of the Industrial Peace Act, no labor injunction may be issued except under the terms and conditions of Section 9(d) of the Act.

Section 9(b) of the Industrial Peace Act provides that:

> "No court of the Philippines shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in paragraph (a) above."

The last paragraph of Section 24 of the same Act provides that:

> "No suit, action or other proceeding shall be maintainable in any court against a labor organization or any officer or member thereof for any act done by or on behalf of such organization in furtherance of an industrial dispute to which it is a party, on the ground only that such act induces some other person to break a contract of employment or that it is in restraint of trade or interferes with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or labor."

In 1965, something singular or unusual happened to Section 24 of the Industrial Peace Act on its way to the decision of *Abo v. Philame Employees and Workers Union*.[87]

In the Court of First Instance of Rizal, where this case originated, Section 24 was used as a basis for the dismissal of a complaint based on the ground that the court was without jurisdiction.

[86] Commonwealth Act No. 146.
[87] G.R. No. L-19912, Jan. 30, 1965.

Yet the case did not involve a labor injunction at all but, according to the lower court itself, an unfair labor practice.

In reversing the lower court, the Supreme Court, in an opinion by Mr. Justice Regala, held that "a careful reading" of Section 24 of the Industrial Peace Act "will readily show that it cannot be invoked in the case because the fact that the individual defendants-appellees are officers and/or members of labor unions does not necessarily mean that all their acts are made in furtherance of an industrial dispute." I agree with the Court that "a careful reading" of Section 24 of the Industrial Peace Act shows that it cannot be invoked as a basis for the dismissal of the case but not on the ground suggested by the Court. If Section 24 of the Act has no relevance at all to this case it is due to the fact that it specifically deals with the national policy of removing union activities from the application of Public Act No. 3247 and Article 186 of the Revised Penal Code, and for no other reason.

V. REINSTATEMENT OF EMPLOYEES

A. Nature of Remedy

One of the remedial actions which the Industrial Peace Act requires the Court of Industrial Relations to take in unfair labor practice cases is the reinstatement of employees with or without backpay.

In the case of *San Miguel Brewery, Inc. v. Santos*,[88] the Supreme Court held that reinstatement, as an affirmative remedy, means the restoration of an employee to a state from which he was removed or separated. Thus, in the case of *Philippine-American Drug Company v. Court of Industrial Relations*,[89] the Supreme Court ruled that an employee can be reinstated to his former position or to a similar position, if there be any, or to a substantially equivalent position, but not to a lesser or higher position. To illustrate, an employee who was on a temporary status when illegally discriminated against cannot be reinstated on a permanent basis, unless, of course, the employer consents thereto.

3. Who are Entitled to Reinstatement

In two 1965 cases, *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations*,[90] and *Philippine Steam Navigation Co. v. Philippine Marine Officers Guild*,[91] the Supreme Court, speaking through Mr. Justice Regala, reiterated the rule expressed in 1964 that only those who have been dismissed as a

[88] G.R. No. L-12682, Aug. 31, 1961.
[89] G.R. No. L-15162, April 18, 1962.
[90] G.R. No. L-19778, Feb. 26, 1965.
[91] G.R. Nos. L-20667 and L-20669, Oct. 29, 1965.

result of illegal discrimination and those who have gone on strike because of the employer's unfair labor practices are entitled to reinstatement, except when they have committed acts of violence or other unlawful conduct during the strike or have found substantially equivalent employment elsewhere having in view the policies of the Industrial Peace Act.[92]

There is need, however, to clarify the Court's statement of the rule in the 1965 *Cromwell* case to avoid confusion. In resolving the motion for reconsideration filed by the petitioner, the Court stated the rule in this manner, to wit:

> [A]s far as reinstatement is concerned, both employees who are discriminatorily dismissed as well as those who strike because of the employer's unfair labor practice are entitled to reinstatement. Excepted from the rule are those who, on account of violence or other misconduct during the strike, or who, because of subsequent employment elsewhere, must be deemed to have forfeited the right to reinstatement, having a view the policies of the Industrial Peace Act.

There is something wrong with the syntax here. As it appears in the foregoing statement of the rule, the Court of Industrial Relations seems to have the power to take as a remedial step the reinstatement of employees who have committed acts of violence or other unlawful conduct during the strike when it finds that such a step will effectuate the policies of the Industrial Peace Act. I don't think the Supreme Court meant to say this. For, otherwise, it would be very difficult to have industrial peace with employees who have committed acts of violence or other unlawful conduct against an employer during a strike. Indeed in a 1964 case,[93] the Supreme Court, speaking through Mr. Justice Makalintal, felt very strongly against the step taken by the Court of Industrial Relations which required the reinstatement of employees who were previously convicted of violence and other unlawful acts upon the employer's property during the strike. To be sure, this step is no longer an affirmance but a negation of the legislative policy of creating a sound and stable industrial peace. Even Mr. Justice Regala, who penned the decision in the *Cromwell* case, when it was first before the Court in 1964, was quite emphatic about this. There he said that the Court of Industrial Relations cannot order reinstatement of employees convicted of violence upon the employer's property for this would mean the application of a step beyond the point which the object of effectuating the policy of the Industrial Peace

[92] *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations*, G.R. No. L-19778, Sept. 30, 1965.

[93] *Consolidated Labor Association of the Philippines v. Marsman & Co., Inc.*, G.R. No. L-17038, July 31, 1964.

Act requires.[94] Besides, the Supreme Court had already ruled in the 1965 *Cromwell* case that violence and other unlawful acts are deemed to be a forfeiture of the right of reinstatement.

The consideration of the policies of the Industrial Peace Act is in order only in the case of employees who have been illegally discriminated against even when they have found substantially equivalent and regular employment elsewhere, unless, prior thereto, they were involved in violence upon the employer's property or other unlawful acts during the industrial dispute. The power to neutralize illegal discrimination, as Mr. Justice Felix Frankfurter held in *Phelps Dodge Corporation v. National Labor Relations Board,*[95] is not lost merely because the employees concerned have obtained substantially equivalent and regular employment elsewhere. This would be the case if the problem involved only monetary considerations. But this question is unique in that it involves more than just money. The rights and other benefits enjoyed by the employees prior to their illegal dismissal, such as seniority and leave privileges, which do not immediately attach to a newly found employment, are very relevant in the pursuit and implementation of the policies of the Act. Therefore, the factor of "substantially equivalent and regular employment" does not by itself preclude the court from undoing the illegal 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."

I think that the statement of the rule made by the Supreme Court in 1964[96] is preferable to that made by the Court in 1965.[97] In the 1964 cases, the Court considered the policy of industrial peace only in the case of employees who have found substantially equivalent and regular employment elsewhere, but excluding those who have committed acts of violence or other unlawful acts during the strike on the employer's property. I think the rule is best stated in the following terms: only those who have been dismissed as a result of illegal discrimination and those who have gone on strike

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[94] *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations,* G.R. No. L-19778, Sept. 30, 1964.

[95] 313 U.S. 177, 85 L. Ed. 1271, 61 S. Ct. 845 (1941).

[96] See *Consolidated Labor Association of the Philippines v. Marsman & Co., Inc.,* G.R. No. L-17038, July 31, 1964; *Marsman & Co., Inc. v. Consolidated Labor Association of the Philippines,* G.R. No. L-17057, July 31, 1964; *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations,* G.R. No. L-19778, Sept. 30, 1964.

[97] See *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations,* G.R. No. L-19778, Feb. 26, 1965.

because of the employer's unfair labor practice are entitled to reinstatement, except when they have committed acts of violence on the employer's property or other unlawful acts during the strike or have found substantially equivalent and regular employment elsewhere unless, in the latter case, there is a finding that the policy of industrial peace would be effectuated or affirmed by their reinstatement.

C. Reinstatement with Backwages

Section 5(c) of the Industrial Peace Act provides, in part, 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 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 action 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 seniority."

In *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations*,[98] the Supreme Court confirmed the distinction between illegally dismissed employees and those who strike even in protest against the employer's unfair labor practice. On the basis of this cut, the Court reiterated the rule that only the former are entitled to backpay. According to the Court, those who join the strike in protest against the employer's unfair labor practice are not entitled to backpay unless, after giving up the strike and they seek unconditional reinstatement, the employer refuses to accept them or imposes discriminatory conditions for their reinstatement. The reason of the Court for disallowing backpay to those who strike in protest against the illegal dismissal of the employees is based on the fact that the stoppage of work is not the direct consequence of the employer's unfair labor practice. Therefore, their economic loss should not be shifted to the employer.[99]

It should be noted that the Court places two concurrent conditions for an award of backpay to employees who have gone on an unfair labor practice strike. First, the unfair labor practice strikers must have unconditionally applied for reinstatement after giving up the strike. Second, the employer refuses to reinstate them or, agreeing to do so, imposes new conditions that constitute discrimination. And, according to the Court, an offer for reinstate-

[98] G.R. No. L-19778, Feb. 26, 1965.
[99] *Dinglasan v. National Labor Union*, G.R. No. L-14183, Nov. 28, 1959; *American Manufacturing Co.*, 5 NLRB 443.

ment is unconditional when the striking employees seek to return to work under the same working conditions and terms of employment prior to the strike.[100] On the other hand, the abandonment of the unfair labor practice strike must be in fact and not in form only to qualify for backpay.

VI. SUPERVISORY EMPLOYEES

The meaning of the term "supervisor" in the Industrial Peace Act got involved in a 1965 decision of the Supreme Court.

The problem should really not be difficult, but for the fact that sometimes supervisory employees join the rank and file group in a plant or establishment. The question is whether this is an unfair labor practice under the Industrial Peace Act.

In the case of *Magalit v. Court of Industrial Relations,*[101] Geronimo Cuadra was charged with unfair labor practice under Section 4(a)(1) of the Industrial Peace Act in that being a supervisor he joined the rank and file employees of the Philippine Charity Sweepstakes Office. Whether or not this was an unfair labor practice depends on the meaning given by the Industrial Peace Act to the term supervisor.

Section 2(k) of the Industrial Peace Act defines a supervisor to mean "any person having authority in the interest of an employer, to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline other employees, or responsibly to direct them, and to adjust their grievances, or effectively to recommend such acts if, in connection with the foregoing, the exercise of such authority is not of a merely routinary or clerical nature but requires the use of independent judgment." Obviously, this definition contains a broad statement of the various functions of a supervisor, which are: (1) to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline other employees, (2) to responsibly direct employees and adjust their grievances, and (3) to effectively recommend such actions. The test, however, is whether a person possesses the authority to act in the interest of his employer and whether the exercise of such authority is not merely routinary or clerical but one which requires the use of independent judgment. A person may have authority to exercise these functions or may even have the title of "supervisor" but still not be a supervisor within the meaning of that term in the Industrial Peace Act. This was very well brought out in the 1963 case of *National*

[100] *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations*, G.R. No. L-19778, Sept. 30, 1964.
[101] G.R. No. L-20448, May 25, 1965.

Merchandising Company, Inc. v. Court of Industrial Relations.[102] In that case the Supreme Court noted that while the so-called supervisors had acted in the interest of their employer, nevertheless, the exercise of their authority were subject to evaluation, review and final decision by the executive officers of the company. The Court correctly concluded that the acts of the so-called supervisors did not involve the use of independent judgment.

In the *Cuadra* case, the Supreme Court, in an opinion by Mr. Justice Bautista Angelo, reiterated the rule that the facts surrounding each case determines whether the functional test has been met or not. According to the Court, the nature of the position and the functions and duties incidental thereto provide the answer to the problem of whether a person is a supervisor or not. The Court was not, however, clear on whether a supervisor, within the meaning of that term in the Industrial Peace Act, may join the rank and file employees. The answer, of course, depends on whether the rank and file employees are under his supervision or not. Section 3 of the Industrial Peace Act does not prohibit persons employed as supervisors from joining the rank and file employees. Under the Act, supervisors are ineligible for membership only in a labor organization of employees who are under their supervision.

The Cuadra decision revives the ruling in National Merchandising Company, Inc. v. Court of Industrial Relations[103] and overrules the decision in *Binalbagan-Isabela Company, Inc. v. Philippine Association of Free Labor Unions.*[104]

VII. CERTIFICATION ELECTIONS

A. Nature of Proceedings

There is a distinction between a representation proceeding and a certification election. In the case of *Free Employees and Workers Association v. Court of Industrial Relations,*[105] the Supreme Court emphasized this matter to the Court of Industrial Relations in a rather singular way.

Here the lower court took the position that a representation proceeding is non-adversary in nature and, on this assumption, thought that it could dispense with the right of the other party to confront and cross-examine the lone witness presented at the hearing. In holding that this was erroneous, the Supreme Court held that a representation proceeding is adversary in character and must

[102] G.R. No. L-18719, March 13, 1963.
[103] G.R. No. L-18719, March 13, 1963.
[104] G.R. No. L-18782, Aug. 29, 1963.
[105] G.R. No. L-20862, July 30, 1965.

always be conducted appropriately, that is to say, in accordance with the substantial rules of evidence and procedure.

In the *Free Employees and Workers Association* case, the lower court seemed to have confused the nature of the proceeding in a certification election with that of a representation case. While a certification election is generally a part of a representation proceeding, the former is non-adversary in nature. The thrust of a certification election is merely to ascertain, by means of the secret ballot, the real bargaining representative of the employees. And in this proceeding, the Department of Labor acts merely as an impartial referee between the labor unions who are contending for the right to represent the employees in an appropriate collective bargaining unit. On the other hand, a representation proceeding requires a hearing upon due notice to the parties and on the basis of the evidence adduced by them, decide the question of representation of the employees, certifying to them in writing the labor organization that they have designated or selected for the purpose.

B. When Certification Election in Order

A representation case may be decided by the Court of Industrial Relations without having to order the holding of a certification election. When then is a certification election in order?

This question arose in the case of *Free Employees and Workers Association v. Court of Industrial Relations.*[106] In this case, the labor union sought the revocation of an order issued by the Court of Industrial Relations directing the holding of a certification election. It appears that two labor unions claimed to have the majority of the employees. Because of this conflicting claims, the employer filed a petition in the Court of Industrial Relations asking that a certification election be held to determine the question of representation of his employees. After conducting a hearing, the trial judge found that many employees had dual membership. Finding himself "in a quandary" as to which labor union had the majority of the employees, he ordered the holding of a certification election. A move to reconsider the order was denied by the court *en banc* and the Free Employees and Workers Association brought the case to the Supreme Court for review.

The Court, speaking through Mr. Justice Reyes, correctly ruled that Section 12(b) of the Industrial Peace Act does not contemplate the holding of a certification election unless the Court of Industrial Relations has a reasonable doubt as to whom the majority of the employees have chosen as their bargaining representative.

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[106] *Ibid.*

An interesting side question in this case is whether or not the lower court's "quandary" as to which union really had the majority can be classified as a reasonable doubt that would justify an order to hold a certification election. The Supreme Court felt strongly that under the circumstances in which the hearing was conducted, the lower court's "quandary" does not justify the holding of a certification election by the Department of Labor. In this case, it appears that on the date set for the hearing of the employer's petition for certification election, counsel for the Free Employees and Workers Association, by means of a motion which he previously filed, asked for the postponement of the hearing because he could not be present due to a prior judicial commitment. Upon objection of counsel for Better Buildings Labor Union, the lower court denied the motion for postponement and proceeded to receive the evidence of this union consisting of the testimony of its president and three membership rosters. Later, the lower court granted the petition filed by counsel for the other union asking for opportunity to cross-examine this witness. But on the day set, the witness did not appear prompting counsel for the Free Employees and Workers Association to move for the striking out of the testimony of the witness. The lower court deferred action on this motion until the next hearing. On the day set, the witness did not also appear but the lower court again deferred its ruling. To the surprise of counsel and without handing down its twice deferred ruling the court ordered the holding of a certification election on the theory, which the Supreme Court turned down later, that the right of cross-examination can be dispensed with because a representation proceeding is non-adversary in nature.

The Supreme Court stated that the kind of doubt that will justify the lower court in ordering a certification election to be conducted by the Department of Labor must necessarily depend on the weight of evidence adduced by the competing unions. And this matter cannot be determined properly even if the most substantial rules of evidence and procedure are dispensed with by the trial court.

But there is a disturbing note in the decision of the Supreme Court in the *Free Employees and Workers Association* case which was repeated in the case of *BCI Employees and Workers Union v. Mountain Province Workers Union.*[107] Whereas, Section 12(b) of the Industrial Peace Act mentions only one ground for the holding of certification elections, the Court gave Section 12(b) an expansive interpretation by reading into it Section 12(c) of the Industrial Peace Act. This is also the thinking of the Court of Industrial Re-

[107] G.R. No. L-23813, Dec. 29, 1965

lations in Section 1, Rule II, of its Rules on Certification Election, promulgated in 1953. Thus both the Supreme Court and the Court of Industrial Relations feel that a certification election may be ordered not only when the Court of Industrial Relations has a reasonable doubt as to whom the employees have chosen as their bargaining agent even after conducting an investigation thereon but also when a demand for a certification election is filed by at least ten per cent of the employees or workers.

I'm afraid this view is very difficult to justify under the Industrial Peace Act. Section 12(c) provides as follows:

> In an instance where a petition is filed by at least ten per cent of the employees in the appropriate unit requesting an election, it shall be mandatory on the Court to order an election for the purpose of determining the representative of the employees for the appropriate bargaining unit.

The election contemplated inthis provision is not the certification election. This provision describes only one out of the three methods by which employees in an appropriate collective bargaining unit may select their bargaining representative with the intervention of the Court of Industrial Relations.

The first method, of course, is by petition of an employee or a labor organization as a result of a question arising from the selection held by the employees themselves pursuant to Section 12(a) of the Industrial Peace Act. The second is by petition of an employer under Section 12(d) of the Act when there has been no certification election held during the 12 months prior to the date of the request of the employees for collective bargaining and the employer has doubts as to the bargaining representative of his employees. The third is that described in Section 12(c) of the Act. But in none of these methods is the certification election ordered right away. This is not the first step to be taken by the Court of Industrial Relations. And the requirement that at least ten per cent of the employees must file the petition for election is designed merely to avoid loss of the court's time by discouraging an election asked by employees in which there is little or no prospect of winning it. Note, that Section 12(c) refers to an election and not to a certification election. The authority of the Court of Industrial Relations under Section 12(c) is limited only to the issuance of an order for the holding of an election among the employees to determine their bargaining representative. It's only when a question arises concerning the representation of the employees as a result of that election that the Court of Industrial Relations may investigate such controversy and if it has no doubt as to whom the employees have chosen as their bargaining agent, then the court simply certifies in writing to the parties the name of the union that has

been selected by the majority of the employees. But if after the hearing conducted by the Court of Industrial Relations it still entertains a reasonable doubt as to whom the employees have chosen as their bargaining representative, then and only then can it order a certification election to resolve the doubt.

C. Bar to Repeated Certification Elections

In 1965, an opportunity to develop this concept in labor relations law was presented to the Supreme Court in the case of *BCI Employees and Workers Union v. Mountain Province Workers Union.*[108] Unfortunately, the Court failed to take advantage of the situation and, I'm afraid, even came up with some disturbing conclusions.

Before considering in detail the decision of the Court, there is need to observe the rationale of this labor relations concept.

The most important reason why a valid certification of a labor union should be honored, for a reasonable time at least, is the fact that a certification is no less a warning to an employer, as it is to a rival union, that they cannot undermine a certified labor union, directly or indirectly, and get away with it. Furthermore, in situations where competition among labor unions is keen, strikes and lockouts can be minimized if certification elections and the court certification of the winning labor union are not at the hazard of informal recall. Besides, it is scarcely conducive to bargaining in good faith for an employer to know that if he can undermine a certified labor union his employees will repudiate it and be relieved of his statutory duty to bargain collectively with the certified labor union.

From the narration of the facts by the Supreme Court, it appears that the BCI Employees and Workers Union and the Benguet Consolidated, Inc. had entered into a collective bargaining contract. Prior to the expiration of this collective bargaining contract, the union won in a certification election conducted by the Department of Labor on August 22, 1962. However, after more than 15 months, the union was not able to negotiate a new collective bargaining contract with Benguet Consolidated, Inc. This situation prompted the rival Mountain Province Workers Union to file petition for another certification election. Over the vigorous objection of the BCI Employees and Workers Union, the Court of Industrial Relations ordered the holding of a new certification election. After the court *en banc* denied its motion for reconsideration, the union brought the case to the Supreme Court by means of a petition for review.

[108] G.R. No. L-23813, Dec. 29, 1965.

The main contention of the petitioner revolves on the alleged error of the lower court in ordering a new certification election despite the fact that it was previously chosen as the collective bargaining representative of the employees in a certification election held on August 22, 1962. Laboring on this issue, the Supreme Court ruled that the lower court was correct in ordering a new certification election in view of the fact that more than 15 months had already elapsed since the certification election held on August 22, 1962. The Court, in an opinion by Mr. Justice Bautista Angelo, tried to justify its ruling by means of Section 12(b), which provides that certification elections in the same bargaining unit shall not be ordered more often than once in 12 months, and Section 12(d), which allows an employer to file a petition for an election if there has been no certification election held during the 12-month period prior to the date of the request of his employees. According to the Court, these provisions of the Industrial Peace Act tend to show that after the lapse of 12 months from a certification election another petition for certification election may be filed.

I'm afraid the Court went too hurriedly over this problem. Let me raise some questions about the Court's reasoning and conclusion. One, can the Court assume that the certification period runs from the date of the certification election? Two, can the Court conclude that Section 12(b) and (d) of the Industrial Peace Act tend to show that after the lapse of 12 months from the date of the certification election another certification election can be ordered? And, three, can the Court sanction a new certification election ordered by the Court of Industrial Relations in the face of a subsisting collective bargaining contract?

The answers to these issues will be given in the discussion of the two grounds which bar repeated certification elections.

The first is found right in Section 12(b) of the Industrial Peace Act, which provides that after a certification election the Court of Industrial Relations shall not order certifications in the same collective bargaining unit more often than once in 12 months. This is otherwise known as the "one-year rule." Within this period of time, the incumbent certified labor union must negotiate a collective bargaining contract with the employer or face another election. And during this period a rival union's pretension to another election will not ordinarily be entertained by the Court of Industrial Relations. But when is the one-year period to run? In the 1965 *BCI Employees and Workers Union* case, the Supreme Court reckoned this period from the certification election. The better rule is to toll the certification year from the date the Court of Industrial Relations issues the order certifying to the parties and

employees the winning labor union rather than from the date of its election. There is a real threat to the policy of sound, stable industrial peace in the ruling of the Supreme Court which starts the certification year from the date of the election of the bargaining union. This opens the way for unscrupulous employers and rival labor unions to delay the issuance of the order certifying the winning labor union by means of unfounded objections thereby shortening or even extinguishing the period within which the bargaining union has to negotiate a collective bargaining contract with the employer. A close reading of Section 12(b) of the Industrial Peace Act does not say that the Court of Industrial Relations may order another certification election once the 12-month period has elapsed. It only provides that after a certification election has been held the Court of Industrial Relations cannot order another certification election in the same bargaining unit within the certification year.

The second ground which bars repeated certification elections is the "contract-bar rule" which the Supreme Court itself applied in the case of *General Maritime Stevedors' Union v. South Sea Shipping Line.*[109] The issues that may arise under this concept in labor relations law are more difficult to adjust because of a conflict between two labor relations policies of the Industrial Peace Act. Whenever a substantial number of employees in an appropriate collective bargaining unit desires to be represented by a labor union other than that which had negotiated a collective bargaining contract, the right of representation of employees through representatives of their own choosing collides with the right of contract of the collective bargaining agent and the employer.

This is exactly the problem in the 1965 *BCI Employees and Workers Union* case. Here the bargaining union had a subsisting collective bargaining agreement with Benguet Consolidated, Inc. After the lapse of 15 months from the date of its reelection but before it could negotiate a new collective bargaining contract with management, the rival Mountain Province Workers Union filed a petition for another certification election with the claim that it has the majority of the employees of Benguet Consolidated, Inc.

The conflict between the right of representation of employees and the right of contract of the bargaining union is not however insurmountable. The key is found in the fundamental policy of the Industrial Peace Act to eliminate the causes of industrial unrest and to create a sound and stable industrial peace for the sake of the productive economy. The "contract-bar rule", which was developed to solve this dilemma, provides that a collective bargaining contract

[109] G.R. No. L-14689, July 26, 1960, 60 O.G. (37) 5802.

of reasonable duration is a bar to repeated certification elections even if the collective bargaining contract is for a period of more than one year. It is on this point that the holding of the Supreme Court in the 1965 *BCI Employees and Workers Union* case has somehow failed. For in the face of the fact that there was a subsisting collective bargaining contract between the bargaining union and the employer, it was surprising that the Court sanctioned the order of the lower court for another certification election without any finding as to whether the subsisting collective bargaining contract is for a reasonable period or not.[110] This is not the time to discuss the question of what a reasonable contract period is. But suffice it to say that the answer to the question depends on whether the collective bargaining contract is of a fixed or uncertain duration, and in the former case whether or not it is for two or more years.

VIII. UNION SECURITY AND STRENGTH

There are two main forms of union security arrangement that have been developed to a remarkable degree by labor organizations, namely, the check-off and the closed-shop.

In our jurisdiction, the Supreme Court has advanced a variation of the closed-shop arrangement, which Mr. Justice Roberto Concepcion called the "limited closed-shop" in *Confederated Sons of Labor v. Anakan Lumber Co., Inc.*[111]

A. Check-Off

In the case of *Manila Trading and Supply Co. v. Manila Trading Laborers Association,*[112] the Supreme Court upheld check-off on the theory that it is necessary for the promotion of the welfare and integrity of labor unions. This ruling was followed in the case of *Oriental Tin Cans Employees' Union v. Court of Industrial Relations.*[113]

In this case the primary issue was whether the Court of Industrial Relations has jurisdiction to enforce check-off previously authorized by employees. Since the question involved in this case had nothing to do with the legality of the union security arrangement but with the problem of jurisdiction to enforce check-off, I discussed this case in the section dealing with the jurisdiction of the Court of Industrial Relations.

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[110] *PLDT Employees' Union v. Philippine Long Distance Telephone Company,* G.R. No. L-8130, Aug. 20, 1955, 51 O.G. (9) 4519; and *General Maritime Stevedores' Union v. South Sea Shipping Line,* G.R. No. L-14689, July 26, 1960, 60 O.G. (37) 5802.

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

[112] G.R. No. L-5783, May 29, 1953, 49 O.G. (6) 2279, 93 Phil. 228.

[113] G.R. No. L-17695, Feb. 26, 1965.

B. Closed-Shop

To undergird the public policy of encouraging trade unionism and to provide some measure of union security, Section 4 (a) (4) of the Industrial Peace Act authorized the closed-shop employment arrangement, provided that the parties agree on it and that the labor union is the duly constituted bargaining agent of the employees. The proviso of Section 4(a) (4) provides 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 selection provided in Section 12 of the Act.

1. Nature and Function of the Closed-Shop

The issue that has bothered the Supreme Court over the past several years deals with the scope of the closed-shop arrangement authorized in Section 4(a) (4) of the Industrial Peace Act. Does it cover employees who are already employed on or before the date of the execution of a collective bargaining contract and those who are already members of other labor organizations?

2. The Conflicting Court Interpretations

There are three schools of thought in the Supreme Court on the question of the scope of the closed-shop arrangement. Necessarily, they can't all be correct. Unfortunately, it is very difficult to identify the members of the Supreme Court in each group because they seem to have no difficulty in moving from one group to another on this question.

The first school of thought holds the view that if the closed-shop arrangement agreed upon does not explicitly provide that employees must remain members of the bargaining union in good standing to keep their jobs and that discontinuance of membership is a ground for dismissal, then it covers only those persons who are hired by the employer after the signing of the labor contract and does not affect his right to retain those already employed even if they are not union members.[114] As stated before, Mr. Justice Concepcion, who spoke for a full Court, categorized this kind of shop arrangement as a "limited closed-shop."

The second school of thought holds the view 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

[114] *Confederated Sons of Labor v. Anakan Lumber Co.*, G.R. No. L-12503, April 29, 1960.

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 after the execution of the collective bargaining contract and are not yet members of any other labor organization. This is the sum of the holdings of the Supreme Court in *Local 7, Press & Printing Free Workers v. Emiliano Tabigne,*[115] *Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations,*[116] *Talim Quarry Company, Inc. v. Gavino Bartola,*[117] *Findlay Millar Timber Company v. Philippine Land-Air-Sea Labor Union,*[118] *Kapisanan ng mga Manggagawa ng Alak v. Hamilton Distillery Company,*[119] *Industrial, Commercial and Agricultural Workers Organization v. Jose S. Bautista,*[120] *United States Lines v. Associated Watchmen and Security Union,*[121] *Big Five Products Workers Union v. Court of Industrial Relations,*[122] *National Brewery & Allied Industries Labor Union v. San Miguel Brewery, Inc.,*[123] and *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations.*[124] The latest addition to this list is the 1965 case of *Santos Juat v. Court of Industrial Relations.*[125]

The third school of thought holds to the view that the closed-shop arrangement is simply an employment arrangement under which no person can be employed nor keep his employment unless he becomes 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. This position was taken by the Supreme Court in the cases of *Victorias Milling Co., Inc. v. Victorias-Manapla Workers Organization*[126] and *Victorias-Manapla Workers Organization v. Court of Industrial Relations.*[127]

3. The 1965 *Santos Juat* Decision

I think that in this case, the Supreme Court has escalated the confusion when it applied the second view on the scope of the closed-shop arrangement to the provision of a collective bargaining agreement which happens to provide for the "limited closed-shop". Furthermore, the Supreme Court in effect held in this 1965 case that the closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act applies only to persons who are to be hired and to employees who are not yet members of any labor organization.

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[115] G.R. No. L-16093, Nov. 29, 1960.
[116] G.R. No. L-16517, Jan. 28, 1961.
[117] G.R. No. L-15768, April 29, 1961.
[118] G.R. Nos. L-18217 and L-18222, Sept. 29, 1962.
[119] G.R. No. L-18112, Oct. 30, 1962.
[120] G.R. No. L-15639, April 30, 1963.
[121] G.R. No. L-15508, June 29, 1963.
[122] G.R. No. L-17600, July 31, 1963.
[123] G.R. No. L-18170, Aug. 31, 1963.
[124] G.R. Nos. L-19273 and L-19274, Feb. 29, 1964.
[125] G.R. No. L-20764, Nov. 29, 1965.
[126] G.R. No. L-18467, Feb. 13, 1964.
[127] G.R. No. L-18470, Sept. 30, 1963.

In other words, it is made to appear that the closed-shop arrangement authorized in Section 4(a)(4) of the Act is inapplicable to those already in the service and are members of other unions.

a. Court's Arguments

In support of this view, the Supreme Court, in an opinion by Mr. Justice Calixto O. Zaldivar, utilized the reasoning advanced in the case of *Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations*,[128] as follows:

> "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. III, sec. 1 [6]).
>
> "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."

In brief, the Supreme Court is banking heavily on the following: (1) that the closed-shop arrangement authorized under Section 4(a)(4) of the Industrial Peace Act is contrary to Section 3 of the same Act, which recognizes and protects the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining, (2) that 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) that 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.

[128] G.R. No. L-16561, Jan. 28, 1961.

b. Refutation of Court's Arguments

Let us consider these arguments of the Supreme Court in their reverse order. For this I'm using extensively the reasons I advanced last year.[129]

It is contended that Section 12(b), which enumerates the different methods of electing a bargaining representative, would be rendered useless by the closed-shop arrangement because it would perpetuate a previously elected bargaining representative.

This contention blocks the fact that union members are at liberty to withdraw from a labor organization at any time and join another labor organization. The right to disaffiliate from a labor organization was succinctly recognized by the Supreme Court itself in *Pagkakaisa Samahang Manggagawa ng San Miguel Brewery v. Juan P. Enriquez*,[130] as follows:

> "When a laborer or employee joins a labor union, he does not make any commitment or assume an understanding 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*,[131] and explicitly rejected in *Victorias Milling Co., Inc. v. Victorias-Manapla Workers Organization*[132] and in *Victorias-Manapla Workers Organization v. Court of Industrial Relations*.[133] In these two cases, the Supreme Court flatly declared that "it is not true" that the closed-shop arrangement would perpetuate the labor organization which secured it for the simple reason that the closed shop agreement is enforceable only for a definite period or until another collective bargaining agreement is entered into. There is another consideration working 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 this rule, as it operates in this jurisdiction, a labor contract with a fixed period or with an indefinite duration constitutes a bar to another election to determine a collective bargaining

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[129] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW (1964), U.P. Law Center, 313.
[130] G.R. No. L-12999, July 26, 1960.
[131] G.R. Nos. L-18217 and L-18222, Sept. 29, 1962.
[132] G.R. No. L-18467, Sept. 30, 1963.
[133] G.R. No. L-18470, Sept. 30, 1963.

representative only for as much of its term as does not exceed the first two years. In other words, the employees 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 right of employees to self-organization and to form, join or assist labor organizations of their own choosing guaranteed by Article III, Section 1(6) of the Constitution. The appeal to the Constitution makes 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 in constitutional science 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.[134] I don't think there is any dispute at all that the labor relations policy spelled out in Section 1 of the Industrial Peace Act is a valid public purpose and that the limitation placed by Section 4(a)(4) of the Act on the constitutional right to form associations is substantially related to the achievement of that labor relations policy.

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 Section 3 of the Act which recognizes the right of employees to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining. Stated differently, it is urged by the Court 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 closed-shop arrangements,[135] I have advanced the view that this argument is contrary to the Industrial Peace Act itself. The rights of employees under Section 3 of the Industrial Peace Act are not absolute. In unmistakable terms, the proviso of Section 4(a)(4) of the Industrial Peace Act stipulates the 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

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

[135] 38 Phil. Law Journal 29 (1963); 28 The Lawyers Journal 81 (1963); 39 Phil. Law Journal 31 (1964); 29 The Lawyers Journal 241 (1964).

> 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-Manapla Workers Organization* cases, the Supreme Court had recognized this in *National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc.*[136] There the Supreme Court, through Mr. Justice Regala, correctly concluded that:

> 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 U.S. 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 contained 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 Company v. National Labor Relations Board,*[137] which was cited by our Supreme Court in the two *Victorias-Manapla 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 em-

[136] G.R. No. L-18170, Aug. 31, 1963.
[137] 338 U.S. 355, 94 L.Ed. 161, 70 S.Ct. 166 (1949).

> ployment 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 stated 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,*[138] that Court stated 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."

The law in this jurisdiction is clear. It is the decisions that are conflicting. With all due respect to the Court, I think that the decisions in *Confederated Sons of Labor v. Anakan Lumber Company,*[139] *Victorias Milling Co., Inc. v. Victorias-Manapla Workers Organization,*[140] and *Victorias-Manapla Workers Organization v. Court of Industrial Relations*[141] express the correct view of the scope and function of the closed-shop arrangement under Section 4(a)(4) of the Industrial Peace Act.

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[138] 362 U.S. 441, 4 L. Ed. 2d 832, 80 S. Ct. 822 (1960).
[139] G.R. No. L-12503, April 29, 1960.
[140] G.R. No. L-18467, Sept. 30, 1963.
[141] G.R. No. L-18470, Sept. 30, 1963.