LABOR RELATIONS LAW

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INTRODUCTION

One of the burdens of this survey is to analyze the decisions of the Supreme Court. This is by no means an easy task. I must state right away that I do this with all due respect to the Supreme Court.

As in past surveys, I have classified the issues involved in the cases decided by the Supreme Court. Thus, many of the decisions of the Court have been used more than once.

The titles of the cases decided by the Supreme Court in 1967 are in **bold** type to distinguish them from the titles of other cases which are given in *italics*.

I. PROCEDURE IN THE COURT OF INDUSTRIAL RELATIONS.

A. Effect of Rule 16 of the Revised Rules of Court on Rule 15 of the Court of Industrial Relations

Rule 14 of the Court of Industrial Relations provides as follows:

> After the petition or motion is filed, the Clerk of Court shall set it for hearing at 9:00 A.M. on the available date immediately following the third day after the filing thereof, and where an earlier setting is necessary due to the urgency of the case, the same may be made upon previous knowledge of the judge trying the case.

In the case of **Philippine Sugar Institute v. Court of Industrial Relations et al.,**[1] the petitioner raised as a reversible error on the part of the Court of Industrial Relations the failure of its clerk to set for hearing the petitioner's motion to have the complaint dismissed.

In resolving this problem the Supreme Court leaned on Section 3 of Rule 16 of the Revised Rules of Court.

Under this rule, two courses of action are open to a court in dealing with a motion: (1) hear the motion and thereafter either

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[1] G.R. No. 18930, Feb. 28, 1967.

deny or grant it or allow amendment of the pleading, or (2) defer hearing on the motion of the basis thereof does not appear to be certain and unquestionable. Since the petitioner's motion to have the complaint dismissed was based on the ground that the complaint had failed to state a valid cause of action, the Supreme Court, in an opinion prepared by Mr. Justice Fred Ruiz Castro, ruled that it was not necessary to hold a hearing on petitioner's motion. Relying on previous decisions,[2] the Court felt that the Court of Industrial Relations did not have to conduct a hearing on the motion and go beyond the allegations therein contained for facts and data to determine the sufficiency and validity of the cause of action averred in the complaint. On these premises, the Supreme Court concluded that it is of no moment that the Clerk of the Court of Industrial Relations had failed to set for hearing petitioner's motion despite the provision of Rule 14 of the Court of Industrial Relations.

The tenor of the decision of the Supreme Court needs clarification.

In the case under review, the Court seems to project the idea that the Clerk of the Court of Industrial Relations may safely ignore Rule 14 of the Court of Industrial Relations whenever he feels that the basis of the motion to dismiss a complaint is not indubitable. The Supreme Court obviously did not intend this to be the case. It is obvious too that both Rule 14 of the Court of Industrial Relations and Section 3 of Rule 16 of the Revised Rules of Court grant this discretion to the court and not to its clerk. The latter's duty is ministerial — to calendar the motion pursuant to the procedure of the court he serves.

I think that this decision should not be taken as controlling in a similar situation.

B. Unfair Labor Pratice Cases

Is it possible, under the Industrial Peace Act, to hold an employer of having committed an unfair labor practice under Section 4(a)(1) when the complaint specifically charges him only with the commission of an unfair labor practice under Section 4(a)(5)? The answer, of course, is that this is not likely to

[2] Convets, Inc. v. National Development Company, 103 Phil. 46 (1958); Worldwide Insurance & Surety Company, Inc. v. Manuel et al., 98 Phil. 46 (1955); Asejo v. Leonoso, 78 Phil. 467 (1947).

happen. But it did in the case of **Republic Savings Bank v. Court of Industrial Relations et al.**[3]

Perhaps a brief review of the facts involved in this case will put the problem into focus.

At the instance of the ranking officers of the different labor unions in the Republic Savings Bank, a complaint against the bank was filed specifically charging it with the violation of Section 4(a)(5) of the Industrial Peace Act, which makes it an unfair labor practice to dismiss an employee for having filed charges or for having given or being about to give testimony under the Industrial Peace Act. The complainants alleged that they were dismissed because of a letter they had published accusing the bank president of nepotism, immorality, favoritism, and discriminatory practices in the promotion of employees. The bank denied the charge and interposed the defense that the union officers were dismissed because the letter was libelous and that it had cast contempt on both the bank and its officers. The Court of Industrial Relations was not impressed with this defense and ruled that the dismissal of the employees was an unfair labor practice under Section 4(a)(5) of the Industrial Peace Act and ordered their reinstatement.

On appeal by certiorari, the Supreme Court divided three ways on the type of unfair labor practice which the employer had committed. Some agreed with the court below that the bank had violated Section 4(a)(5). Others were of the opinion that there was a violation of Section 4(a)(1). And still another group were ready to hold that the bank had violated Section 4(a)(6). In the end, however, all the members of the Supreme Court finally came to the conclusion that the bank's conduct was not an unfair labor practice under Section 4(a)(5) as charged in the complaint but a violation of Section 4(a)(1), which makes it an unfair labor practice, among others, for an employer to interfere with the exercise of the rights of the employees guaranteed by Section 3 of the Act.

In justifying this unusual action of the Supreme Court, Mr. Justice Enrique Fernando stated in a concurring opinion that the specific unfair labor practices provided in Section 4(a)(2) through 4(a)(6) of the Industrial Peace Act are but express

[3] G.R. No. 20303, Sept. 27, 1967.

illustrations of employer unfair labor practices broadly falling under Section 4(a)(1). In other words, Justice Fernando is saying here that an employer may be held under Section 4(a)(1) of the Industrial Peace Act notwithstanding the fact that he may not have been charged thereunder but under another subparagraph of Section 4(a).

The decision of the Supreme Court finding the employer guilty under Section 4(a)(1) is a far-reaching one that needs scrutiny.

In the first place, Section 5(c) of the Industrial Peace Act justly demands the dismissal of a complaint for unfair labor practice when the respondent named therein has not engaged, or is not engaging, in the unfair labor practice complained of. Since the Supreme Court concluded that the act complained of does not fall under Section 4(a)(5) as charged, then plainly the bank could not have interfered with the right of the employees to engage in any concerted activity for their mutual aid and protection. It is not in accordance with Section 5(c) of the Industrial Peace Act to hold an employer guilty of an unfair labor practice of which he was not charged. It is therefore surprising that in the resolution denying the motion for reconsideration filed by the bank,[4] the Supreme Court brushed aside the provision of Section 5(c) of the Industrial Peace Act as having no procedural consequence on the case. Yet, four months before, in a decision penned by Mr. Justice J.B.L. Reyes in the case of **Pagkakaisang Itinataguyod ng mga Manggagawa sa Ang Tibay v. Ang Tibay et al.**,[5] the Supreme Court even went to the extent of reminding the Court of Industrial Relations that it is expected to conduct the hearing of unfair labor practice cases in accordance with the procedure provided in Section 5(c) of the Industrial Peace Act.

In the second place, while it is correct to say that the more specific unfair labor practices provided in Section 4(a)(2), (3), (4), (5) and (6) of the Industrial Peace Act, are "simply express enumerations of the types of acts broadly encompassed" by Section 4(a)(1), nevertheless, there must first be a violation of any of these subparagraphs before an employer can also be

[4] G.R. No. 20303, Oct. 31, 1967.
[5] G.R. No. 22273, May 16, 1967.

held of a violation of Section 4(a)(1).[6] Note that in the case under review, the Supreme Court found no violation of Section 4(a)(5) as charged in the complaint. Again, while the more specific unfair labor practices defined in Section 4(a)(2) through Section 4(a)(6) are express illustrations of the types of acts prescribed in Section 4(a)(1), the converse is not true because there are many unfair labor practices falling under Section 4(a)(1) which are completely independent of the unfair labor practices enumerated in the other subparagraphs of Section 4(a). Put differently, there are practices in violation of Section 4(a)(1) which are not necessarily violations of the other subsections. If examples are necessary, espionage and surveillance of union activities are good ones. This is another reason why it is necessary to charge a violation of Section 4(a)(1) in a complaint to be able to hold an employer guilty of such unfair labor practice.

C. Labor Disputes in Industries Indispensable to the National Interest

1. Issuance of Labor Injunctions

The decision of the Supreme Court in **Seno v. Mendoza et al.,**[7] reiterates the distinction between the procedure for the issuance of labor injunctions in cases falling within the exclusive jurisdiction of the Court of Industrial Relations and the procedure for issuance of injunctions in cases falling within the competence of the Courts of First Instance.

In the former case, the issuance of labor injunctions is based on Section 9(a) and (d) of the Industrial Peace Act, which requires strict compliances with the five conditions therein provided. In the latter case, the issuance of injunctions is governed by Rule 58 of the Revised Rules of Court, that is to say, on the basis of a verified complaint filed together with a bond and generally upon affidavits merely.

2. Exercise of Compulsory Arbitration

In **Bachrach Transportation Company v. Rural Transit Shop Employees Association et al.,**[8] reference was made to the well-settled doctrine expressed in *Feati University v. Bautista,*[9] *Feati*

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[6] See PASCUAL, LABOR AND TENANCY RELATIONS LAW, 189 (3rd ed., 1966).
[7] G.R. No. 20565, Nov. 29, 1967.
[8] G.R. No. 26764, July 25, 1967.
[9] G.R. No. 21278, Dec. 27, 1966.

University v. Feati University Faculty Club,[10] *Hind Sugar Company v. Court of Industrial Relations*,[11] and *Philippine Marine Radio Operators' Association v. Court of Industrial Relations*,[12] that when the Court of Industrial Relations exercises its power of compulsory arbitration under Section 10 of the Industrial Peace Act, the provisions of Section 1 and 20 of Commonwealth Act No. 103 govern the procedure in the settlement of the dispute between the parties. This is due mainly to the lack of procedure for compulsory arbitration in the Industrial Peace Act since this law is based on the concept of free enterprise for capital and labor.

There is one aspect of the Court's decision on this point that I particularly invite your attention. Speaking through Mr. Justice Conrado V. Sanchez, the Court held:

> The presidential certification under Section 10 of Republic Act 875 brings a labor dispute under the operation of Commonwealth Act 103 for the case is one of compulsory arbitration.

This is a sweeping statement. Surely, a presidential certification does not **ipso facto** bring a case for compulsory arbitration under Sections 1 and 20 of Commonwealth Act No. 103. Pursuant to Section 10 of the Industrial Peace Act, this can happen only when the Court of Industrial Relations is unable, within a reasonable time, to find any other solution to the labor dispute despite its efforts to bring the parties to settle their problems amicably. Only when these conditions occur may the Court of Industrial Relations exercise its power of compulsory arbitration. But so long as there is a chance of solving the labor dispute by the non-compulsory method, Section 10 of the Industrial Peace Act puts the process of compulsory arbitration last. The reason for this is plain. The national labor policy is based on free enterprise and collective bargaining.

D. Relief from Ruling or Decision of a Judge of the Court of Industrial Relations

There are orders, awards, or decisions of a judge of the Court of Industrial Relations that cannot be directly questioned in the Supreme Court. There are others that can. When and how to elevate an order, award or decision of a judge of the

[10] G.R. Nos. 21462 & 21500, Dec. 27, 1966.
[11] G.R. No. 13364, July 26, 1960, 60 O.G. 8277 (Dec., 1964).
[12] G.R. Nos. 10095 & 10115, Oct. 31, 1957, 102 Phil. 373 (1957).

Court of Industrial Relations to the Supreme Court depends on the objective of the aggrieved party as well as the nature of the ruling or decision involved.

The decisive rules are found in Sections 1 and 15 of Commonwealth Act No. 103. Section 1 provides that an aggrieved party may ask for a reconsideration of the ruling of a judge of the Court of Industrial Relations, in which case the court shall sit **en banc.**[13] Section 15, on the other hand, provides that the Supreme Court in its discretion may review the decision of the Court of Industrial Relations involving questions of law on appeal by certiorari.

In two previous cases,[14] the Supreme Court held that a ruling or decision of any of the judges of the Court of Industrial Relations cannot be appealed directly to the Supreme Court without filing a motion for its reconsideration with the Court of Industrial Relations. Thus, failure to file a motion for reconsideration is fatal to the appellate jurisdiction of the Supreme Court.

The case of **Mayormente v. Rabago Corporation et al.,**[15] further clarifies the law and jurisprudence on this point. The respondents in this case argued that the filing in the Supreme Court of the petition for certiorari and prohibition with preliminary injunction, to prevent the respondent judge of the Court of Industrial Relations from transfering the hearing of a labor case from Cebu City to Butuan City, was premature because the petitioner had failed to file a motion with the Court of Industrial Relations asking for the reconsideration of the disputed order.

Mr. Justice Castro, who spoke for the Supreme Court, could not conceal his displeasure over the failure of the respondents to distinguish a petition for certiorari, which was filed in the Supreme Court, from an appeal by certiorari. Taking time to explain the basic distinction between the two, Mr. Justice Castro said that an appeal by certiorari is governed by Sections 1 and 15 of Commonwealth Act No. 103 in connection with Rule 43

[13] It should be noted that under Sec. 1 of Commonwealth Act No. 103 (1936), any of the trial judges may file with the Court of Industrial Relations request for reconsideration. Generally, however, the motion for reconsideration is filed by the aggrieved party.

[14] NAMARCO Employees and Workers Association v. Tabigne, G.R. No. 23294, April 30, 1966; Broce v. Court of Industrial Relations, *et al.*, G.R. No. 12367, Oct. 28, 1959, 56 O.G. 7445 (Dec., 1960).

[15] G.R. No. 25337, Nov. 27, 1967.

of the Revised Rules of Court. It is a mode of review whereby questions of law may be reviewed by the Supreme Court. On the other hand, a petition for certiorari is a special civil action governed exclusively by Rule 65 of the Revised Rules of Court. It is a means of putting in issue an action of any tribunal, board, or officer done without or in excess of its or his jurisdiction or with grave abuse of discretion, subject only to the condition that there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law open to the aggrieved party.

In the **Mayormente** case, the Supreme Court pointed out the fact that the proceeding filed with it was an original petition for the extraordinary remedy of certiorari under Rule 65 and not an ordinary action of appeal by certiorari under Sections 1 and 15 of Commonwealth Act No. 103 in relation to Rule 43 of the Revised Rules of Court. Thus, concluded the Supreme Court, a petition for certiorari does not require an intermediate motion for reconsideration which is absolutely necessary in cases of appeal by certiorari since the law authorizes an appeal only from a decision, order, or award of the Court of Industrial Relations reached **en banc.**

But does it make any difference if an aggrieved party, without waiting for the resolution on his pending motion for reconsideration in the Court of Industrial Relations proceeds under Rule 65 of the Revised Rules of Court by filing with the Supreme Court an original special civil action for certiorari and prohibition with preliminary injunction? This is the novel question raised in the case of **Maritime Company of the Philippines et al. v. Paredes.**[16] In a decision by Mr. Justice Calixto Zaldivar, the Supreme Court held that Rule 65 of the Revised Rules of Court applies only when the petition is directed against an act taken by any tribunal, board or officer exercising judicial functions without or in excess of its or his jurisdiction or with grave abuse of discretion, and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. The Supreme Court noted that the aggrieved party had a remedy available to him in the ordinary course of law. Indeed, he actually made use of it when he asked the reconsideration of the order of the trial judge. This motion for reconsideration was pending

[16] G.R. No. 24811, March 3, 1967.

before the Court of Industrial Relations at the time he filed with the Supreme Court an original special civil action for certiorari with preliminary injunction.

II. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

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, as amended (Termination Pay Law).

In 1967, the cases involving the jurisdiction of the Court of Industrial Relations that reached the Supreme Court were those dealing only with Commonwealth Act No. 444 and Republic Act No. 875.

A. Cases Involving Unfair Labor Practices

In the case of **Associated Labor Union v. Gomez et al.,**[17] a strike was called by the union on two counts: (1) the employer's refusal to stop coercing his employees to resign their union membership, and (2) his refusal to bargain with the union as to terms and conditions of employment.

On the day following the strike, the union filed an unfair labor practice case against the employer in the Court of Industrial Relations. On the same day, the employer filed a civil case against the union in the Court of First Instance of Cebu, charging the union of coercing his employees to renew their membership. In the same case, the employer asked for a preliminary injunction to restrain the labor union from picketing his place of business, which the lower court granted ex parte on the basis of Rule 58 of the Revised Rules of Court. The union moved swiftly for a reconsideration thereof on the ground that the Court of First Instance has no jurisdiction over unfair labor practice cases. Having been refused by the lower court, the union went to the Supreme Court on a petition for certiorari and prohibition.

[17] G.R. No. 25999, Feb. 9, 1967.

In a decision prepared by Mr. Justice Sanchez, the Supreme Court noted that both the charge and countercharge fall under the unfair labor practices proscribed respectively in Section 4(a)(1) and Section 4(b)(1) of the Industrial Peace Act. In view of this fact, the Supreme Court held that the Court of First Instance did not acquire jurisdiction over the case because Section 5(a) of the Industrial Peace Act vests exclusive jurisdiction over cases involving unfair labor practices in the Court of Industrial Relations.

B. Cases Involving Labor Injunctions

1. Lawful and Unlawful Union Activities

The treatment of labor injunction is different from ordinary injunction cases. Different rules apply, naturally. As I have suggested in previous surveys, this is based on the absence of any relation between subparagraphs(a) and (d) of Section 9 of the Industrial Peace Act.

Section 9(a) provides that no court or administrative agency shall have jurisdiction, except as provided in Section 10 of the Industrial Peace Act, to issue an injunction in any case involving or growing out of labor dispute to prohibit any person or persons participating or interested in such dispute from doing, whether singly or in concert, any of the activities enumerated therein. The reason for this prohibition is that these activities are considered legal activities. However, it should be noted that this policy applies only to cases involving or growing out of a labor dispute as this term is defined in Section 9(f)(1) in relation to Section 2(j) of the Industrial Peace Act.

On the other hand, Section 9(d) of the Industrial Peace Act allows the issuance of a labor injunction even though the case may involve or grow out of a labor dispute because illegal activities have been threatened and will be committed unless such activities are restrained or have been committed and will be continued unless such activities are restrained. But note, too, that the law, even in this critical situation, exacts certain stringent conditions before a court may issue a labor injunction.

2. Nature of Jurisdiction

The decision in the case of **Bachrach Transportation Company, Inc. v. Rural Transit Shop Employees Association et al.,**[18] is in line with the rule laid down recently in *Talisay Silay Milling Co. v. Court of Industrial Relations.*[19]

In the **Talisay Silay Milling** case, the Supreme Court upheld the view that the Court of Industrial Relations has exclusive authority to grant labor injunctions in cases falling within its exclusive jurisdiction. In other words, jurisdiction to issue injunction remains with the regular court if the principal case does not fall within the jurisdictional competence of the Court of Industrial Relations.[20]

3. Labor Disputes in Industries Indispensable to the National Interest

Section 10 of the Industrial Peace Act deals with one of the two types of cases in which labor injunctions may be issued, namely, labor disputes occuring in industries indispensable to the national interest. The other type, of course, is provided in Section 9(d) of the Industrial Peace Act, namely, cases involving or growing out of a labor dispute where illegal activities are involved.

In the **Bachrach Transportation Company** case, the Supreme Court further clarified the discretion of the Court of Industrial Relations to issue labor injunctions as a means of solving labor disputes occurring in industries indispensable to the national interest. Speaking through Mr. Justice Sanchez, the Supreme Court ruled that the labor injunction provided in Section 10 of the Industrial Peace Act is an ancillary remedy which may be availed of while the Court of Industrial Relations is in the process of investigating a case involving a labor dispute in an industry indispensable to the national interest. The obvious purposes are to put an immediate stop to the hazard (not just inconvenience) to which the public is exposed by reason of the occurrence of the labor dispute and to prevent further damage or prejudice to the national interest which otherwise would result were the Court

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[18] G.R. No. 26764, July 25, 1967.
[19] G.R. No. 21852, Nov. 29, 1966.
[20] PAFLU v. Tan, 99 Phil. 854 (1956); Cuesto v. Ortiz, G.R. No. 11555, May 31, 1960.

of Industrial Relations unable to get the parties to settle their dispute amicably.

Care should, however, be exercised in distinguishing the conditions for the issuance of a labor injunction from the conditions for the exercise of the power of compulsory arbitration of the Court of Industrial Relations. In the former, the President must be of the opinion, whether he is right or wrong, that a labor dispute exists in an industry indispensable to the national interest and certifies the labor dispute to the Court of Industrial Relations. Pending investigation of the case, the Court of Industrial Relations may issue an injunction forbidding the employees to strike or the employer to lock-out his employees. This injunction is otherwise known as the return-to-work order. On the other hand, before the Court of Industrial Relations may compulsorily arbitrate a labor dispute involved in an industry indispensable to the national interest, a third condition must be present, namely, the failure of the court to find within a reasonable time any other solution to the dispute in question.

C. Cases Involving Labor Disputes in Industries Indispensable to the National Interest

1. **Exercise of Power Independent of Section 9(d) of the Industrial Peace Act**

It should be noted that the jurisdiction of the Court of Industrial Relations over labor disputes occurring in industries indispensable to the national interest certified to it as such by the President of the Philippines is not dependent at all on the conditions provided in Section 9(d) of the Industrial Peace Act.

As stated by Mr. Justice Sanchez in the **Bachrach Transportation Company** case, there is no justifiable reason for reading the conditions provided in Section 9(d) of the Industrial Peace Act as controlling on the jurisdiction of the Court of Industrial Relations under Section 10 of the Industrial Peace Act because these two provisions are separate and distinct legal precepts. May I add that Section 10 of the Industrial Peace Act gives the Court of Industrial Relations jurisdiction to issue restraining orders and/or exercise the power of compulsory arbitration apart from and without any reference to the requirements enumerated in Section 9(d) of the Act. Indeed, Section 9(d) treats

of ordinary labor disputes where illegal activities are involved whereas Section 10 deals exclusively with a special type of labor dispute, that is to say, one where the national interest is involved.

2. Exercise of Power Independent of Section 4 of the Industrial Peace Act

One of the arguments advanced by the petitioner in the **Bachrach Transportation Company** case was that no evidence was submitted to show that the employer had committed an unfair labor practice.

In dismissing this argument, the Supreme Court ruled that the jurisdiction of the Court of Industrial Relations under Section 10 of the Industrial Peace Act is not dependent on the existence of any unfair labor practice. The Supreme Court reasoned that the jurisdiction of the Court of Industrial Relations under Section 10 is distinct and apart from its jurisdiction over unfair labor practice cases under section 4 of the Industrial Peace Act.

D. Cases Involving Interpretation or Enforcement of Collective Bargaining Contracts

1. Prior Decisions of the Supreme Court.

In last year's survey, I reviewed the decisions of the Supreme Court from 1954 to 1966 on the question of whether the Court of Industrial Relations has jurisdiction over cases involving the interpretation or enforcement of collective bargaining contracts.[21] There is no need to repeat that here.

The score, though, over the years is five affirmative decisions based on varying grounds[22] and three negative decisions.[23] However, with the decision of the Supreme Court in the case of **National Brewery & Allied Industries Labor Union v. Cloribel**

[21] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, PROCEEDINGS OF 1967, 19-22.

[22] National Mines and Allied Workers Union v. Philippine Iron Mines, Inc., G.R. No. 19372, Oct. 31, 1964; Manila Electric Company v. Ortañez, G.R. No. 19557, March 31, 1964; Elizalde Paint and Oil Company, Inc. v. Bautista, G.R. No. 15904, Nov. 23, 1960, 61 O.G. 137 (Jan., 1965); Benguet Consolidated Mining Co. v. Coto Labor Union, G.R. No. 12394, May 29, 1959; Pambujan Sur United Mine Workers v. Samar Mining Co., Inc., 94 Phil. 932 (1954).

[23] Nasipit Labor Union v. Court of Industrial Relations, G.R. No. 17838, Aug. 3, 1966; Philippine Sugar Institute v. Court of Industrial Relations, G.R. No. 13098, Oct. 29, 1959, 57 O.G. 635 (Jan. 1961); Dee Cho Lumber Workers' Union v. Dee Cho Lumber Company, 101 Phil. 417 (1957).

et al.[24] the negative vote now stands at four. The Supreme Court did not, however, give any reason for its vote in this case.

I do not, of course, suggest that the reaction of the Supreme Court on this question is merely a matter of addition, although lawyers make a lot to do about the controlling effect of the latest decision. But a word of caution is in order in a situation where the Supreme Court seems to be uncertain about its own approach to the problem. Note specially the fact that the position of the Supreme Court over the years on this question has alternated with each case decided from 1954 to 1960 and thereafter by twos up to 1967.

2. Basis of Jurisdiction of the Court of Industrial Relations

This matter was also considered somewhat extendedly in the survey last year.[25]

There I reached the conclusion that the Court of Industrial Relations has jurisdiction over cases involving the interpretation or enforcement of collective bargaining contracts. It seems to me that the reasoning of the Supreme Court in the five decisions supporting the jurisdiction of the Court of Industrial Relations over this type of cases is in accordance with the philosophy underlying the Industrial Peace Act.

I might add this time that the intervention of the Court of Industrial Relations over this type of cases is all the more urgent when there is no machinery provided in the collective bargaining contract for the adjustment of grievances and settlement of conflicts of interest or when either of the parties refuses to abide by such machinery. As the Supreme Court itself has said, the Court of Industrial Relations is in a better position and is relatively more qualified than other courts to determine cases dealing with problems between management and labor,[26] undoubtedly on the basis of the expertise of this court in the field of labor relations law.

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[24] G.R. No. 25171, Aug. 17, 1967.

[25] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, PROCEEDINGS OF 1967, 22-24.

[26] Philippine Land-Air-Sea Labor Union (PLASLU) v. Ortiz, 103 Phil. 410 (1958).

E. Cases Involving Rights and Conditions of Membership in Labor Unions

1. Nature of Jurisdiction

The decisions of the Supreme Court in **Kapisanan ng mga Manggagawa ng Manila Railroad Co. v. Hernandez et al.,**[27] and **National Brewery and Allied Industries Labor Union v. Cloribel et al.,**[28] have further strengthened the view that the jurisdiction of the Court of Industrial Relations is not confined only to the four types of cases mentioned in *Philippine Association of Free Labor Unions v. Tan.*[29]

These 1967 cases involve Section 17 of the Industrial Peace Act, which provides that complaints involving violations of internal labor organization procedures dealing with the rights and conditions of membership in labor organizations are cognizable by the Court of Industrial Relations. The Supreme Court, through Mr. Justice Querube Makalintal in the **Hernandez** case and through Mr. Justice Eugenio Angeles in the **National Brewery** case, held that the Court of Industrial Relations has jurisdiction over cases involving rights and conditions of membership in labor unions or associations of employees.

In these and previous cases, the Supreme Court has ruled that this particular jurisdiction of the Court of Industrial Relations is exclusive in nature.[30]

2. Requisites for Exercise of Jurisdiction

Under Section 17 of the Industrial Peace Act, two requisites must first be met before the Court of Industrial Relations may intervene in the internal affairs of labor organizations. First, there must be a charge concurred by at least 10% of the union members. Second, the procedure for relief provided in the constitution or by-laws of the labor union must first be exhausted.

In the two cases under review, the Supreme Court merely stated that there was no reason to disturb the finding of the

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[27] G.R. No. 19791, May 16, 1967.
[28] See note 24, *supra.*
[29] 99 Phil. 854 (1956).
[30] PAFLU v. Secretary of Labor, G.R. No. 21321, April 29, 1966; PAFLU v. Padilla, G.R. No. 11722, Nov. 28, 1959; Philippine Land-Air-Sea Labor Union (PLASLU) v. Ortiz, see note 26, *supra;* Kapisanan ng mga Manggagawa sa Manila Railroad Co. v. Bugay *et al.,* 101 Phil. 18 (1957).

Court of Industrial Relations that the first requirement was complied with.

Let me, however, remind you of the conflicting views of the Supreme Court on this matter. The requisite that the charge must be concurred in by at least 10% of the union members was previously held to refer only to violations which necessarily affect the entire union or a segment thereof.[31] An example is paragraph (c) of Section 17, concerning the election of officers at intervals of not more than two years and voting on questions involving policies affecting the entire membership of a labor organization. Another example is paragraph (h) of the same section, referring to the application of the funds of a labor organization for purposes expressly stated in its constitution or by-laws. But this requisite, according to the Supreme Court, does not apply when the violation of the provisions of Section 17 affects only a member of the labor organization, e.g., paragraph (c), concerning a member deprived of his right to vote by the officers of the organization. However, in the subsequent decision reached in *PAFLU v. Bognot,*[32] the Supreme Court held that there is no need to distinguish between violations of the internal labor organization procedures enumerated in Section 17 of the Industrial Peace Act affecting a labor union or a segment thereof from violations affecting only a union member. With this ruling, redress of individual grievances within the union structure is stifled contrary to the general policies of the Industrial Peace Act.

This brings us to the second requirement which calls for the exhaustion of intra-union remedies. The Supreme Court went along with the orthodox view that this is not an inflexible requirement but one which yields to exceptions under certain circumstances. In the **Hernandez** case, the Supreme Court found that it would have been futile for the aggrieved party to abide by the intra-union remedy.[33] As provided in the constitution and by-laws of the labor union, charges for any violation of the

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[31] Philippine Land-Air-Sea Labor Union (PLASLU) v. Ortiz, see note 26 *supra.*; Kapisanan ng mga Manggagawa sa Manila Railroad Co. v. Bugay, see note 30, *supra.*

[32] G.R. No. 19420, Jan. 31, 1964.

[33] There are other exceptions to the rule requiring exhaustion of intra-union remedies, *viz.*, improper grounds or procedure for expulsion, undue delay in appeal, lack of jurisdiction of investigating body, action for damages.

provisions of Section 17 of the Industrial Peace Act must first be filed with the Board of Directors of the labor union. Since the charge involves the incumbent officers of the labor union, who are all members of the Board of Directors, the Supreme Court ruled that it would have been illusory and vain to suppose that the Board of Directors could have acted objectively in a situation where the members of the Board are in effect the respondents, the investigators and the judges all rolled into one.

There is an interesting side to the **Hernandez** case which the Supreme Court did not pass upon, perhaps because it was not material to the decision. In any case, both the trial judge and the Court of Industrial Relations *en banc* surprisingly held that violations of the internal labor organization procedures catalogued in Section 17 of the Industrial Peace Act are unfair labor practices. This, of course, is not correct. Section 2(i) of the Industrial Peace Act expressly limits the concept of unfair labor practice only to those enumerated in Section 4(a) and (b) of the Act. Furthermore, the parent portion of Section 17 of the Industrial Peace Act provides that violations of internal labor organization procedures shall be disposed of by the Court of Industrial Relations as in unfair labor practice cases. This only means that the procedure for the trial of unfair labor practices must be followed. It may be that the error of the judges of the Court of Industrial Relations stemmed from a hurried reading of this particular provision of the law. But note that the preposition "in" and not the indefinite article "an" is used in Section 17 of the Industrial Peace Act.

F. Cases Involving Money Claims Arising Out of Employment Relationship

1. Conditions for the Exercise of Power

In three early cases, namely, *Price Stabilization Corporation v. Court of Industrial Relations*,[34] *Campos v. Manila Railroad Co.*,[35] and *Barranta v. International Harvester Co. of the Philippines*,[36] the Supreme Court ruled that the Court of Industrial Relations has jurisdiction over all money claims arising out of or in connection with employment, provided that

[34] G.R. No. 13806, May 23, 1960.
[35] G.R. No. 17905, May 25, 1962.
[36] G.R. No. 18198, April 22, 1963.

there exists an employer-employee relationship between the parties or, in its absence, that a claim for reinstatement is made. After the termination of such relationship and no reinstatement thereof is sought, money claims arising out of such employment, such as salary differential or overtime pay, come within the jurisdiction of the proper regular courts.

This pronouncement was clarified by the Supreme Court in the case of **National Shipyards and Steel Corporation v. Court of Industrial Relations et al.**[37] Speaking through Mr. Justice Zaldivar, the Court stated that if there is no employer-employee relationship, the following types of cases do not fall within the jurisdictional competence of the Court of Industrial Relations:

(a) An action for reinstatement.
(b) An action for reinstatement accompanied by a claim for backwages and/or damages.
(c) An action for reinstatement related merely to the Eight-Hour Labor Law (Commonwealth Act No. 444) or the Minimum Wage Law (Republic Act No. 602).

In other words, after the termination of the employer-employee relationship and no reinstatement thereof is sought, a claim for overtime pay or salary differential must be litigated in the proper regular court even when it arises out of or is connected with a previous employment relationship. And an action for reinstatement will prosper in the Court of Industrial Relations only when it is accompanied by another claim arising out of or in connection with an employment relationship, such as a claim for overtime pay under Commonwealth Act No. 444 or a claim for salary differential under Republic Act No. 602.

But an action for reinstatement even when accompanied by claim for overtime pay or salary differential is not always within the jurisdiction of the Court of Industrial Relations. Put differently, when are claims for overtime pay or for salary differential mere money claims and thus within the jurisdiction of the regular courts and when are they not so and thus within the competence of the Court of Industrial Relations?

This problem was answered by the Supreme Court in *Manila Electric Company v. Ortañez*[38] and *Red V Coconut Products v. Court of Industrial Relations.*[39] In these cases, the Court held

[37] G.R. No. 21675, May 23, 1967.
[38] G.R. No. 19557, March 31, 1964.
[39] G.R. No. 21348, June 30, 1966.

that when the claimant seeking reinstatement does not ask for an specific amount of overtime pay or salary differential then it is not merely a case for the recovery of a sum of money but one involving the basic question of whether the claimant is entitled or not to overtime pay or salary differential.

2. Claims Under the Eight-Hour Labor Law

There are two types of cases falling within the jurisdiction of the Court of Industrial Relations under the Eight-Hour Labor Law. The first involves cases dealing with hours of work, the second with cases which have to do with claims for compensation for overtime work.

In 1967, the Supreme Court had occasion to deal only with claims belonging to the second type. In the case of **Rheem of the Philippines, Inc. v. Ferrer et al.,**[40] the Supreme Court, in an opinion by Mr. Justice Sanchez, held that claims for additional compensation for work performed on Sundays and legal holidays fall within the jurisdiction of the Court of Industrial Relations, provided that the claimant is an employee at the time of the filing of the complaint or seeks his reinstatement in the absence of such employment relationship. In the absence of either of these concurring conditions, a claim for additional compensation for work done on Sundays and legal holidays becomes a mere claim for the recovery of a sum of money and as such falls within the jurisdiction of the regular competent court.

III. UNFAIR LABOR PRACTICES

A. On the Part of Employers

1. Dismissal of Employees in Violation of Collective Bargaining Contract

The case of **Pagkakaisang Itinataguyod ng mga Manggagawas sa Ang Tibay et al. v. Ang Tibay, Inc. et al.,**[41] is quite significant in the area of unfair labor practices.

Suppose that a union member is dismissed by an employer without prior investigation as required in the collective bargaining agreement. Is this an unfair labor practice within the provision of Section 4(a) of the Industrial Peace Act?

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[40] G.R. No. 22979, January 27, 1967.
[41] See note 5, *supra*.

The Supreme Court, speaking through Mr. Justice Reyes, in the case under review, ruled that it is not an unfair labor practice because an action to remedy a breach or violation of a collective bargaining agreement does not fall within the jurisdiction of the Court of Industrial Relations but under the authority of the regular courts as in ordinary cases involving obligations and contracts.

This holding requires scrutiny. To begin with, the term "unfair labor practice" is expressly defined in Section 2(i) of the Industrial Peace Act to mean any practice listed in Section 4 thereof, no more and no less. Unless this policy is changed by Congress, it is decisive. An act is not an unfair labor practice because it does not fall under Section 4(a) and (f) of the Industrial Peace Act and not for any other reason. In the second place, the dismissal of the union members without prior investigation as required by the collective bargaining agreement is an unfair labor practice under Section 4(a)(1) of the Industrial Peace Act because it is an independent act which interferes with and restrains the employees in the exercise of their right to unionize and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection. The reason is plainly that such an act tends to create misgivings in the minds of union members that their union is incapable and incompetent to promote and advance their general welfare, engendering doubt as to the value of unionization and collective bargaining as a means of settling issues respecting terms and conditions of employment.

2. Dismissal of Employees for Publishing a Letter-Protest

The case of **Republic Savings Bank v. Court of Industrial Relations et al.,**[42] involves the dismissal of the ranking officers of the different labor unions in the bank. At their instance, a complaint for unfair labor practice was filed against the Republic Savings Bank under Section 4(a)(5) of the Industrial Peace Act for having dismissed them as a result of a letter which they had published accusing the bank president of nepotism, immorality, favoritism, discriminatory practices in promotions, and other irregularities. The bank denied the complaint and interposed the defense that the employees' dismissal was for cause, since

[42] G.R. No. 20303, Sept. 27, 1967.

the letter was libelous and caused dishonor and contempt on the bank and its officers. The lower court rendered a decision finding the Republic Savings Bank guilty of the unfair labor practice complained of under Section 4(a)(5) of the Industrial Peace Act and ordered the reinstatement of the dismissed employees.

On appeal, the Supreme Court agreed with the lower court that an unfair labor practice was committed but divided three ways as to the particular type of unfair labor practice which the employer had committed. Some members of the Supreme Court were of the view that since the dismissed employees were engaged in concerted activities for their mutual aid or protection when they published the letter, then their dismissal was an interference of this right which Section 4(a)(1) of the Act protects. Other members of the Supreme Court concurred with the Court of Industrial Relations that the Republic Savings Bank had violated Section 4(a)(5) of the Industrial Peace Act, which makes it an unfair labor practice for an employer to dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under the Industrial Peace Act. Still some other members of the Court expressed the opinion that the Republic Savings Bank had violated Section 4(a)(6) of the Industrial Peace Act for failure to refer the charges against the bank president to the grievance committee as provided in the collective bargaining agreement. This group views the failure of the bank to comply with the provisions of the collective bargaining agreement as a violation of Section 4(a)(6), which makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. In the end, however, all the members of the Supreme Court united in holding that the conduct of the Republic Savings Bank was contrary to Section 4(a)(1), which makes it an unfair labor practice for an employer to interfere with the exercise of the rights of the employees guaranteed in Section 3 of the Industrial Peace Act.

In arriving at this solution, the Court fell back on the principle that the more specific unfair labor practices provided in Section 4(a)(2), (3), (4), (5) and (6) of the Act are simply express enumerations of the types of acts broadly encompassed by

Section 4(a)(1). In different words, acts violating any of the provisions of Section 4 (a)(2) through 4(a)(6) are always either interference with, or restraint, or coercion of the employees in the exercise of the rights guaranteed to them in Section 3 of the Act.

B. On the Part of Labor Unions

1. **Discrimination by Labor Organizations Against Employees**

Under Section 4(b)(2) of the Industrial Peace Act, two types of illegal discrimination against employees may be committed by a labor organization or its agents: (1) when it causes or attempts to cause an employer to discriminate against his employees in regard to hire or tenure or any term or condition of employment to encourage or discourage membership in a labor organization, and (2) when it directly discriminates against an employee whose membership in the union has been denied or terminated on some grounds other than the usual terms and conditions of membership or continuation thereof applicable to other members.

The second type of illegal discrimination figured in the case of **Salunga v. Court of Industrial Relations et al.**[43] Salunga was a member of the respondent labor union for several years. Because he disagreed with certain measures taken by the union officers, he resigned his membership. The union lost no time in accepting it and asked the employer to dismiss him from employment on the basis of the closed-shop arrangement provided in the collective bargaining contract existing between the union and the employer. Upon being informed of the union demand, Salunga revoked his letter of resignation and advised the union to reinstate his membership and to continue the check-off of his union dues. But the union informed the employer that Salunga's membership could no longer be reinstated and insisted on the termination of his employment conformably with the closed-shop arrangement. When the employer yielded, Salunga filed a complaint for unfair labor practice against the union under Section 4(b)(2). On a 3-to-2 vote, the Court of Industrial Relations dismissed his complaint on the ground that his discharge under the closed-shop arrangement was not an unfair labor practice.

[43] G.R. No. 22456, Sept. 27, 1967.

The Supreme Court, in an opinion by Mr. Chief Justice Roberto Concepcion, held in effect that the act of the labor union falls within the second type of conduct proscribed under Section 4(b)(2) of the Industrial Peace Act. The conclusion of the Court was influenced by the union's denial, without just cause, of the request of the employee for the reinstatement of his membership in the union after he had informed the union that he did not realize the consequences of his resignation from the union with a closed-shop arrangement with the employer. The Court found that this arbitrary conduct of the labor union was motivated by no other reason than to get rid of this employee because of his critical attitude toward certain measures taken or sanctioned by the labor union. This attitude of the employee could not even be justified, continued Mr. Chief Justice Concepcion, as an act of disloyalty to the union because the union constitution and by-laws recognized the right of its members to give their views on all transactions made by the union. The Supreme Court felt that the closed-shop arrangement can be applied, in a situation such as this, only when the union has a reasonable ground to refuse the readmission of a former member who did not realize the consequences of a closed-shop arrangement. While a labor union has the reserved right under Section 4(b)(1) of the Industrial Peace Act to prescribe its own rules with respect to acquisition or retention of membership therein, the Supreme Court held that this is not an absolute right because it is qualified in cases where a union has a closed-shop arrangement with the employer or has a monopoly in the supply of labor within a given locality.

IV. CERTIFICATION ELECTIONS

A. Conditions for Holding Elections

Several conditions must be present before the Court of Industrial Relations may order a certification election, namely, the existence of an employer-employee relationship, compliance by the contending unions with the data and affidavit requirements provided in Section 23(b) of the Industrial Peace Act, and the existence of a reasonable doubt on the part of the court as to whom the employees have designated as their bargaining agent.

The first condition was emphasized in the case of **Compañia Maritima et al. v. Allied Free Workers Union et al.**[44] In an opinion prepared by Mr. Justice Jose P. Bengzon, the Supreme Court held that pursuant to Section 13 of the Industrial Peace Act, an employer-employee relationship must exist between the parties before the Court of Industrial Relations may order the Department of Labor to conduct a certification election. The reason is obvious — there is no legal duty to bargain collectively if this relationship is lacking.

The second prerequisite figured in the case of **Taller Visayas and Workers Association (TALBEWA) v. Panay Allied Workers Union et al.**[45] In this case, the Court of Industrial Relations denied the petitioner's motion for leave to intervene in the certification election previously scheduled by the Department of Labor. Not satisfied with the ruling, the petitioner brought the matter to the Supreme Court. Speaking through Mr. Justice Makalintal, the Court sustained the order of the lower court on the ground that the petitioner had failed to meet the data and affidavit requirements of Section 23(b) and, for that reason, was not a duly recognized labor organization.

The third condition mentioned in Section 12(b) of the Industrial Peace Act did not get involved in the cases that reached the Supreme Court during the year in review.

B. Basis of "Majority of Votes Cast"

According to Section 12(b) of the Industrial Peace Act, it takes a majority of the votes cast by the employees in an appropriate collective bargaining unit to elect a bargaining representative.

1. Spoiled and Invalid Ballots

But are spoiled and invalid votes included? This was the problem raised in **Allied Workers Association of the Philippines v. Court of Industrial Relations et al.,**[46] a case of first impression in this jurisdiction.

In the Court of Industrial Relations, the judges felt that the term "votes" includes not just the valid ballots but all the ballots cast in a certification election, including even the spoiled and in-

[44] G.R. Nos. 22951-52 & 22971, January 31, 1967.
[45] G.R. No. 23927, September 19, 1967.
[46] G.R. Nos. 22580 & 22950, June 6, 1967.

valid ones. In reversing the Court of Industrial Relations, the Supreme Court, in an opinion by Mr. Justice Roberto Regala, held that Section 12(b) of the Industrial Peace Act does not contemplate the counting of invalid ballots, such as those cast by employees who do not belong to the appropriate collective bargaining unit. The Supreme Court ruled that only the valid ballots should be used in determining the "majority of the votes cast" in an election to choose the bargaining representative of the employees. Insofar as the spoiled ballots which have been challenged are concerned, the Supreme Court held that "spoiled ballots, i.e., those that are defaced, torn or marked, should be counted in determining the majority of the votes cast since they are nonetheless votes cast by those who are qualified to vote." According to the Supreme Court, the contrary view projected by the Court of Industrial Relations "would make it easy for a union to go on challenging voters known to be sympathetic to its rivals, knowing that the votes thus challenged would not be examined even as their number would be counted in determining the majority of the votes cast. No easier way of frustrating the results of the election could be imagined."

2. Difference Between Section 12(a) and Section 12(b) of the Act

In reaching the decision in the **Allied Workers Association** case, that invalid ballots are not to be counted in determining the majority of the votes cast in a certification election, the Supreme Court investigated the problem of whether there is any difference between the provision of Section 12(a) of the Industrial Peace Act, which speaks of a bargaining representative designated or selected by the *majority of the employees* in an appropriate collective bargaining unit, and the provision of Section 12(b) thereof, which speaks of a labor organization receiving the *majority of the votes cast* in a certification election. But here the Court came to the rather surprising conclusion that there is no difference at all in meaning between these two subparagraphs of Section 12 of the Industrial Peace Act.

Of course, there is a substantial difference between them. Section 12(a) refers to the designation or selection of a bargaining agent made by the employees *without* the intervention of the Court of Industrial Relations. On the other hand, Section 12(b) refers to the election of a bargaining agent by the em-

ployees *with* the intervention of the Court of Industrial Relations. In different words, Section 12(a) deals with a situation where there is no question at all as to the representation of the employees, in which event a labor organization is simply designated or selected by the *majority of the employees* as their bargaining representative. Section 12(b), on the other hand, contemplates an entirely different situation. Here a question concerning the representation of the employees has arisen, in which case the Court of Industrial Relations has to intervene by investigating the controversy. If the Court of Industrial Relations has no doubt as to whom the employees have chosen as their bargaining agent, then all the Court of Industrial Relations needs to do is to issue a written order certifying to the contending parties the name of the labor union which the employees had designated or selected as their bargaining agent. But if the Court of Industrial Relations has still a reasonable doubt concerning the representation of the employees even after its investigation, then pursuant to Section 12(b) the Court of Industrial Relations must ask the Department of Labor to conduct a certification election in order to resolve once and for all any question as to the representation of the employees. And the basis of the resolution of this question is by the *majority of the votes cast* in such an election.

There is really no question or doubt as to the import of the term "majority of the votes cast" spoken of in Section 12(b). It just means what it says. If there is any question at all, it revolves on the meaning of the term "majority of the employees" which is the standard required by Section 12(a) of the Industrial Peace Act for the designation or selection of a bargaining agent by the employees.

In the **Allied Workers' Association** case, the Supreme Court reviewed the steps which the American courts have taken in the search for a reasonable construction of the term "majority of the employees" used in Section 9(a) of the Wagner Act, which was copied verbatim as Section 12(a) of the Industrial Peace Act.

I think the Supreme Court did not succeed here, for several reasons. First, there is no relation or similarity between the method of selection or designation of a bargaining agent contemplated in Section 12(a) and the method of election of a bar-

gaining agent spoken of in Section 12(b), under which the case under review was decided. Thus, the use of the jurisprudential history of the term "majority of the employees" spoken of in Section 12(a) to explain the significance of the term "majority of the votes cast" spoken of in Section 12(b) is misleading. Second, the presentation made by the Supreme Court of the confusion that had attended the early administration of Section 9(a) of the Wagner Act is incomplete. Third, the American cases cited on this point by the Supreme Court in the case under review were not the ones actually or directly involved in this problem.

Perhaps there is now a need to give a brief account of the confusion behind the application of Section 9(a) of the Wagner Act in order to help understand better the provision of Section 12(a) of the Industrial Peace Act.

In the United States, several theories were evolved in the search for a reasonable interpretation of the term "majority of the employees" used in Section 9(a) of the Wagner Act. In the *Chrysler Corporation case*,[47] the very first case on this question, it was held that the bargaining agent must be designated or selected by the majority of *all* the employees who are eligible to vote. Thus, under this solution, if there are 1,000 eligible employees, at least 501 votes must be cast in favor of a particular labor organization to become the exclusive bargaining representative of all the employees in that appropriate collective bargaining unit. This "absolute majority" interpretation prevailed for a number of years. However, it was severely criticized because it did not only work difficulty on the employees but, more importantly, hindered the implementation of the new labor policy of unionization and collective bargaining adopted by the Wagner Act. Thus, in the case of *National Labor Relations Board v. Whittier Mills Company*,[48] the Court opted for the "slender majority" interpretation of the term "majority of the employees" used in Section 9(a) of the Wagner Act. Under this interpretation, the bargaining agent is designated or selected by a majority of those who participated in the selection of the bargaining agent, provided that those who joined in the selection constitute at least a majority of all the eligible employees in the appropriate

[47] 1 N.L.R.B. 686 (1936).
[48] 111 F. 2d. 474 (1940).

collective bargaining unit. In other words, if there are 1,000 eligible employees, then at least 251 votes must be cast for a particular labor organization to become the exclusive bargaining agent of all the employees in the appropriate collective bargaining unit. But even the "slender majority" or "quorum" interpretation did not last long either. It was also criticized as a hindrance to the realization of the labor policy of the Wagner Act. It is not unlikely that an indifferent group could prevent a selection of the bargaining agent by simply refusing to participate. Or, worse, the required quorum may be prevented by the coercion of the employer. In both cases, the purpose of the Act is thwarted. Thus, at the very first opportunity, in the case of *National Labor Relations Board v. Standard Lime and Stone Company*,[49] the "slender majority" or "quorum" interpretation was abandoned in favor of the current "political principle of majority" interpretation. Here, the bargaining representative need only be designated by at least a majority of the eligible employees who actually participated in the selection of a bargaining agent, regardless of whether a majority of all the eligible employees participated therein, subject only to the condition that the election was fairly advertised and that there was no coercion or interference from any quarter.

V. BACK-PAY

A. Salaries and Wages

In the case of **Government Service Insurance System v. Olase et al.**,[50] the Supreme Court, for the first time, distinguished "salary" from "wages" and "salary period" from "wage period." Whether it is material in labor relations law to draw these distinctions is another question. In any case, the Supreme Court ruled that the term "salary" refers to the amount which a dismissed employee would have earned from the time his right to reinstatement accrued while the term "wage" refers to the amount corresponding to the period from his dismissal to the date the Court of Industrial Relations ordered his reinstatement.

Perhaps there is need to back up a little on the facts involved in this case to understand the complications of this ruling.

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[49] 149 F. 2d. 435 (1945).
[50] G.R. No. 19988, Jan. 5, 1967, 63 O.G. 9349 (Oct., 1967).

After conducting a hearing on the petition of the dismissed employee for his reinstatement with back-pay the Court of Industrial Relations ordered only his reinstatement. After the denial of their respective motions for reconsideration, the employer appealed from the order requiring him to reinstate the employee while the latter appealed from that part of the order denying his claim for back-pay. The Supreme Court affirmed the decision of the lower court.

In due time the employee filed with the Court of Industrial Relations a motion for the execution of the judgment ordering his reinstatement and asked that it be made effective ten days after the employer's receipt of the decision of the Court of Industrial Relations, pursuant to Section 14 of Commonwealth Act No. 103. This was granted over the vigorous objection of the employer that there was no decision that could have been enforced at that time because the employee had appealed the case to the Supreme Court. Not satisfied with this ruling, the employer brought the matter to the Supreme Court. On the ground that an appeal from the decision of the Court of Industrial Relations does not stay the execution of the decision, the Supreme Court ruled that under Section 13 of Commonwealth Act No. 103 the decision had become effective and self-executory ten days after receipt thereof by the parties. According to the Supreme Court, in an opinion prepared by Mr. Justice Bengzon, the dismissed employee should have been paid his back salaries from the date the decision of the lower court to reinstate him had become effective. This, said the Supreme Court, is different from back wages which refer to the period starting from his illegal dismissal up to the time his right to reinstatement accrued, i.e., ten days after the employer's receipt of the order to reinstate the employee.

There is an interesting aspect of the case that needs some clarification. After the Supreme Court had affirmed the decision of the Court of Industrial Relations ordering reinstatement without back wages,[51] it seems unusual for the Supreme Court in the present case[52] to distinguish between "back wages" and "back salaries," such that the term "back wages" was made to refer to the period covered by the employee's illegal dismissal to

[51] G.R. Nos. 17186 & 17363, Oct. 31, 1961.
[52] See note 50, *supra*.

the date his reinstatement accrued and then denied this to him, while the term "back salaries" was made to start after the date reinstatement accrued to the date of actual reinstatement and then awarded this to the employee. But note that the employee's suit involves a single demand for reinstatement with back-pay. Obviously, he was also seeking payment of back wages from the time of his illegal dismissal to the actual date of his reinstatement. Note, too, that the Court of Industrial Relations ordered his reinstatement without back-pay, which the Supreme Court had sustained. The decision of the Court of Industrial Relations is qualified. It did not merely order "reinstatement," (as the Supreme Court claimed in its decision in the present case) but "reinstatement without back wage." Since this is the decision which the Supreme Court affirmed in G.R. Nos. L-17136 and 17363, then back-pay was not in order even from the time the employee was illegally dismissed to the time he was actually reinstated. It would seem that there is no need to distinguish "back wage" from "back salary" and to apportion a definite period of time for each. The terms "wages" and "salaries," after all, both refer to the amount of money paid for services rendered. The real difference between these terms, which obviously was not material in this case anyway, is that the term "wage" applies to the amount paid daily or weekly for labor involving physical effort, while the term "salary" refers to the fixed compensation paid for services which require previous training or special ability. In any case, the term "back-pay" as used in the Industrial Peace Act refers to both "wage" and salary."

B. Computation of Back-Pay

1. **In Cases Involving Discriminatory Lockouts**

One of the issues raised in **San Pablo Oil Factory, Inc. v. Court of Industrial Relations et al.,**[53] deals with the basis for the computation of back-pay of employees who have been the victims of discriminatory lockout. The judges of the Court of Industrial Relations could not agree on this question. The trial judge felt that the computation should be based on the employer's production record within the lockout period multiplied by the basic wage per day of each employee. On the other hand, the

[53] G.R. No. 25044, Feb. 28, 1967.

Court of Industrial Relations sitting *en banc* ruled that it should be the total lockout period multiplied by the employee's base wage per day.

On appeal the Supreme Court sustained the trial judge. Speaking through Mr. Chief Justice Concepcion, the Supreme Court stated:

> Indeed, even if there had been no lock-out, the laborers in question could not have possibly worked when the factory was not in actual operation. They could not have earned any wages except for the days of said actual operation, it being seemingly conceded that they had no monthly salary, but were paid a daily wage for services actually rendered. And, it being undisputed that the factory was not actually operated and did not mill except during the aforementioned thirty-nine (39) days, the order and the resolution appealed from the aggregate amount of the award should be, respectively, modified and reduced, accordingly.

This should not, of course, be confused with the solution involving laborers working on a weekly or monthly basis.

2. In Cases Involving Determination of Gross Back-Pay

The decision in the **San Pablo Oil Factory** case should be distinguished from the case of *Talisay-Silay Milling Co., Inc. v. Court of Industrial Relations et al.*[54] Here the Supreme Court, in determining the gross back-pay, emphasized the difference between a situation where the number of actual working days is known from one where this factor is unknown. In the first situation, the average daily wage of each employee during a given payroll period is multiplied by the actual number of working days during the back-pay period. In a situation where the actual number of working days cannot be determined, the gross back-pay is computed by dividing the sum total of the compensation actually received by the employee during a given payroll period by the number of months in that given period, after which the employee's average monthly compensation is multiplied by the number of months actually covered in the back-pay period.

C. Christmas Bonus

Is this gift or wage? The answer depends on whether or not it actually changes the wage structure of the employees. If the bonus is regularly given over a period of years, or is other-

[54] G.R. No. 17344, April 23, 1962, 62 O.G. 711 (Jan., 1966).

wise based on the actual pay earned by the employees or on the percentage of profit of the employer, then obviously it is no longer a gift but a part of the wages or salaries of the employees.

In the case of **Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association et al.,**[55] and **National Waterworks and Sewerage Authority v. NWASA Consolidated Labor Unions et at.,**[56] the Supreme Court, speaking through Mr. Chief Justice Concepcion in the first case and through Mr. Justice Makalintal in the second, ruled that since the Christmas bonus was paid regularly over a period of years, then it becomes part of the wages or salaries of the employees and thus not to be considered a gift.

The significance of this distinction lies in its impact on collective bargaining. If the Christmas bonus actually changes the wage or salary structure of the employees, and thus not a gift, then it is bargainable matter.

VI. NON-PROFIT INSTITUTIONS OR ORGANIZATIONS AND THE INDUSTRIAL PEACE ACT

In the case of *Casino Español de Manila v. Court of Industrial Relations,*[57] the Supreme Court considered the issue of whether non-profit institutions or organizations are within the jurisdiction of the Court of Industrial Relations. After carefully scanning the facts, the Court, in an opinion prepared by Mr. Justice Jesus Barrera, ruled that the Court of Industrial Relations is not deprived of its jurisdiction by the mere fact that an institution or organization is non-stock and non-profit in nature.

This is a very commendable approach because the Supreme Court answers to some extent the clamor of employees in non-profit institutions for protection under the Industrial Peace Act. In different words, not all the profits should be plowed back into the operation but a portion thereof set aside to meet the just economic demands of the employees. But in less than nine months, the Supreme Court overturned this decision in the case of **Manila Club Employees Union v. Manila Club Inc. et al.**[58]

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[55] G.R. No. 21120, Feb. 28, 1967.
[56] G.R. No. 20055, Sept. 27, 1967.
[57] G.R. No. 18159, Dec. 17, 1966.
[58] G.R. No. 21501, Aug. 30, 1967.

In this case, the Supreme Court, speaking through Mr. Justice Makalintal, held that the non-stock and non-profit nature of an organization or institution is enough to put at rest the question of jurisdiction of the Court of Industrial Relations. The clearest implication of this decision of the Supreme Court on the subject is to remove once more a great many workers and employees in non-stock and non-profit institutions from the protection of the Industrial Peace Act.

Perhaps a comparative analysis of these two contradictory decisions will help. In the *Casino Español* case, the employer moved for the dismissal of the unfair labor practice complaint on the ground that the Court of Industrial Relations had no jurisdiction over the case because it is a non-stock, non-profit corporation and that it was organized for the purpose of promoting closer relationship among its members and developing their mutual interests and recreation. In disposing of this contention, the Supreme Court correctly stated that Casino Español's argument is a complete misreading of the previous decisions on the matter, starting with the leading case of *Boy Scouts of the Philippines v. Araos*.[59] Mr. Justice Barrera took special care in nursing the point that the *ratio decidendi* of the cases previously decided by the Court on this problem is based on the material fact that the objectives or purposes of the institutions or organizations involved in those cases were all for "elevated and lofty purposes" such as charitable work, social service, education and instruction, hospitalization and medical services, and the promotion of civic consciousness, character and patriotism. Thus, the Supreme Court concluded that while the Casino Español de Manila is a non-stock, non-profit organization, nevertheless, its purposes are not in the same class nor are they even akin to the public objectives of the organizations and institutions involved in the cases previously decided by the Court on this question. Mr. Justice Barrera felt that the Casino Español de Manila was established for a private purpose, that is to provide service, comfort and benefit only to its members and their guests. Thus, the Supreme Court correctly concluded in the *Casino Español* case that it is not enough that an organization or association be non-stock or non-profit to remove it from the jurisdiction of the Court of Industrial Relations. To have this it must also

[59] 102 Phil. 1080 (1958).

be shown that it pursues some public objective or purpose, such as benevolent, educational, medical, charitable, or patriotic activities.

Now, in the **Manila Club** case, the employer also sought the dismissal of the unfair labor practice charge on the ground that the Court of Industrial Relations did not acquire jurisdiction over the case because it is a non-stock, non-profit organization. The Court of Industrial Relations *en banc* agreed and forthwith dismissed the complaint. The labor union appealed by certiorari and contended that the lower court erred in refusing to assume jurisdiction over the case. In another surprising move, the Supreme Court held that the issue of jurisdiction depends only on whether an institution or organization is organized for profit or not. And in resolving the issue of jurisdiction on this basis, the Supreme Court merely referred to the purpose of the respondent Manila Club, which is to promote the social relations among its members and to that end, establish and maintain one or more club houses and such other appurtenances and belongings as are usual in social clubs and club houses. After taking a look at the articles of incorporation of the Manila Club, which declares that it is a non-stock, non-profit corporation, the Supreme Court was ready to hold that this fact alone is enough to set at rest the question of jurisdiction.

It is noteworthy that the Supreme Court in the **Manila Club** case did not consider the *ratio decidendi* of the previous cases on the matter, something which the Court couldn't seem to overemphasize in the 1966 *Casino Español* case. The Manila Club, Inc. and the Casino Español de Manila have identical private purposes, namely, to provide service, comfort and benefit only to their respective members and their guests, and more revealingly, their respective moneys and assets are to be devoted exclusively to the furtherance of their respective private activities. Although both are non-stock, non-profit organizations, their respective objectives are by no means public in nature, such as benevolent, educational, medical, charitable, or patriotic activities.

What then is the law on the matter? This is now hard to answer. It is perhaps safer to say that it would depend on the temper of the Court at the time a case of this nature is brought for consideration. But if we go by the traditional lawyer's approach, then the latest decision upsets the earlier ones. How-

ever, may I say that good decisions, such as the 1966 *Casino Español* case, are, like sleeping dogs, ready to bite again when awakened.

VII. SEASONAL WORKERS.

Are seasonal workers regular employees? Speaking through Mr. Justice Reyes in the 1966 case of *Industrial-Commercial-Agricultural Workers Association (ICAWO) v. Court of Industrial Relations*,[60] the Supreme Court reiterated its decision in the 1963 case of *Manila Hotel Company v. Court of Industrial Relations*[61] to the effect that seasonal workers are to be considered regular employees and should, therefore, be recalled to their respective jobs at the start of the employer's seasonal activity. In justifying this position, the Supreme Court reasoned that seasonal workers are not to be treated as separated from their jobs because during off season their employment relationship is only suspended and as such they are to be considered on leave of absence without pay.

But as I pointed out in last year's survey, this conclusion is vulnerable because it fails to take into account the possibility that the seasonal activity of the employer may not be periodic or recurrent at all. This is a relevant factor and undoubtedly material to the problem of whether seasonal workers are to be considered regular employees or not. Realizing this deficiency, the Supreme Court rectified its decision in the *Industrial-Commercial-Agricultural* case in its resolution on August 23, 1966, denying the motion for reconsideration filed by the employer. There Mr. Justice Reyes stated very clearly that seasonal workers are to be considered regular employees only when the seasonal operation of the employer *has been regular and uninterrupted.*

In the case of **Visayan Stevedore Transportation et. al. v. Court of Industrial Relations et al.**,[62] the Supreme Court was again confronted with the same problem but surprisingly reacted to it by ignoring the realistic rule laid down in its resolution disposing of the motion for reconsideration filed in G.R. No. L-21465. The Supreme Court, now speaking through Mr. Chief Justice Concepcion, to which Mr. Justice Reyes concurred with-

[60] G.R. No. 21465, March 31, 1966.
[61] G.R. No. 18873, Sept. 30, 1963.
[62] G.R. No. 21696, Feb. 25, 1967.

out a word of reference to his fine opinion of August 23, 1966 in the *Industrial-Commercial-Agricultural Workers Association* case, blandly held that seasonal workers are not to be considered separated from service during the off season but only on leave of absence without pay because the employer-employee relationship is merely suspended and not severed.

This ruling naturally revives the criticism that it fails to take into account the possibility that the business activity of the employer while seasonal may not be recurrent and uninterrupted, in the sense that while the seasons are indeed regular, the business operation of the employer, which depends on the seasons, may not. Therefore, it is noteworthy to repeat here in full the resolution penned by Mr. Justice Reyes for the Supreme Court in disposing of the motion for reconsideration filed by the employer in the *Industrial-Commercial-Agricultural Workers Organization* case, to wit:

> The cessation of the Central's milling activities at the end of the season is certainly not permanent or definitive; it is foreseeable suspension of work and both Central and laborers have reason to expect that such activities will be resumed, as they are in fact resumed, when sugar cane ripe for milling is again available. There is therefore, merely a temporary cessation of the manufacturing process due to passing shortage of raw material that by itself alone is not sufficient, in the absence of other justified reasons, to sever the employment or labor relationship between the parties since the shortage is not permanent. The proof of this assertion is the undenied fact that many of the petitioner-members of the ICAWO Union have been laboring for the Central, and re-engaged for many seasons *without interruption.* Nor does the Central interrupt completely its operations in the interval between milling seasons; the office and sales force are maintained precisely because operations are to be later resumed.

VIII. FARM WORKERS

Section 166(15) of the Agricultural Land Reform Code defines the term "farm workers" to include any agricultural worker as well as farm laborer or farm employee. This definition embodies the decisions of the Supreme Court in *Pampanga Sugar Mills v. Pasumil Labor Union*[63] and *Victorias Milling Company v. Court of Industrial Relations.*[64]

[63] 98 Phil. 558 (1956).
[64] G.R. No. 17281, March 30, 1963.

The decision in the case of **Del Rosario v. Court of Industrial Relations et al.,**[65] reaffirms the rules pronounced by the Supreme Court in these prior cases.

In the *Pampanga Sugar Mills* case, the Supreme Court held that the term "farm laborer" includes farm planters, farm harvesters and other farm hands, such as those whose job is to load and unload the produce for transportation to the mill or warehouse. And the term "farm employee" according to the Court in the *Victorias Milling Company* case does not include office clericals, mill chemists, mill laborers, tractor and truckdrivers, fuelmen, oilers and maintenance workers.

Thus, for the Supreme Court, it is the nature of the work which classifies a person either as an agricultural worker or an industrial worker. The former falls within the exclusive jurisdiction of the Court of Agrarian Relations while the latter falls under the exclusive jurisdiction of the Court of Industrial Relations.

The **Del Rosario** case abandons the decision reached in *Celestial v. Southern Mindanao Experimental Station,*[66] where the Supreme Court held that maintenance workers and even office clericals employed by a farming enterprise are to be considered agricultural workers despite the fact that their work is only incidental to farming.

IX. INDEPENDENT CONTRACTORS

One of the problems where the Supreme Court has not yet tidied up its decisions deals with the classification of a person who happens to have certain attributes of an employee and some characteristics of an independent business contractor. The contradictory decisions in **Allied Free Workers Union v. Compañia Maritima et al.**[67] and **Visayan Stevedore Transportation Co. et al. v. Court of Industrial Relations et al.,**[68] illustrate this proposition rather well.

As in previous cases,[69] the Supreme Court in the case under review used the older "right of control" test to determine the

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[65] G.R. No. 23133, July 13, 1967.
[66] G.R. No. 12950, Dec. 9, 1959, 57 O.G. 8461 (Nov., 1961).
[67] See note 44, *supra.*
[68] G.R. No. 21696, Feb. 25, 1967.
[69] Cruz v. Manila Hotel, 101 Phil. 358 (1957); LVN Pictures, Inc. v. Philippine Musicians Guild, G.R. No. 12582, Jan. 28, 1961.

type of economic arrangement existing between the parties. Speaking through Mr. Justice Bengzon in the **Allied Free Workers** case, the Supreme Court ruled that an employer-independent contractor relationship existed between the parties simply because Compañia Maritima limited its intervention over the result of the stevedoring and arrastre services rendered by the Allied Free Workers Union and did not concern itself over the conduct or method used in accomplishing the result.

I think this is an oversimplification. There is no attempt at all to relate the economic arrangement existing between the parties nor the solution of the problem to the newer socio-economic concepts and objectives of the Industrial Peace Act. Put differently, the fact that an employer has limited his control over the result of the work done for him may still be outweighed by other and perhaps more important economic factors involved in the relationship. When this happens, then surely an employer-employee relationship exists between the parties. Were this not the case, an employer may, by the mere expedience of limiting his control over the result of the work agreed upon, subvert the policies of the Industrial Peace Act, avoid his statutory responsibilities thereunder, and resort to individual bargaining, anti-unionism, and unfair labor practices, which are precisely the mischiefs which the Industrial Peace Act seeks to eradicate.

1. **The "Right-of-Control" Test**

The right-of-control test is a common law formula based on the old master-and-servant concept. This is a deceptively simple formula.

Under this rule, if the right of control is over the result as well as the means by which the result is accomplished, then it is said that there is an employer-employee relationship. On the other hand, if the right of control is limited only to the result, then it is said that there exists an employer-independent contractor relationship. Obviously, an employer will under ordinary circumstances opt for the latter. By this expedience an employer is able to absolve himself from his legal responsibilities. This is the reason why the simplicity of this rule is deceptive. Its simplicity is largely in formulation and not in its application.[70] To repeat, being an older rule or test, it is not related to

[70] NLRB v. Hearst Publications, Inc., 322 U.S. 111, 88 L. Ed. 1170, 64 S. Ct. 851 (1944).

the newer concepts in labor relations law, which have been formulated through experience and experiment in order to prevent the mischiefs prevalent under the older common law concept of master and servant, such as unfair labor practice, unorganized labor, anti-unionism, and individual bargaining.

2. The "Economic Facts of the Relation" Test

The problem at the present time is a good deal complicated. It is not at all strange to find a person possessing some of the attributes of an employee and at the same time some of the characteristics of an independent contractor. How, then, should a person with both attributes be classified, bearing in mind the objectives and policies of the Industrial Peace Act?

The test implicit in the Industrial Peace Act is to consider all the economic indicators of the relationship existing between the parties. If these economic factors make the relation more nearly either of the two, with due regard to the policies and objectives of the Industrial Peace Act, then the classification must be made accordingly. This is called the "economic facts of the relation" test.

Said the Supreme Court of the United States on this point in the *Hearst Publications* case:

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

In the 1962 case of *Dy Pac & Company, Inc. v. Court of Industrial Relations et al.*,[71] the Supreme Court applied this new test to determine the economic relation of the laborers with the lumber company. Speaking through Mr. Chief Justice (then Justice) Concepcion, the Court observed that while it is a fact that the laborers were hired by a secondary employer, nevertheless, there were other economic indicators showing that they did not fall under the classification of independent contractors. They were really employees of the company. Therefore, they were entitled to all the rights and privileges provided in the Indus-

[71] G.R. No. 18460, Aug. 24, 1962.

trial Peace Act. Among the economic factors involved in the *Dy Pac* case were the following: (1) the individual hiring of the workers by the secondary employers was subject to the approval of the company, (2) the company and not the secondary employer paid the wages of the workers, (3) the workers signed the payroll of the company, and (4) the shutdown involved in that case occurred soon after the workers organized themselves into a labor union and presented certain economic demands on the company.[72]

Going back to the two 1967 cases under review, it is interesting to note that while the Supreme Court returned to the older "right of control" test, it took into account at the same time the other *economic facts* involved in the relationship between the parties. In effect the Court realized that while the employer's control over the result of the work done is an important economic indicator, it is by no means the only factor to be considered in determining whether there is an employer-employee relationship or an employer-independent contractor arrangement.

In the **Visayas Stevedore Transportation Company** case, the employer argued that the arrangement between him and the complaining laborers was not one of employer-employee relationship because of the fact that he did not assume control over the method or means of accomplishing the work performed for him by the laborers. This is an indication that the employer was deliberately avoiding his obligations under the Industrial Peace Act. Speaking thru Mr. Chief Justice Concepcion, to which the Justices who had subscribed to the "right of control" test in the earlier **Allied Free Workers Union** case agreed, the Supreme Court disregarded this contention because there were other economic factors showing that it was in fact an employer-employee relationship. Here, Mr. Chief Justice Concepcion correctly disregarded the employer's control over the result of the work performed for him because of the presence of other countervailing economic factors which convinced him that there was no independent employment contract between the employer and the laborers.

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[72] This decision continues the ruling in LVN Pictures, Inc. v. Philippine Musicians Guild *et. al.*, see note 69, *supra.*; Sampaguita Pictures, Inc. v. Philippine Musicians Guild *et. al.*, G.R. No. 12598, Jan. 28, 1961; Cruz v. Manila Hotel, see note 69, *supra.*; and Sunripe Coconut Products v. Court of Industrial Relations *et. al.*, 83 Phil. 518 (1949).

X. CONCERTED ACTIVITIES

A. Strikes

1. Validity

In the case of **United Seamen's Union of the Philippines v. Davao Ship Owners Association et al.,**[73] the Supreme Court, in an opinion prepared by Mr. Justice Makalintal, ruled that a strike is illegal even though it may be for a valid purpose if the means to carry it out involves violence, coercion, intimidation and the use of obscene language.

2. Basic Judicial Approach

Perhaps there is need to dwell a little on the reason behind this elementary principle in the law on strikes. In cases not falling within the express prohibition of the Industrial Peace Act against strikes, such as strikes of government employees who are engaged in governmental functions or strikes during the cooling-off period, the courts have adopted a uniform bases for the solution of the problem of the legality or illegality of strikes. The reason for this judicial approach is simple. The right to engage in this type of concerted activity is not on the same footing, insofar as governmental control thereof is concerned, as the right to self-organization or the right to form, join or assist labor organizations for the purpose of collective bargaining. The reason for this is reflected in the holding of the Supreme Court in the early case of *Dee Chuan and Sons, Inc. v. Kaisahan ng mga Manggagawa sa Kahoy sa Pilipinas,*[74] that a strike, by its very nature, has a more serious impact upon the public interest and causes injury to another's business or property.

The statutory elements of this type of concerted activity is given in Section 2(1) of the Industrial Peace Act, namely, industrial dispute, collective action of employees, and temporary work stoppage. It does not follow, however, that the presence of these elements makes a strike valid as a means of enforcing union demands. Note that Section 3 of the Industrial Peace Act further qualifies the right to strike insofar as the objective of this type of concerted action of the employees is concerned, namely, that it must be for the purpose of collective bargaining and other mutual aid or protection.

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[73] G.R. Nos. 18778-79, Aug. 31, 1967.
[74] G.R. No. 8149, June 30, 1956.

It is not, therefore, merely a question of whether the statutory elements have been met or not, or whether the demands involved in a strike may or may not be granted. The more important issue is whether the objective of a strike falls within the limits set by Section 3 of the Industrial Peace Act. In different words, a strike can be used only for the purpose of collective bargaining and other mutual aid or protection of the employees.

But even if the strike has this objective, the courts have also been concerned with another important issue which has to do with the means employed to carry out a lawful purpose. Thus, if a strike is carried out by violence, coercion, intimidation, or with the use of obscene language, then it is of no moment that the objective or purpose is lawful. A different approach would encourage abuses and subvert the objectives of the law.

3. Employment and Wage Status of Strikers

Section 2(d) and (j) of the Industrial Peace Act provides that employees who go on an unfair labor practice strike retain their status as employees even though they are not actually on the job. On this basis, they are entitled to reinstatement with or without backpay.

The question is whether this provision extends to all employees out on an unfair labor practice strike.

This issue was given a qualified answer by the Supreme Court in 1964 in the case of *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations.*[75] The decision in the case of *Norton & Harrison and Jackbuilt Concrete Blocks Labor Union v. Norton & Harrison Company et al.*,[76] follows the rule laid down in the *Cromwell Commercial* case. Here, the Supreme Court, speaking through Mr. Justice Regala, held that if a strike is the result of an employer's unfair labor practice, then the striking employees who were discriminatorily dismissed are entitled to reinstatement with back-pay from the time of their discharge less interim earnings, if any, but those who go with the strike merely to join in protesting the employer's unfair labor practice are entitled to reinstatement only after

[75] G.R. No. 19778, Sept. 30, 1964 and Feb. 26, 1965.
[76] G.R. No. 18461, Feb. 10, 1967.

they have given up the unfair labor practice strike, or have been or will be reinstated under new conditions which would discriminate against them because of their union activities. The reason for this distinction is based on the fact that the strikers who were discriminatorily dismissed were the ones *directly* prejudiced by the employer's unfair labor practice while the prejudice to those who joined the stoppage of work as a protest against the employer's unfair labor practices is only an **indirect** consequence of the employer's unfair labor practice.

B. Activities for Mutual Aid or Protection

Section 3 of the Industrial Peace Act guarantees not only the right of employees to engage in concerted activities for the purpose of collective bargaining but also the right to engage in collective action for their mutual aid or protection. Incidentally, to fall within the protection of the law, the concerted activity is not limited to cases where the employees act through labor unions only.

What, then, is the meaning of collective action for "mutual aid or protection?" Obviously, it must be reciprocal in nature, that is to say, the concerted activity must be pursued by the employees for or towards the benefit of one another and must be reasonably related to the conditions of their employment. Thus, an employee who initiated a petition which was signed by his co-employees at his behest, demanding the removal of the foreman who had disciplined him for neglecting his duties, cannot be said to have acted for the mutual aid or protection of the employees. On the contrary, his act is personal to him and obviously the result of his private resentment.[77] The point here is that not all activities in which employees act in concert are for their "mutual aid or protection," as this concept is contemplated in Section 3 of the Industrial Peace Act.

In the case of **Republic Savings Bank v. Court of Industrial Relations et al.,**[78] the ranking officers of the different unions in the Republic Savings Bank were dismissed for publishing a letter seeking the ouster of the bank president in order to aid the latter's rival for the control of the bank. In the letter pub-

[77] Joanna Cotton Mills, Co. v. National Labor Relations Board, 176 F. 2d. 749 (1949).

[78] See note 3, *supra.*

lished by the dismissed employees, the bank president was attacked for alleged acts of immorality, favoritism, and discrimination in the promotion of employees.

One of the questions raised in this case was whether the publication of the protest-letter is protected as a concerted activity for their mutual aid or protection under Section 3 of the Industrial Peace Act. In holding that it is, the Supreme Court cited the case of *National Labor Relations Board v. Phoenix Mutual Life Insurance Co.*[79]

There is need to scrutinize the ruling of the Court in the *Republic Savings Bank* case. There is no question that the act was done in concert. But there is serious doubt as to whether this concerted activity was for the mutual aid or protection of the signatories to the protest-letter and for the mutual aid or protection of the employees respectively belonging to the different collective bargaining units headed by each of the signatories to the letter. The Supreme Court itself was not quite convinced that the *Phoenix Mutual Life Insurance* case which it cited was of any help. Mr. Justice Castro, who penned the decision, himself admitted that the American case is not on all fours with the *Republic Savings Bank* case. They are similar only in the fact that the employees in both cases prepared and signed a protest-letter. But they are very different where it counts the most: (1) as to the objective of the protest, and (2) as to the means or language used to attain such purpose. In the *Phoenix* case, the objective of the employees in writing the letter protesting the appointment of an outsider for the position of company cashier was clearly for their mutual aid or protection because the "degree of efficiency of the cashier and the employees in his department often aids or hinders the effectiveness of the work [and income] of the dismissed insurance salesmen." This fact shows that the protest-letter was for or towards their reciprocal benefit and that it was reasonably related to the conditions of their employment. However, this material fact was not mentioned at all in the decision in the *Republic Savings Bank* case; not in the decision in the main case, nor in the subsequent resolution dismissing the motion for reconsideration filed

[79] 167 F. 2d. 983; 335 U.S. 845, 69 S.Ct. 68, 93 L. Ed. 395 (1948).

by the Republic Savings Bank.[80] It is on the basis of this material fact that the Court in the *Phoenix* case ruled that the dismissed employees "were properly concerned with the identity and capability of the new cashier" because "it bore a reasonable relation to the conditions of their employment" even though they did not have any authority to recommend anyone to that position. Upon the other hand, the employees who prepared and published the protest-letter in the *Republic Savings Bank* case was motivated by nothing more than their desire to have the bank president ousted from his position because they favored the president's rival for the control of the bank.

Insofar as the means or language used by the dismissed employees is concerned, the Court in the *Phoenix* case correctly characterized the means used by the discharged employees in preparing their protest-letter as "moderate conduct" because there was nothing therein that was illegal or offensive. This cannot be said of the language used in the protest-letter prepared and published by the dismissed employees in the *Republic Savings Bank* case. It was libelous, it was angry, it was offensive.

With due respect to the Supreme Court, the *ratio decidendi* of the *Phoenix* case was not fully utilized for what it stands for in labor relations law.

XI. CLOSED SHOP

A. Validity

There is not a year that the problem of the scope and validity of the closed-shop arrangement has not reached the Supreme Court.

During the year under review, it is noteworthy that in the case of **Manalang et al. v. Artex Development Company, Inc., et al.,**[81] the Supreme Court has firmed up its view that the closed-shop arrangement is not an unreasonable restriction of the freedom of association guaranteed in the Constitution. Speaking through Mr. Justice Castro, the Supreme Court stated that it is futile to argue otherwise because the Court has already sustained in a number of cases the view that the closed-shop arrangement is a valid form of union security.

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[80] See note 4, *supra.*
[81] G.R. No. 20432, Oct. 30, 1967.

For many years, the closed-shop arrangement which is recognized and allowed in Section 4(a)(4) of the Industrial Peace Act has been attacked by its opponents both in the bench and bar on three different grounds. First, it is argued that the closed-shop arrangement is contrary to Section 3 of the Industrial Peace Act, which protects the right of the employees to self-organization and to form, join or assist a labor organization of their own choosing for the purpose of collective bargaining. Second, it is contended that the closed-shop arrangement perpetuates a collective bargaining union in contravention of Section 12 (b) of the Industrial Peace Act, which allows the holding of a certification election when the Court of Industrial Relations has a reasonable doubt as to whom the employees have chosen as their bargaining representative. And third, it is asserted that it 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.

All these attacks against the validity of the closed-shop arrangement have been discussed in previous annual surveys. No useful purpose will be served to repeat the discussion here. But insofar as the last argument is concerned, it must be added that I find it difficult to go along with the holding of the Supreme Court in the **Manalang** case that the third attack on the validity of the closed-shop arrangement is "a futile exercise in argumentation" on the ground that the Supreme Court has previously sustained its validity as a form of union security in a number of cases. I'm afraid that this is not an accurate proposition because the closed-shop arrangement has also been struck down by the Supreme Court in more cases than in those where the Court had sustained it.

If the argument is futile, it has got to be on a different basis. And that appears to me to be the attempt to make it appear that the privilege to form associations is an inflexible right. This, of course, is not the case. There is no question in constitutional science that this right is subject to the exercise of the police power of the State. As Sinco stated it in his work, the privilege to form associations, even when their objectives are not contrary to law, can be limited by a valid public purpose that "is more important than the interest of the individual,"

provided "that the means employed must have a substantial and reasonable relation to the end sought to be achieved."[82] I don't think there is any doubt in anybody's mind that the labor relations policy spelled out in Section 1 of the Industrial Peace Act is a valid purpose and that the limitation placed by Section 4(a)(4) of the Industrial Peace Act on the constitutional right to form associations is substantially related to the achievement of that labor relations policy.[83]

B. Scope of the Closed-Shop Arrangement

One of the decisions in labor relations law that I respect very much is the one prepared by Mr. Chief Justice Concepcion in the case of *Confederated Sons of Labor v. Anakan Lumber Co., et al.*[84] It does not only show a careful analysis of the scope of the shop arrangement agreed upon by the parties in their collective bargaining contract but it likewise exhibits a healthy feeling for the circumstances in which labor relations law is evolving at the present time in our country.

In this case, Mr. Chief Justice Concepcion felt that the shop arrangement agreed upon by the parties in their collective bargaining contract was not *the* closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act. He based his conclusion on two points: (1) that the employees of the Anakan Lumber Company were not informed of the nature of the shop or employment clause agreed upon by the labor union and the employer, and (2) that the collective bargaining contract signed by the parties did not express unequivocally that all employees must be members in good standing of the bargaining union in order to keep their jobs and that failure to do so is a ground for dismissal.

Mr. Chief Justice Concepcion felt that failure to meet either of these conditions is fatal to the establishment of *the* closed-shop arrangement authorized in Section 4(a)(4) of the Industrial Peace Act. Conformably thereto, he construed the shop arrangement agreed upon by the parties in the collective bargaining contract to be one of limited application only, that is to say, those employed after the execution of the collective bargaining contract and are not yet union members are required to

[82] SINCO, CONSTITUTIONAL LAW, 127 (2d Ed., 1960).
[83] 41 PHIL. LAW J., 45 (1966).
[84] G.R. No. 12503, April 29, 1960.

become members in good standing of the bargaining labor union to keep their jobs. Thus, employees who are on the job on or before the signing of the collective bargaining contract who are already members of other labor unions are not to be affected. This Mr. Chief Justice Concepcion aptly described as a "limited closed-shop" and not *the* closed shop allowed in Section 4(a)(4) of the Industrial Peace Act.

In the case of **Manalang et al. v. Artex Development Company, Inc. et al.,**[85] the issue squarely presented to the Supreme Court for resolution was whether it is lawful to enforce a closed-shop arrangement against employees who did not have any knowledge thereof. After considering the facts and circumstances involved in the case, the Supreme Court came to the conclusion that the union members were aware of the existence of the closed-shop provision in the collective bargaining agreement. That being the case, the Court agreed that the closed-shop arrangement contained in the labor contract could be applied to them.

Mr. Justice Castro, who penned the decision, could have stopped here. However, he went on to state that even if it is assumed *arguendo* that the employees were unaware of the closed-shop arrangement set forth in the collective bargaining agreement between the parties, there is no question that as long as the collective bargaining contract itself was in force the employees were bound by it. This, obviously, is not consistent with the first position reached by the Court.

Perhaps it is appropriate to raise the question at this point whether this additional opinion has affected in any way the previous stand taken by the Court. My own thinking of the matter is that the first position taken by the Court in the 1967 case as well as the decision reached in the *Anakan Lumber Company* case still hold true and has not been affected at all by the assumption made by the Court in the latter part of its decision in the **Manalang** case. Obviously, it is obiter dictum.

May I add that Mr. Chief Justice Concepcion apparently forgot the fine analysis of the problem he made in the 1960 *Anakan Lumber Company* case, and surprisingly joined Mr. Justice Castro's *obiter dictum* in the 1967 **Manalang** case.

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[85] See note 81, *supra*.

XII. TERMINATION PAY LAW.

A. Prescription of Action.

Section 1 of Republic Act No. 1052, as amended by Republic Act No. 1787, provides as follows:

> In cases of employment without a definite period in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause or without just cause in the case of an employee by serving written notice on the employer at least one month in advance or in the case of an employer by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee whichever is longer, a fraction of at least six months being considered as one whole year.
>
> The employer upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.
>
> The employee upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice.

In previous surveys, several issues involving this provision were taken up, such as the condition imposed by the Supreme Court for the exercise by the Court of Industrial Relations of its jurisdiction, the amount of separation compensation, and the question of termination of employment not subject to separation compensation.

During the year in review, the Supreme Court faced a different question. In the case of **Cielos et al. v. Bacolod Murcia Milling Company, Inc.**[86] the lower court dismissed plaintiff's claim for termination or separation pay upon the ground that the action had already prescribed because the complaint was filed after the lapse of more than six years from the time they were dismissed by the employer. The lower court ruled that the complaint was barred by Article 1146(1) of the Civil Code of the Philippines, which provides that action upon an injury to the rights of the plaintiff must be instituted within four years from the time the right of action accrues. Put differently, the lower court felt that the failure of the company to pay

[86] G.R. No. 20991, Aug. 30, 1967.

the plaintiffs their separation pay constitutes an injury to the rights of the plaintiffs.

Not satisfied with this decision, the plaintiffs appealed by certiorari to the Supreme Court on a question of law. They contended that the law applicable to their case is Article 1144(2) of the Civil Code of the Philippines and not Article 1146(1) thereof. The former provides that actions upon an obligation created by law must be brought within ten years from the time the right of action accrues. In other words, the plaintiffs took the position that the obligation of the company to pay their separation or termination pay under Republic Act No. 1052 is an obligation created by law.

The Supreme Court, speaking through Mr. Justice Zaldivar, found merit in this contention. Indeed, this obligation, according to the Court, does not have to be stipulated in the contract of employment because it is the law that imposes this obligation, whether the parties to the contract of employment agree with it or not. Thus, unless the policy stated in the Civil Code of the Philippines is changed, the action to enforce compliance with this obligation may be instituted anytime within the period of ten years from the time the right of action accrues, pursuant to Article 1144(2) of the Civil Code of the Philippines.

The employer, however, insisted that the action falls under Article 1146(1) of the Civil Code as held by the Supreme Court in the case of *Valencia v. Cebu Portland Cement Company et al.*[87] There it was held that the cause of action which arose upon plaintiff's separation from service was barred because the complaint was not filed within four years from the date the plaintiff was separated from the service, that is to say, the date when the cause of action accrued. But the Supreme Court dismissed this argument because the *Valencia* case was not applicable inasmuch as the action there was for actual as well as compensatory damages under the Civil Code, and not for separation or termination pay under Republic Act No. 1052.

[87] G.R. No. 13715, Dec. 23, 1959, 57 O.G. 2134 (March, 1961).