LABOR RELATIONS LAW

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I. The Court of Industrial Relations

A. *Meaning of the term "court" in the Industrial Peace Act*

In *Capistrano v. Bocar*,[1] a question as to the meaning of the term "Court" as used in the Industrial Peace Act was brought before the Supreme Court for determination. Mr. Justice J. P. Bengzon simply referred the problem to the provision of section 2(a) of the Industrial Peace Act, where it is provided that the word "court" whenever used in the Industrial Peace Act refers to the Court of Industrial Relations established by Commonwealth Act No. 103.

This pronouncement must, however, be taken in connection with the decision in *Scoty's Department Store v. Micaller*[2] where the meaning of the term "court," as used in section 25 of the Industrial Peace Act was first raised. Under this section the "Court" is given the discretion to punish any person violating section 3 of the Industrial Peace Act by a fine of not less than ₱100 nor more than ₱1,000 or by imprisonment of not less than one month nor more than one year, or by both such fine and imprisonment.

The Supreme Court held that the word "Court" as used in this section does not refer to the Court of Industrial Relations but to the regular courts, notwithstanding the express provision of section 2(a) that the term "Court" whenever used in the Industrial Peace Act refers to the Court of Industrial Relations. According to the Supreme Court, to say that the term "court" in section 25 refers to the Court of Industrial Relations could result in a violation of the fundamental safeguards guaranteed in the Constitution to any person accused of violating section 3 of Republic Act No. 875 or of committing any act which is declared unlawful therein. The provisions of the Constitution that no person shall be held to answer for a criminal offense without due process of law and that in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to

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[1] G.R. No. 24707, Jan. 18, 1968.

[2] G.R. No. 8116, Aug. 25, 1956, 52 O.G. 5119 (Sept., 1956); 99 Phil. 762 (1956).

have compulsory process to secure the evidence of witnesses in his behalf can be jeopardized by the procedure followed by the Court of Industrial Relations under section 5(b) of the Industrial Peace Act. This section provides that in the ascertainment of the facts in each case the rules of evidence prevailing in courts of law shall not be controlling and that the hearing may be done without regard to technicalities of law or procedure. Furthermore, under the same section, the Court of Industrial Relations is not bound solely by the evidence presented during the hearing in rendering its decision but may avail itself of all other means. Under this legal provision the Court of Industrial Relations is not bound by the hearsay rule and could rely on background evidence. The Supreme Court felt that all these might be disastrous to any person accused under the penal provisions of section 25 of the Industrial Peace Act.

B. *Basis for determination of jurisdictional question*

In *Security Bank Employees Union v. Security Bank and Trust Co.*[3] and *Luzon Stevedoring Corporation v. Celorio,*[4] the Supreme Court reiterated the long-standing rule, going as far back as *Suanes v. Almeda Lopez*[5] that the jurisdiction of the Court of Industrial Relations over the subject matter is determined by the allegations of the complaint. This means that the truth of the allegations must be theoretically admitted until facts or evidence subsequently presented show otherwise.[6] Put differently, the question of jurisdiction over the subject matter does not depend on the contrary averments contained in the answer.[7] And it is not material in the determination of the jurisdiction of the Court of Industrial Relations whether the relief prayed for in the complaint could be granted or not, or whether the demands set forth in the complaint are valid or not.

But during the year in review, there seems to be a shift in the position of the Supreme Court on this question. In *Associated Labor Union v. Borromeo,*[8] Mr. Chief Justice Roberto Concepcion stated that the jurisdiction of the Court of Industrial Relations is determined by

[3] G.R. No. 28536, April 30, 1968.
[4] G.R. No. 22542, July 31, 1968.
[5] 73 Phil. 573 (1942).
[6] Serrano v. Serrano, G.R. No. 19562, May 23, 1964; Manila Electric Company v. Ortañez, G.R. No. 19557, March 31, 1964; Insular Sugar Refining Corporation v. Court of Industrial Relations, G.R. No. 19247, May 31, 1963, 62 O.G. 5580 (Aug., 1966).
[7] Bay View Hotel, Inc. v. Manila Hotel Workers Union, G.R. No. 21803, Dec. 17, 1966; Red V Coconut Products, Ltd. v. Court of Industrial Relations, G.R. No. 21348, June 30, 1966; Layno v. de la Cruz, G.R. No. 20636, April 30, 1965; Tuvera v. de Guzman, G.R. No. 20547, April 20, 1965; Associated Labor Union v. Ramolete, G.R. No. 23527, March 31, 1965; Abo v. Philame Employees and Workers Union, G.R. No. 19912, Jan. 30, 1965.
[8] G.R. No. 26461, Nov. 27, 1968.

the *issues* raised by the parties. This naturally involves the consideration of the allegations by both parties in their respective pleadings. While this was mentioned *obiter dictum,* it is something to reckon with because *obiters* have a peculiar way of becoming starting points in the determination of cases.

C. *Incidental powers*

Under Commonwealth Act No. 103, the Court of Industrial Relations is vested with all the powers incidental to its jurisdictional authority and competence.

1. Adjudication of questions related to main case

In the case of *Amalgamated Laborers' Association v. Court of Industrial Relations,*[9] the controversy involved the award and sharing of attorney's fees for legal services rendered by the union lawyers in an unfair labor practice case. On petition of one of the union lawyers, the Court of Industrial Relations authorized the disbursement of the amount deposited by the employer to satisfy the claim for attorney's fees. The other counsel for the labor union appealed the order of the Court of Industrial Relations pressing the proposition that it is without jurisdiction to adjudicate controversies regarding attorney's fees on the ground that such questions do not involve a labor dispute and is not among the types of cases held to be within the jurisdiction of the Court of Industrial Relations.

Speaking through Mr. Justice Conrado Sanchez, the Supreme Court found this argument unmeritorious and held that the question regarding attorney's fees in a case falling within the jurisdiction of the Court of Industrial Relations is an incidental matter related to the main case and falls within the court's jurisdiction too. Mr. Justice Sanchez cited the case of *Cebu Portland Cement Co. v. Court of Industrial Relations*[10] and *Martinez v. Union de Maquinistas.*[11] In both cases it was held that once the Court of Industrial Relations has acquired jurisdiction of a case, it retains that jurisdiction until the case is completely decided including all matters and incidents related thereto, such as claims for attorney's fees. The Supreme Court concluded in the 1968 case that a grant of jurisdiction implies the necessary and incidental powers essential to put such jurisdiction into effect "even though the court may thus be called upon to decide matters which would not be within its cognizance as original causes of action."

[9] G.R. No. 23467, March 27, 1968.
[10] 94 Phil. 509 (1954).
[11] G.R. Nos. 19455-56, Jan. 30, 1967.

2. Adoption of rules of procedure

(a) The "no-extension" rule

Section 20 of Commonwealth Act No. 103, empowers the Court of Industrial Relations to adopt its own rules and procedures.

In the exercise of this power, the Court of Industrial Relations promulgated sections 15, 16 and 17 of the Rules of the Court of Industrial Relations governing the procedure for the filing of motions seeking reconsideration of its orders or decisions. One of these rules prohibits the extension of the 10-day period for the filing of supporting arguments.

In the case of *Elizalde and Co., Inc. v. Court of Industrial Relations,*[12] the Supreme Court applied the "no-extension" rule of the Court of Industrial Relations. Speaking through Mr. Justice Sanchez, the Court held that it would be a mistake to disregard the "no-extension" rule. Citing the case of *Luzon Stevedoring Company, Inc. v. Court of Industrial Relations,*[13] the Supreme Court underscored the purpose of speeding up the disposition of cases pending in the Court of Industrial Relations in the promulgation of the "no-extension" rule. This, according to the Supreme Court, is a reasonable exercise of the power of the Court of Industrial Relations to promulgate rules of procedure. And reiterating the holding in *Visayan Bicycle Manufacturing Company, Inc. v. National Labor Union*[14] and *Manila Metal Caps and Tin Cans Manufacturing Co., Inc. v. Court of Industrial Relations,*[15] the Supreme Court held that it is not an abuse of discretion on the part of the Court of Industrial Relations to dismiss a motion for reconsideration on the basis of the "no-extension" rule. In the earlier cases, the Supreme Court even likened the "no-extension" rule of the Court of Industrial Relations to section 1 of Rule 54 of the Rules of Court which removed from the regular courts the power to grant a new period, besides the 15 days therein provided, for the filing of a second motion for reconsideration, except when the 15-day period expires without giving the movant more than two days to file his second motion for reconsideration after deducting the period during which the first motion for reconsideration was pending, in which case the Court may still grant the movant two full days.

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[12] G.R. No. 21942, Sept. 23, 1968.
[13] G.R. No. 16682, July 6, 1963, 62 O.G. 4780 (July, 1966).
[14] G.R. No. 19997, May 19, 1965.
[15] G.R. No. 17578, July 31, 1963, 62 O.G. 4936 (July, 1966).

II. Unfair Labor Practices

A. *On the part of the employer*

During the year in review, the unfair labor practices involving employers were limited to discriminatory acts against employees in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization under section 4(a)(4) of the Industrial Peace Act.

In *Benguet Consolidated Inc. v. BCI Employees and Workers Union-PAFLU*,[16] management was charged in the Court of Industrial Relations of having committed an unfair labor practice under this provision because of its alleged failure to implement the salary scale contained in the collective bargaining agreement in favor of the complaining employee notwithstanding his promotion. To help him secure the proper wage scale for the work he has been doing for the company, the employee sought the assistance of his labor union.

In *Philippine Educational Institution v. MLQSEA Faculty Association*,[17] the employer was also charged with unfair labor practice under this provision because of alleged discriminatory acts against the complaining employee. It appears that the employee's teaching load was reduced and given to a non-union faculty member and that he was dismissed later from the service due to his involvement in the labor union.

In disposing of these issues the Supreme Court, speaking through Mr. Justice Bengzon in the first case and through Mr. Justice Enrique Fernando in the second, ruled that the respective acts of the employers in these cases were indeed the kind of discrimination in regard to hiring or tenure of employment or any term or condition of employment that discourage membership in a labor organization. According to Mr. Justice Bengzon, in the first case, the act of the complaining employee in seeking the assistance of his labor union to secure for him the proper wage scale embodied in the collective bargaining agreement is an allowable activity of a union member. In the second case, Mr. Justice Fernando characterized the act of the employer as an unfair labor practice because he discriminated against the complaining employee on grounds of union membership and activity.

The principle involved in this particular employer unfair labor practice is simple. An employer may discriminate against his employees for any reason whatsoever subject only to his legal responsibility under the circumstances of each case, except that he cannot discriminate against

[16] G.R. No. 25471, March 27, 1968.
[17] G.R. No. 24019, Nov. 29, 1968.

his employees on grounds of union affiliation and union activity. This has the effect of either encouraging or discouraging membership in any labor organization and, therefore, contrary to the rights of the employees guaranteed in section 3 of the Industrial Peace Act. The only exception to this is found in the proviso of section 4(a)(4) of the Industrial Peace Act, where it is expressly provided that an employer may discriminate on grounds of union affiliation and activity when there is a closed shop provision in the collective bargaining contract between the employer and the bargaining union. However, under Republic Act No. 3350, a closed shop agreement does not cover any member of a religious sect which genuinely prohibits affiliation of its members in any labor organization.

B. *On the part of labor organization*

In 1968, the only unfair labor practice involving labor organizations referred to section 4(b)(3) of Republic Act No. 875 which makes it an unfair labor practice for any labor organization or its agent to refuse to bargain collectively with the employer.

In a 1967 case, *Republic Savings Bank v. Court of Industrial Relations,*[18] the Supreme Court held that the duty to bargain collectively does not end with the execution of a collective bargaining agreement because as an economic relationship it is a continuing process. Thus, in the case of *Security Bank Employees Union v. Security Bank and Trust Co.,*[19] the Supreme Court, in an opinion penned by Mr. Justice Fernando, ruled that the duty to bargain collectively, as defined in section 13 of the Industrial Peace Act, necessarily imposes on the parties thereto the obligation to live up to the terms and conditions agreed upon and that failure to do so constitutes an unfair labor practice.

Something has to be said about this interpretation. Section 2(i) of the Industrial Peace Act expressly limits the term "unfair labor practice" to those unfair labor practices listed in section 4 of the Act. In section 4(a)(6), it is provided that it shall be an unfair labor practice for an employer to refuse to bargain collectively with the employer, provided it is the representative of the employees subject to the provisions of sections 13 and 14. And section 4(b)(3) provides that it shall be unfair labor practice for a labor organization or its agents to refuse to bargain collectively with the employer, provided it is the representative of the employees subject to the provisions of sections 13 and 14.

[18] G.R. No. 20303, Sept. 27, 1967.
[19] G.R. No. 28536, April 30, 1968.

Under section 13 of the Industrial Peace Act, the duty to bargain collectively has two aspects: 1) the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith, for the purpose of negotiating an agreement as to terms and conditions of employment and of executing a written contract incorporating such agreement if requested by either party, and 2) the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith for the purpose of adjusting any grievances or questions arising under the terms and conditions of such agreement.

The decision of the Supreme Court in the 1968 *Security Bank Employees Union* case unduly enlarges the concept of union "unfair labor practices" under section 4(b)(3). What is defined as an unfair labor practice in section 13, in so far as this case is concerned, is the *failure to meet* promptly and expeditiously and in good faith for the purpose of adjusting any grievances or questions arising under such terms and conditions of employment. Clearly, the *failure to comply* with the terms and conditions of employment embodied in a collective bargaining agreement is not an unfair labor practice. There is nothing in section 4(b)(3) in relation to section 13 on which to read the conclusion reached by the Supreme Court that failure to perform or to comply with the terms and conditions of a collective bargaining agreement constitutes an unfair labor practice.

III. Unfair Labor Practice Cases

A. *Nature and test to determine commission*

The case of *Tanglaw ng Paggawa v. Court of Industrial Relations,*[20] is the leading case on the nature of an unfair labor practice case as well as the test to determine whether an unfair labor practice has been committed or not. Through Mr. Justice J. B. L. Reyes, the Supreme Court stated that investigation of unfair labor practice cases partakes the nature of a criminal prosecution. As such, proof of its commission must be clear whether by direct or circumstantial evidence and cannot be merely presumed from other facts.

This is contrary to the provision of section 5(b) of the Industrial Peace Act. Earlier it was mentioned that under this provision the Court of Industrial Relations could rely on background evidence. The test given is also a very rigid one. With this pronouncement of the Supreme Court, many unfair labor practice cases would have to be dismissed which otherwise could be remedied by affirmative action of the Court

[20] G.R. No. 24498, September 21, 1968.

of Industrial Relations under section 5(c) in order to put into effect the policies of the Industrial Peace Act.

The public policies expressed in the Industrial Peace Act would have been served better had the Supreme Court opted for the "Ford" test.[21] This test draws a distinction between employers with anti-union background and those who have none. Thus, the basic question to be settled in any case involving alleged interference, restraint, or coercion of employees in the exercise of the rights provided in section 3 of the Industrial Peace Act is whether or not the employer has an anti-union background. If he has, then direct evidence of the commission of the unfair labor practice is not necessary because it is reasonable to infer that its presence has an adverse effect on the rights of the employees guaranteed in the Act. The test then to use in determining whether an unfair labor practice has been committed or not in this situation is whether the employer engaged in or is engaging in acts which it may reasonably be said tend to interfere with, restrain or coerce employees in the exercise of their rights guaranteed in the Act. But if the answer to the basic question is that the employer has no anti-union background, then and only then is direct evidence necessary to prove the charge of unfair labor practice. It cannot be presumed from other facts.

B. *Unique features in disposal of cases*

Section 5(a) and (b) lays down the procedure for the disposal of complaints for unfair labor practices. It also gives the unusual features of such procedure. First, the power of the Court of Industrial Relations over the prevention of unfair labor practices and its authority to prevent any person from engaging in any unfair labor practice "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise." Second, in the exercise of this power, the Court of Industrial Relations is expressly prohibited from holding any pre-trial procedure or resorting to the mediation and conciliation procedure provided in section 4 of the Commonwealth Act No. 103.

This is not so in other cases which are subject to pre-trial, mediation or conciliation, settlement, or compromise. But unfair labor practice cases are unusual cases for they involve much more than private interests. This and the public policy of eliminating the causes of industrial unrest and the maintenance of a sound and stable industrial peace require the complete ventilation of unfair labor practices in order to undo the private and public harm done, serve as examples to others, and prevent their repetition. The promotion of a sound and

[21] National Labor Relations Board v. Ford, 170 F. 2d 735 (1948).

stable industrial peace cannot be achieved if the causes of industrial unrest are not unmasked and eliminated.

Under the Industrial Peace Act, the only type of prevention of unfair labor practices allowed is found in section 5(b) and (c) of the Industrial Peace Act. Under this provision, the Court of Industrial Relations can do either of two things. If, after investigation, the Court of Industrial Relations is of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the court shall issue an order requiring such person to cease and desist from such unfair labor practice and in the same order take such affirmative action as will effectuate the policies of the Industrial Peace Act, including (but not limited to) reinstatement of employees with or without back pay and including seniority as well as the rights of employees prior to dismissal. Stated differently, once a complaint for unfair labor practice is filed, there is no room for compromise or settlement other than the means of adjustment or prevention allowed in section 5(c) of the Industrial Peace Act. And if the unfair labor practice charge involves refusal to bargain collectively, the only type of mediation and conciliation allowed is that provided in section 18 of the Industrial Peace Act. But if, after investigation, the Court of Industrial Relations is of the opinion that no person named in the complaint has engaged or is engaging in any unfair labor practice, then the court shall issue an order dismissing the complaint. The court shall also dismiss the case if the complaining party withdraws his complaint.

During the year in review, the Supreme Court, in two cases brought to it on certiorari, fell short of this unique provisions of the Act. Indeed, they were disregarded. In the case of *Central Azucarera Don Pedro v. Don Pedro Security Guards Union*,[22] the Court of Industrial Relations found that the employer committed the unfair labor practice complained of and issued a general cease and desist order plus the required specific affirmative steps to effectuate the policies of the Industrial Peace Act. In due time the decision of the Court of Industrial Relations was appealed to the Supreme Court. And in the case of *Luzon Glass Factory v. Court of Industrial Relations*,[23] the Court of Industrial Relations found the employer to have committed the unfair labor practice defined in section 4(a) (1) and (4). The decision was appealed to the Supreme Court.

Pending resolution of the appeals in both cases, the parties in the first case simultaneously filed separate motions to withdraw the petitions for certiorari on the ground that the parties have arrived

[22] G.R. No. 21610, March 15, 1968.
[23] G.R. No. 23319, Oct. 7, 1968.

at an "amicable settlement". In the second case, the parties filed a joint motion to dismiss the case on the ground that they too have reached an "amicable settlement". Surprisingly, the Supreme Court, in dismissing the petitions for certiorari in both cases concluded that the "amicable settlements" reached by the parties have rendered the cases moot and academic.

The Supreme Court seems to treat unfair labor practice cases as ordinary civil cases governed by ordinary rules and procedure. The Supreme Court has failed to reckon with the strict requirements of section 5 of the Industrial Peace Act. The two cases should have been remanded to the lower courts so that the procedure for the disposal of unfair labor practice cases provided in section 5(b) and (c) of the Act may be followed. The parties cannot do this by agreement, as the law provides. The unions must file their respective motions of withdrawal in the Court of Industrial Relations so that appropriate remedial steps as will effectuate the policies of the Industrial Peace Act may be ordered. This is necessary because of a previous finding of unfair labor practice by the Court of Industrial Relations.

As a short note to the 1968 cases is the decision in *Pasumil Workers Union v. Court of Industrial Relations*.[24] This is perhaps the first case decided by the Supreme Court touching on the special limitations imposed by the Industrial Peace Act on the jurisdiction of the Court of Industrial Relations over the prevention of unfair labor practices. In this 1964 case, the National Labor Union filed an unfair labor practice complaint against the employer for extending financial assistance to the Pasumil Workers Union contrary to section 4(a)(3) of the Industrial Peace Act. After the trial, the Court of Industrial Relations ruled that the sum received by the Pasumil Workers Union from the company was the kind of assistance prohibited by section 4(a)(3) of the Industrial Peace Act and held the employer guilty of unfair labor practice. On appeal, the Supreme Court reversed the lower court and ruled that on the basis of the evidence on the record of the case the amount of money given by the company to the union was in fact payment for vacation leave for the years 1953 and 1954. But in reversing the Court of Industrial Relations, the Supreme Court, in an opinion by Mr. Justice Alejo Labrador, made the following observation:

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

[24] G.R. No. 19628, April 30, 1964.

In the survey of the 1964 decisions, opinion was expressed that this pronouncement may lead to confusion in the administration of the Industrial Peace Act, specifically in the application of section 5(a) and (b) thereof. The decisions of the Supreme Court in the 1964 *Pasumil Workers Union* case and the 1968 *Central Azucarera Don Pedro* and *Luzon Glass Factory* cases are not in agreement with the express requirements of section 5(a) and (b) that the exclusive jurisdiction of the Court of Industrial Relations over cases involving unfair labor practices shall not be affected by any pre-trial procedure nor by any other means of adjustment or prevention notwithstanding the fact that such means may have been established by an agreement between the parties, by code, by law, or any other method.

C. *Procedure*

Under this broad heading, the procedural questions that required the attention of the Supreme Court referred to unfair labor practice and labor injunction cases.

1. Preliminary investigation

Section 5(b) of the Industrial Peace Act requires a preliminary investigation of any charge of unfair labor practice.[25] This is mandatory.

In the case of *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations,*[26] the respondent company was charged in the Court of Industrial Relations with unfair labor practice. After the company had rested its case, the union filed a motion with the Court of Industrial Relations asking for the admission of a supplemental pleading treating of matters constituting alleged acts of unfair labor practices which occurred after the filing of the original complaint. This motion was opposed by the company on the ground that the Court of Industrial Relations has no jurisdiction over it because no preliminary investigation has been conducted in connection with the new charges as required by law. The trial court sustained the company's motion for dismissal. The petitioner moved for a reconsideration which the court *en banc* denied, after which a petition on appeal was filed with the Supreme Court arguing that the lower court erred in refusing to admit its supplemental pleadings in violation of section 5(b) of the Industrial Peace Act which provides in part that in unfair labor practice proceedings the Court of Industrial Relations shall use every and all reasonable means to ascertain the facts without regard to technicalities of law or procedure. The respondent company

[25] National Union of Printing Workers v. Asia Printing Company, G.R. No. 8750, July 30, 1956, 99 Phil. 589 (1956).

[26] G.R. No. 28742, April 30, 1968.

opposed on the ground that a supplemental pleading charging new acts of unfair labor practices cannot be admitted without prior preliminary investigation, and cited the 1956 *Asia Printing Company* case.

After resolving the appeal as a special civil action of mandamus, the Supreme Court faced the issue of whether this action will lie to compel the Court of Industrial Relations to admit a supplemental pleading which actually charges additional acts of unfair labor practice without the preliminary investigation relative thereto. Speaking through Mr. Justice Reyes, the Supreme Court stated that there is no reason to question the finding of the Court of Industrial Relations that the aforementioned supplemental pleading was in fact a charge for new acts of unfair labor practice. This being the case, the Supreme Court held that the charge even though contained in the form of supplemental pleading cannot be admitted by mandamus but must first be the subject of preliminary investigaton. Mandamus, said the Court, will not lie to compel the performance of a discretionary power, such as the admission or non-admission of a supplemental pleading. Besides, continued the Court, mandamus is improper because there is an adequate remedy in the ordinary course of law which is the filing of the charge of unfair labor practice before the Court of Industrial Relations.

2. Dismissal for lack of jurisdiction

In *Philippine Association of Free Labor Unions v. Marcos*[27] and *Progressive Labor Association v. Villasor*,[28] the Supreme Court reiterated the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practice cases, pursuant to section 5(a) of the Industrial Peace Act. Speaking through Mr. Justice Bengzon in both cases, the Supreme Court reaffirmed the rule that the Court of First Instance has no jurisdiction over unfair labor practice cases.

In these cases, the Court of First Instance of Baguio, in the first case, and the Court of First Instance of Cebu, in the second case, took cognizance of the complaints for damages by denying the motions to dismiss filed by the respective unions on the ground of lack of jurisdiction since the labor disputes existing between the parties in both cases were connected with the unfair labor practice cases pending before the Court of Industrial Relations. Upon denial of their respective motions, both unions, without asking for the reconsideration of the disputed orders, went straight to the Supreme Court by means of the special civil action for certiorari with preliminary injunction.

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[27] G.R. No. 26213, March 27, 1968.
[28] G.R. No. 26383, April 3, 1968.

The Supreme Court agreed with the contention of the labor unions that Courts of First Instance have no jurisdiction over this type of cases. Nevertheless, the Supreme Court dismissed their petitions because they failed to show by satisfactory evidence in the courts below that the labor disputes which were the subjects of the respective civil cases for damages arose out of, or were connected or interwoven with, the acts constituting the unfair labor practice complaints previously filed in the Court of Industrial Relations. The Supreme Court found that both labor unions had merely alleged, in their respective motions to dismiss, the existence of a prior case of unfair labor practice filed before the Court of Industrial Relations without establishing this allegation by supporting proof. According to the Supreme Court, the mere filing of an unfair labor practice case in the Court of Industrial Relations does not *per se* establish the connection.

In disposing of the question, the Supreme Court cited the case of *United Pepsi Cola Sales Organization v. Cañizares,*[29] where it was held that the lack of jurisdiction of the Court of Industrial Relations cannot be simply assumed from the bare recitation in the motion to dismiss that an unfair labor practice case is pending in the Court of Industrial Relations. The connection between the labor dispute pending in the Court of Industrial Relations and the civil cases for damages filed in the Court of First Instance is a question of fact that should be brought to the latter's attention to enable it to pass upon the issue of whether or not it has jurisdiction over the case.

The rule in the *Pepsi-Cola Sales Organization* case was applied in four subsequent cases, namely, *Erlanger and Galinger v. Erlanger and Galinger Employees Association,*[30] *National Mines and Allied Workers' Union v. Ilao,*[31] *B.C.I. Employees and Workers Association v. Marcos,*[32] and *Citizens League of Free Workers v. Abbas.*[33] The Supreme Court in these cases ruled that the Courts of First Instance concerned did not have jurisdiction because it was there shown that the labor disputes which were the subjects of the respective civil suits were connected or interwoven with the unfair labor practice cases pending in the Court of Industrial Relations.

3. When complaint is to be dismissed

Section 5(c) of the Industrial Peace Act expressly provides that the complaint for unfair labor practice must be dismissed if the Court

[29] 102 Phil. 887 (1958).
[30] 104 Phil. 17 (1958).
[31] G.R. No. 16884, Jan. 31, 1963.
[32] G.R. No. 21016, July 30, 1965.
[33] G.R. No. 21212, Sept. 23, 1966.

of Industrial Relations after conducting a hearing finds as a matter of fact that no person named in the complaint has engaged in or is engaging in any unfair labor practice.

In the case of *Luzon Stevedoring Corporation v. Celorio,*[34] the question raised before the Supreme Court was whether the Court of Industrial Relations has the power to order the reinstatement with back wages of a dismissed employee when there is no finding that the employer has engaged in or is engaging in any unfair labor practice. The employer argued that since the lower court did not find him guilty of any unfair labor practice, then the court is powerless to order the reinstatement of the employees. On the other hand, the employee contended that under Commonwealth Act No. 103, the Court of Industrial Relations has broad powers to issue the affirmative relief of reinstatement with back wages even if there is no finding of unfair labor practice on the part of the employer. In effect, the employee would extend the application of the remedial step of reinstatement with or without back pay even when there is no finding of unfair labor practice.

The Supreme Court was not impressed with the employee's contention. Speaking through Mr. Justice Calixto Zaldivar, the Court ruled that the Court of Industrial Relations cannot apply this remedial measure in a case where the employer has not engaged in or is engaging in any unfair labor practice.

This is a reiteration of the holding of the Supreme Court in the case of *Pan American World Airways, Inc. v. Court of Industrial Relations.*[35] Here the question involved also the application of section 5(c) of the Industrial Peace Act. Speaking also through Mr. Justice Zaldivar, the Supreme Court held that where an unfair labor practice case is to be dismissed on the ground that no person therein mentioned has engaged in or is engaging in any unfair labor practice, then under section 5(c) of the Industrial Peace Act the Court of Industrial Relations cannot order the reinstatement of the employee, let alone the payment of back wages. According to the Supreme Court, the Court of Industrial Relations must limit itself to the dismissal of the unfair labor practice case in accordance with the express provisions of section 5(c) of the Industrial Peace Act.

D. *Remedial measures*

Section 5(c) of the Industrial Peace Act provides that if the Court of Industrial Relations is of the opinion that an unfair labor practice

[34] G.R. No. 22542, July 31, 1968.
[35] G.R. No. 20434, July 30, 1966.

has been committed, then the court must issue a "cease and desist" order and take such affirmative steps as will effectuate the policies of the Act, including (but not limited to) reinstatement with or without back pay and including seniority and rights prior to dismissal.

1. Per diems

In the case of *Lexal Laboratories v. National Chemical Industries Workers Union*,[36] the Court of Industrial Relations included per diems as part of the remedial order of back wages of the dismissed employees on the ground that they were paid to the dismissed employees regularly. The employer objected because the per diems were regular only in the sense that they were given to the company agents everytime they go on duty outside their respective stations.

The Supreme Court, in a decision by Mr. Justice Sanchez, upheld the employer's view and ruled that the per diems cannot be a part of back pay for the simple reason that it is a daily allowance given for each day an employee is away from his home base. Since the employees did not actually spend for meals and lodgings during the period of their dismissal, the employees are not entitled to per diems as part of the remedial step of back pay.

2. Effective period of back pay

Two cases decided by the Supreme Court during the year in review blurred the rule on the period covered by an order for reinstatement with back pay.

In *Itogon-Suyoc Mines Inc. v. Sañgilo-Itogon Workers' Union*,[37] and *G. Liner v. National Labor Union*,[38] the Supreme Court, through Mr. Justice Sanchez in both cases, held that employees are entitled to back wages from the time of their dismissal to their actual reinstatement without loss of seniority and other rights and privileges enjoyed prior to dismissal.

There is no question as to the start of the payment of back wages. But, under the Industrial Peace Act, payment of back wages up to the date of actual reinstatement can be ordered only if this will effectuate the policies of the Industrial Peace Act. Thus, if payment of back wages to date of actual reinstatement will cause severe financial dislocation, then the remedial order must be adjusted to prevent this.

[36] G.R. No. 24632, Oct. 26, 1968.
[37] G.R. No. 24169, Aug. 30, 1968.
[38] G.R. No. 24963, Nov. 29, 1968.

3. Deductions from back pay

For the first time, the Supreme Court, in the case of *Itogon-Suyoc Mines, Inc. v. Sañgilo-Itogon Workers' Union,*[39] established certain guidelines to be followed in the computation of back wages, *viz.*

> *First.* To be deducted from the back wages accruing to each of the employees to be reinstated is the total amount of earnings obtained by him from other employment(s) from the date of dismissal to the date of reinstatement. Should the employee decide that he prefers to stay in his new job, the deduction should be made up to the time judgment becomes final.
>
> *Second.* In the mitigation of the damage to which the dismissed employees are entitled, account should be taken of the presence or lack of due diligence exercised by the employees in trying to obtain income from other suitable remunerative employment.

The rule on "suitable remunerative employment" is bound to create problems unless remedied at the very first opportunity. Suitable remunerative employment means desirable new employment, that is gainful, profitable new employment. But desirable or remunerative new employment is not easy to come by. Thus, the search for this type of new employment must continue only for a reasonable period of time. When there is none, or when even jobs comparable to the work from which the employee was dismissed are no longer obtainable, then available suitable employment, that is, work fit to the dismissed employee's abilities and skills, must be considered or else it will constitute loss of earnings wilfully incurred for which the employer is not liable. In this event, the remedial order should be reinstatement without back pay. The second guideline laid down by the Supreme Court should refer to suitable available employment, not to "suitable remunerative employment."

E. *Conclusiveness of findings of fact*

Section 6 of the Industrial Peace Act provides that the findings of the Court of Industrial Relations with respect to question of fact shall be conclusive if supported by *substantial evidence* on the record.

The pronouncements of the Supreme Court on the meaning of this provision have not been uniform. In 1966, for example, the decisions of the Supreme Court moved from one interpretation to the other.[40]

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[39] G.R. No. 24169, Aug. 30. 1968.

[40] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, PROCEEDINGS OF 1967, pp. 6-10 U.P. Law Center, 1967.

No case on this problem was decided by the Supreme Court in 1967. The situation in the 1968 is no different from that in 1966. There is still confusion. Without any attempt to explain their respective views or opinions, the members of the Court advocating one view simply join the opinion of the other members advancing the opposite view, and vice versa.

To provide continuity in the survey of the decisions of the Supreme Court in 1968 on this question, a quick look at the performance of the Supreme Court in 1966 would help. In the case of *Manila Cordage Company v. Vibar*,[41] the Supreme Court speaking through Mr. Justice Roberto Regala interpreted the term "substantial evidence" to mean preponderance of evidence. Reversing the Court of Industrial Relations, the Supreme Court held that although the finding of facts of the trial court is not without support in the evidence it was, nevertheless, contradicted by other evidence on the record of the case. But in a cluster of subsequent cases, namely, *East Asiatic Company, Ltd. v. Court of Industrial Relations*,[42] *Luzon Stevedoring Corporation v. Court of Industrial Relations*,[43] *Lusteveco Employees Association v. Luzon Stevedoring Corporation*,[44] and *Luzon Stevedoring Corporation v. Court of Industrial Relations*,[45] the Supreme Court switched to the other view that the findings of facts of the Court of Industrial Relations are conclusive as long as they are supported by some evidence on the record of the case, on the ground that preponderance of evidence is not the meaning of the term "substantial evidence" found in section 6 of the Industrial Peace Act. And yet, not half a month later, in *Ferrer v. Court of Industrial Relations*[46] and in *Cinema, Stage and Radio Entertainment Free Workers v. Court of Industrial Relations*,[47] the Supreme Court returned to the decision in the *Manila Cordage Company* case by interpreting section 6 of the Industrial Peace Act to mean preponderance of evidence and upheld the finding of facts of the trial judge over the contrary finding of facts of the Court of Industrial Relations sitting *en banc*. In the *Ferrer* and *Cinema* cases, the Supreme Court considered the record of each case *as a whole* in reaching a decision as to the conclusiveness of the findings of fact of the Court of Industrial Relations.

In 1968 the decisions of the Supreme Court on this problem started off by departing from the preponderance of evidence rule. In *Philip-*

[41] G.R. No. 21663, March 31, 1966.
[42] G.R. No. 17037, April 30, 1966.
[43] G.R. No. 17411, May 19, 1966.
[44] G.R. No. 18681, May 19, 1966.
[45] G.R. No. 18683, May 19, 1966.
[46] G.R. No. 24267, May 31, 1966.
[47] G.R. No. 19879, Dec. 17, 1966.

pine Marine Officers' Guild v. Compañia Maritima,[48] the Supreme Court denied the claim for back wages of the employees, relying solely on the finding of facts of the Court of Industrial Relations that the respondent employers did not discriminate against their employees. Through Mr. Justice Querube Makalintal, the Supreme Court held that the finding of facts of the Court of Industrial Relations can no longer be reversed because they are supported by evidence on the record. But in *Del Rosario v. de los Santos,*[49] Mr. Justice Fernando, who concurred merely in the result in the foregoing case, led the Supreme Court, including Mr. Justice Makalintal, to change its mind on the question of the conclusiveness of the findings of fact of the Court of Agrarian Relations. The Supreme Court refused to consider further the question of whether or not the ejectment of the tenants would lie because of the finding of facts that the landowner does not have the *bona fide* intention to undertake the personal cultivation of his land. Mr. Justice Fernando cited the case of *Lapina v. Court of Agrarian Relations,*[50] where it was held that the finding of facts of the trial court must be accepted, unless it is shown that it is unfounded or arbitrarily arrived at, or that the lower court had failed to consider evidence to the contrary.

However, within just one month, two cases were decided by the Supreme Court changing the picture once more. In *Benguet Consolidated, Inc. v. BCI Employees and Workers Union-PAFLU,*[51] and *Laguna Transportation Employees Union v. Laguna Transportation Co., Inc.*[52] the Supreme Court, including both Mr. Justice Makalintal and Mr. Justice Fernando, returned to the proposition that the requirement of "substantial evidence" in section 6 to support the findings of fact of the Court of Industrial Relations does not mean preponderance of evidence. But two months later, in *Nevans v. Court of Industrial Relations,*[53] the Supreme Court, this time speaking through Mr. Chief Justice Concepcion, in examining the evidence on the record *as a whole* found that the decision of the Court of Industrial Relations was based "on pure and simple speculation" and was not justified at all by the facts of the case. This startling finding of the Court of Industrial Relations would not have been exposed had the Supreme Court not considered the contrary evidence on the record of the case.

But, just as quickly, the Supreme Court, in *Luzon Stevedoring Corp. v. Celorio,*[54] changed its position again. This time Mr. Justice

[48] G.R. Nos. 20662-20663, March 19, 1968.
[49] G.R. Nos. 20589-20590, March 21, 1968.
[50] G.R. No. 20706, Sept. 25, 1967.
[51] G.R. No. 25471, March 27, 1968.
[52] G.R. No. 23266, April 25, 1968.
[53] G.R. No. 21510, June 29, 1968.
[54] G.R. No. 22542, July 31, 1968.

Zaldivar, who had just joined Mr. Chief Justice Concepcion in the other view in the *Nevans* case, took the Supreme Court, together with the Chief Justice, to return to the view that the findings of fact of the Court of Industrial Relations will not be disturbed if they are supported by substantial evidence on the record of the case. In another way of putting it, the Supreme Court was saying that conflicting evidence on the record of the case can be disregarded as long as there is evidence upon which the findings of fact of the Court of Industrial Relations can be based. However, on the very day the *Celorio* case was promulgated, the decision in *Carillo v. Allied Workers' Association of the Philippines*[55] was released where the Supreme Court swung again to the other end. Speaking once more through Mr. Justice Fernando, the Court reiterated the view that the finding of facts of the lower court must be accepted except when it is shown that such findings of fact are without basis or arrived at arbitrarily, or without consideration of the contrary evidence on the record of the case. This view prevailed in *Laguna College v. Court of Industrial Relations*[56] where the Supreme Court adopted the finding of facts of the trial judge which he arrived at by "analysing *in detail* the evidence both oral and documentary." It was also applied in *National Waterworks and Sewerage Authority v. Kaisahan at Kapatiran ng mga Manggagawa at Kawani ng NAWASA-PAFLU*[57] and in *Cebu Portland Cement Company v. Cement Workers Union, Local 7-ALU.*[58] In the *Kaisahan at Kapatiran* case Mr. Chief Justice Concepcion, drawing all the members of the Court with him, kept the view that the preponderance of evidence rule is the meaning of section 6 of the Industrial Peace Act. The Supreme Court noted that the finding of facts of the Court of Industrial Relations in this case was based on the greater weight of evidence on the record of the case and that the decision was the result of the "relative credibility of the *opposing* witnesses." In the *Cement Workers Union* case, the Supreme Court, through Mr. Justice Reyes, held that the findings of fact of the Court of Industrial Relations to be conclusive must be credible.

But in the following month, the Supreme Court once more veered away from this position and took the view that substantial evidence called for in section 6 of the Industrial Peace Act does not mean preponderance of evidence in the case of *G. Liner v. National Labor Union,*[59] the petitioner argued that the greater weight of evidence on the record of the case was in his favor. Mr. Justice Sanchez, who

[55] G.R. No. 23689, July 31, 1968.
[56] G.R. No. 28927, Sept. 25, 1968.
[57] G.R. No. 25328, Oct. 11, 1968.
[58] G.R. Nos. 25032, 25037-38, Oct. 14, 1968.
[59] G.R. No. 24963, Nov. 29, 1968.

penned the decision of the Court, refused the appeal to the preponderance of evidence rule and said that the Supreme Court has consistently adhered to the *frequent* pronouncements that the findings of fact of the Court of Industrial Relations will not be disturbed provided that they are supported by substantial evidence on the record of the case. Therefore, as long as there is some evidence on the record upon which the findings of fact can be based conflicting evidence need not be considered. And yet the Supreme Court has also made "frequent pronouncements" advocating the other view.

This is the record of the Supreme Court on this question in 1968. One is completely lost as to what the Supreme Court really thinks or the meaning of the term "substantial evidence" in section 6 of the Industrial Peace Act. Because of the contrasting decisions promulgated through the years by the Supreme Court on this issue, there is need for a definitive reexamination of the question.

Is it enough that the findings of fact of the Court of Industrial Relations are supported by some evidence on the record of the case to be conclusive, regardless of the possibility, not entirely remote, that there may be contrary evidence on the same record? The Supreme Court is not without responsibility for the credibility, reasonableness and sufficiency of the findings of fact of the Court of Industrial Relations. On the whole, section 6 of the Industrial Peace Act does not preclude a review of the findings of fact of the Court of Industrial Relations where such findings are not supported by *substantial* evidence on the record of the case. The Supreme Court itself in a very early case,[60] stated that the term "substantial evidence" means evidence which a reasonable mind would accept as adequate to support a conclusion. It is plain that evidence is not adequate to support a conclusion of fact if it is unfounded or incredible, or arbitrarily reached, or that the lower court had failed to consider contrary evidence.

It is interesting to note the history back of this concept. Prior to the amendment of the National Labor Relations Act, from which section 6 of the Industrial Peace Act was copied verbatim, it was provided that the findings of fact of the National Labor Relations Board is conclusive so long as there is evidence to support it.[61] But in *Washington V. and M. Coach Co. v. National Labor Relations Board*[62] the Supreme Court of the United States interpreted the term "evidence" used in the National Labor Relations Act to mean "substantial evidence". As a result, the courts in the United States took into account

[60] Ang Tibay v. Court of Industrial Relations, 69 Phil. 635 (1940).
[61] National Labor Relations Act, 1953, Section 10(e) and (f).
[62] 301 U.S. 142, 81 L.Ed. 965, 57 S.Ct. 648 (1937).

whatever on the record of the case fairly detracts from the evidence on which the findings of facts of the National Labor Relations Board is based. Obviously, the courts felt that evidence on which findings of facts is based would not be "substantial", that is to say, true, credible, strong, material, or positive, if contrary evidence on the record of the case were not also taken into account. Again, in *National Labor Relations Board v. Columbian Enameling and Stamping Company, Inc.*[63] the U.S. Supreme Court said that according to the Act "the findings of the Board as to the facts, if supported by evidence, shall be conclusive. But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence that is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred . . . Substantial evidence is more than a scintilla, and must do more to create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

When the National Labor Relations Act was amended, the American Congress adopted the decision of the U.S. Supreme Court in the *Washington Coach* and *Columbian Enameling* cases and required "substantial evidence" for the Board's findings of facts to be conclusive on the reviewing courts. This was the state of the American federal legislation on this matter when section 6 of the Industrial Peace Act was patterned after it.

And it was this interpretation that our Supreme Court adopted in the early case of *United States Lines v. Associated Watchmen and Security Union.*[64] In this case, our Supreme Court relying on the decisions of the U.S. Supreme Court ruled that the term "substantial evidence" does not mean just any evidence on the record of the case, but it does mean evidence which is "more than a scintilla, and must do more to create a suspicion of the evidence of the fact established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." If this means anything, it is that the evidence supporting the findings of fact of the Court of Industrial Relations is adequate only if it prevails over contrary evidence appearing on the same record.[65] The test under the "substantial evidence" rule is whether or not a reasonable man considering all the evidence on the record could accept the conclusion stated in the findings of the Court of Industrial Relations.

[63] 306 U.S. 292, 83 L.Ed. 660, 59 S.Ct. 501 (1939).
[64] G.R. Nos. 1228-11, May 21, 1958.
[65] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, PROCEEDINGS OF 1967, pp. 7-9.

IV. INJUNCTIONS IN LABOR DISPUTES

A. *Requisites*

The conditions for the issuance of a labor injunction depends on the type of case involved.

In labor disputes in industries indispensable to the national interest, the conditions are provided in section 10 of the Industrial Peace Act. In cases involving unprotected labor activities under section 9 of the Industrial Peace Act, the conditions for the issuance of an injunction are provided in section 9(d), (e) and (f) of the Industrial Peace Act.

In both types of cases, the respective conditions must all concur together or no injunction will issue. Thus, in the case of *Philippine Communications, Electronics and Electricity v. Nolasco*[66] and the case of *Associated Labor Union v. Borromeo*,[67] the Supreme Court, through Mr. Justice Sanchez, stated that these conditions are indispensable and must be strictly complied with otherwise the injunction issued will be null and void. A court which is not convinced that these requirements have been complied with has a valid ground to deny the issuance of a writ of injunction.

B. *Procedure*

In *Eastern Paper Mills Employees Association v. Eastern Paper Mills, Inc.*,[68] the Supreme Court found the judge of the Court of First Instance of Rizal to have "patently violated" the specific procedure in section 9(d) of the Industrial Peace Act in the issuance of labor injunctions *ex parte*. For this reason the injunction was annulled.

The ruling of the Supreme Court in this case follows the decision in *Seno v. Mendoza*[69] which reiterated the distinction between the procedure for the issuance of labor injunctions in cases falling within the competence of the Court of First Instance. In the former case, the procedure is found in section 9(d), (e) and (f) of the Industrial Peace Act. In the latter case, the procedure for the issuance of an injunction is governed by Rule 58 of the Revised Rules of Court, that is to say, on the basis merely of a verified complaint filed together with a bond and generally upon affidavits only.

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[66] G.R. No. 24984, July 29, 1968.
[67] G.R. No. 26461, Nov. 27, 1968.
[68] G.R. No. 23958, Sept. 28, 1968.
[69] G.R. No. 20565, Nov. 29, 1967.

C. *Doctrine of vicarious liability*

Section 9(c) of Republic Act No. 875 has abandoned the "vicarious liability" rule in labor disputes. It provides:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable for the unlawful acts of individual officers, members, or agents, except upon proof of actual participation in, or actual authorization of such acts or of ratifying of such acts after actual knowledge thereof."

In the case of *Benguet Consolidated, Inc. v. BCI Employees and Workers Union,*[70] one of the issues raised was whether the labor unions and their respective presidents were liable for the illegal acts committed by some union members during the course of the strike. The employer took the position that they were.

The Supreme Court, speaking through Mr. Justice Bengzon, held that section 9(c) of Republic Act No. 875 is an express provision which legislated out the doctrine of vicarious liability in labor relations law. And the Court found uncontradicted evidence on the record that before and during the strike the officers and strike leaders had time and again warned the strikers not to resort to violence and other unlawful acts and exhorted them to be peaceful only in their picketing.

V. Labor Disputes In Industries Indispensable To The National Interest

A. *Compulsory arbitation*

In the case of *Philippine Marine Officers' Guild v. Compañia Maritima,*[71] the union questioned the failure of the Court of Industrial Relations to issue an order fixing the terms and conditions of employment in a case certified by the President of the Philippines as a labor dispute existing in an industry indispensable to the national interest. The union argued that upon presidential certification it becomes the duty of Court of Industrial Relations "to fix the terms and conditions of work through compulsory arbitration and not leave the same to the parties through collective bargaining."

Insofar as this point is concerned, there are two aspects of the case worth noting.

First, the proposition advanced by the union is not quite in consonance with section 10 of the Industrial Peace Act. Under this pro-

[70] G.R. No. 24711, April 30, 1968.
[71] G.R. Nos. 20662-63, March 19, 1968.

vision, compulsory arbitration is allowed only when "no other solution to the dispute is found." The proposal of the labor union would avoid this statutory requirement. This is not correct.

Second, the Supreme Court, in trying to show that the Court of Industrial Relations tried to look for other solutions to the dispute, referred to the action taken by the Court of Industrial Relations which enjoined the parties to consider the holding of a certification election as a means to solve the labor dispute that had led to the strike. There is, however, no mention in the decision of the Supreme Court when this attempt at solving the dispute was made by the Court of Industrial Relations. This is important in relation to the date of the presidential certification. The decision does not show either whether this step was taken before or after the presidential certification of the labor dispute to the Court of Industrial Relations. However, if the Supreme Court was referring to the mediation attempted by the Court of Industrial Relations to solve the labor dispute short of compulsory arbitration, then this would not be of any consequence because it occurred, according to the decision itself, about seven months before the presidential certification.

There is a good reason for the strict requirements of section 10 of the Industrial Peace Act before the Court of Industrial Relations may exercise its power to fix or set wages, rates of pay, hours of work or conditions of employment. Under section 7 of the Industrial Peace Act, the fixing of the terms and conditions of employment in general has been withdrawn from the courts due to the express policy of the Industrial Peace Act of "encouraging the democratic method of regulating the relationship between employer and employee by means of agreements freely entered into by means of collective bargaining."

B. *Certification of labor dispute to CIR*

After a presidential certification of a labor dispute existing in an industry indispensable to the national interest to the Court of Industrial Relations, the latter may, pending investigation of the case, issue a return-to-work order forbidding the employees to strike and the employer to lock-out his employees. If no other solution to the labor dispute is found, the court may exercise its power of compulsory arbitration and fix for the parties the terms and conditions of employment.

In a 1966 case, *Feati University v. Feati University Faculty Club*,[72] the Supreme Court held that when the Court of Industrial Relations assumes jurisdiction of a case under section 10 of the Industrial Peace

[72] G.R. Nos. 21278, 21462 & 21500, Dec. 27, 1966.

Act, it may exercise its broad power of arbitration provided in section 7 of Commonwealth Act No. 103.[73] This means that the Court of Industrial Relations may consider all aspects of the labor dispute certified to it and issue such orders which may be necessary to make its jurisdiction under section 10 of the Industrial Peace Act effective.

1. Power of CIR to order inclusion of indispensable parties

In the joint cases of *Liberation Steamship Co., Inc. v. Court of Industrial Relations*[74] and *National Development Company v. Unlicensed Crew Members of Three Doña Vessels,*[75] one of the points raised was the impropriety of the order of the Court of Industrial Relations including the petitioner Liberation Steamship Co., Inc. as an indispensable party. The petitioner contended that the presidential certification of the labor dispute mentioned only the crew of the three Doña Vessels and the National Development Company as the parties to the labor dispute.

According to the Supreme Court, in an opinion prepared by Mr. Justice Reyes, the petitioner cannot contest the authority of the Court of Industrial Relations to order its inclusion in the proceedings. The Court reasoned that since the labor dispute was certified by the President to the Court of Industrial Relations the latter can, in the exercise of its broad powers of arbitration under section 7 of Commonwealth Act No. 103, direct the inclusion or exclusion of parties to make effective its jurisdiction under section 10 of the Industrial Peace Act.[76]

2. Form of presidential certification

In disposing of the contention of the petitioner that it was not included as a party in the presidential certification, the Supreme Court also ruled that it is not the form or manner of certification by the President that confers jurisdiction on the Court of Industrial Relations but the referral to the said court of the labor dispute existing in an industry indispensable to the national interest. Therefore, the particular names specified in the presidential certification are merely descriptive of the contending parties to the case and the fact that the petitioner Liberation Steamship Co., Inc. was not included therein does not make the petitioner any less the employer.

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[73] Citing Rizal Cement Co., Inc. v. Rizal Cement Workers' Union, G.R. No. 12747, July 30, 1960.

[74] G.R. No. 25389, June 27, 1968.

[75] G.R. No. 25390, June 27, 1968.

[76] The Court cited Rizal Cement Co., Inc. v. Rizal Cement Workers' Union, G.R. No. 12747, July 30, 1960; Hind Sugar Company v. Court of Industrial Relations, G.R. No. 13364, July 26, 1960; and Philippine Marine Radio Officers Association v. Court of Industrial Relations, 102 Phil. 373 (1957).

There is need to assess the effect of this ruling on previous decisions of the Supreme Court because there are matters having to do with "form or manner" of presidential certification other than the title of the case and the names of the parties to the dispute.

For example, in the case of *Government Service Insurance System Employees Association v. Court of Industrial Relations,*[77] the issue revolved on whether the form of certifying a labor dispute to the Court of Industrial Relations upon the signature of the Executive Secretary is valid or not under section 10 of the Industrial Peace Act. The Supreme Court held that if a person other than the President signs the certification to the Court of Industrial Relations it is necessary for its validity that the signor be an official of the Executive Department, that he is duly authorized to sign for the President, and that the communication attest to the fact that the President of the Philippines has ordered the certification of the dispute to the Court of Industrial Relations.

The decision of the Supreme Court in the 1968 *Liberation Steamship Company* case that the form and manner of presidential certification is not decisive to the jurisdiction of the Court of Industrial Relations must be considered in the light of the 1961 decision.

VI. COLLECTIVE BARGAINING REPRESENTATION FOR LABOR ORGANIZATIONS

A. *Scope of authority to represent employees*

The decision of the Supreme Court in the case of *United Restauror's Employees and Labor Union-PAFLU v. Torres*[78] applies the provision of section 12(a) of the Industrial Peace Act concerning the nature of the right of a labor organization to represent the employees for the purpose of collective bargaining. The Supreme Court, through Mr. Justice Sanchez, stated that the right of representation granted to a labor organization designated, selected, or certified for the purpose of collective bargaining covers all the employees in the appropriate collective bargaining unit regardless of the fact that some of them may belong to a minority labor union.

B. *Certification elections*

In the case of *National Labor Union v. Go Soc and Sons and Sy Gui Huat, Inc.*[79] the Supreme Court, speaking through Mr. Justice Fred

[77] G.R. No. 18734, Dec. 30, 1961.
[78] G.R. No. 24993, Dec. 18, 1968.
[79] G.R. No. 21260, April 30, 1968.

Ruiz Castro, reiterated the non-adversary, fact-finding nature of certification elections where the Court of Industrial Relations plays the role of an impartial referee seeking merely to ascertain the preference of the employees as to their representation for purposes of collective bargaining.

In this connection, the Supreme Court considered the problem of proof of the authority of the bargaining union to represent the employees. While the testimony of the employees is the best evidence on this point, nevertheless, other evidence are also satisfactory, such as, membership cards, petitions or statements signed by a majority of the employees authorizing labor union to represent them, and applications for or affidavits of membership signed by the majority of the employees where the authenticity has been established or where the evidence of membership in a labor union is uncontested in the certification proceedings.

C. *Doctrine of substitution*

The case of *Benguet Consolidated Company v. BCI Employees and Workers Union*[80] is the first case in this jurisdiction which squarely meets the question of the applicability of the substitutionary doctrine in this jurisdiction.

For and in behalf of all the employees of Benguet Consolidated Company, the Benguet-Balatoc Workers Union entered into a collective bargaining contract with the former effective for four and a half years. One of the provisions embodied in the collective bargaining agreement is a no-strike, no-lockout clause. After three years, a certification election was conducted on April 6, 1962 by the Department of Labor between the Benguet-Balatoc Workers Union and the BCI Employees and Workers Union. The latter obtained more than one-half of the total number of votes cast and the Court of Industrial Relations certified it as the sole and exclusive collective bargaining agent of all the employees of the company. About three months later, and after the filing of the usual notice, the BCI Employees and Workers Union went on a strike for alleged employer unfair labor practices and violations of the collective bargaining agreement. The company, in turn, filed a complaint for damages in the Court of First Instance on the ground that the respondent BCI Employees and Workers Union had violated the no-strike clause contained in the existing collective bargaining contract previously signed by the company and the Benguet-Balatoc Workers Union. The BCI Employees and Workers Union replied that it was not bound by the contract signed by the Benguet-Balatoc Workers Union with the company.

[80] G.R. No. 24711, April 30, 1968.

After the trial, the lower court rendered judgment dismissing the complaint on the ground that the no-strike clause embodied in the collective bargaining contract between the Benguet-Balatoc Workers Union and the company was not binding on the BCI Employees and Workers Union. Upon failure to get a reconsideration of the said decision, the company appealed and assigned this as error committed by the trial court. In support of its contention, the company invoked the doctrine of substitution first articulated by the Supreme Court in the case of *General Maritime Stevedores' Union v. South Sea Shipping Lines.*[81] There the Supreme Court stated:

> "We also hold that where the bargaining contract is to run for more than two years, the principle of substitution may well be adopted and enforced by the CIR to the effect that after two years of the life of a bargaining agreement, a certification election may be allowed by the CIR; *that if a bargaining agent other than the union or organization that executed the contract is elected, said new agent would have to respect said contract,* but that it may bargain with the management for the shortening of the life of the contract if it considers it too long, or refuse to renew the contract pursuant to an automatic renewal clause. (Stressed for emphasis)"

Mr. Justice Bengzon, who spoke for the Court, correctly analyzed the foregoing pronouncement as *obiter dictum.* Indeed it was, for the only issue in the 1960 *South Sea Shipping Lines* case was whether a collective bargaining agreement which had practically run for five years is a bar to another certification proceeding. As Mr. Justice Bengzon said, nothing more need have been said for the disposition of that issue with the holding that such a collective bargaining agreement is not a bar to another certification election.

In the 1968 *Benguet Consolidated* case, the issue was squarely raised as to whether the collective bargaining agreement executed between the employer and the original bargaining agent automatically bound the labor union newly certified as the bargaining representative of all the employees of the company. The Supreme Court held that the doctrine of substitution cannot be invoked to support the proposition that a newly certified collective bargaining agent automatically assumes all the *personal* obligations, *e.g.* no-strike clause, in the collective bargaining agreement entered into by the deposed union with the employer. The Supreme Court reasoned that the deposed union as a collective bargaining agent has a distinct personality from other unions and to consider the newly certified union contractually bound to the personal commitment of the deposed union would be a violation of the legal maxim *res inter alios acta alios nec prodest nec nocet.*

[81] G.R. No. 14689, July 26, 1960. It was also referred in Seno v. Mendoza, G.R. No. 20565, Nov. 29, 1967.

In rejecting the substitutionary doctrine, the Supreme Court traced too briefly the formulation of this doctrine by the National Labor Relations Board. This needs a little expansion in order to include the important features of this doctrine.

During the early application of the Wagner Act, one of the problems that reached the National Labor Relations Board was the shift or change in union membership of the employees acting as individuals after the execution of a collective bargaining agreement entered into by the deposed union with the employer. In this situation, two competing principles pulled on the National Labor Relations Board in different directions. The first is its power to investigate any question of representation and certify to the parties in writing the name of the union selected or designated by the employees as their bargaining representative. The other is the principle of inviolability of contractual rights which the Wagner Act did not abrogate either expressly or impliedly. The problem ultimately revolved on the effect of the exercise of such power on an existing collective bargaining agreement previously entered into by the defeated union with the employer.

In solving this problem, the National Labor Relations Board had three alternatives. One, the existence of a valid collective bargaining agreement negotiated by a union with a majority command closes consideration of all questions as to representation during the term of the said collective bargaining agreement. Two, a valid collective bargaining agreement might be completely set aside with the certification of a new collective bargaining agent. Third, recognizing the new collective bargaining agent but maintaining the collective bargaining agreement entered into by the defeated union and the employer binding on the employer and his employees.

The National Labor Relations Board followed the compromise solution. The theory usually invoked to justify this solution is that the change in union membership by a majority of the employees acting as individuals leaves the collective bargaining contract binding only on them but not on the new collective bargaining union, for the reason that "the majority of the employees, as an entity under the statute, is the true party in interest to the collective bargaining contract, holding such rights through the agency of the union representative. Thus, any exclusive interest claimed by the agent is defeasible at the will of the principal. And since the principal remains the same after an election to shift agents, 'substitution' can be justified as effecting no material change in the legal rights or obligations of the majority entity."[82]

[82] 51 YALE L. J. 465 at 472.

Stated differently, the doctrine of substitution does not affect the rights and obligations of the new collective bargaining agent. This doctrine only provides that the employees cannot revoke validly executed collective bargaining agreement by the simple expedient of changing the bargaining agent although they can, through their new bargaining agent, negotiate with management for a modification of the said collective bargaining contract. On the other hand, a newly certified collective bargaining agent is not automatically bound by the *personal* conditions in the old collective bargaining agreement made by a deposed union. There must be a voluntary assumption by the new collective bargaining agent of this commitments before it can be bound by them.

VII. COLLECTIVE BARGAINING

Only one case was decided by the Supreme Court during the year in review dealing with the subject matter of collective bargaining.

The question is whether bonus or gratuity is to be considered as wage, and, therefore, bargainable, or whether it is a reward, and, thus, a management prerogative. The answer depends on whether or not it actually changes the wage structure of the employees.

In the case of *Liberation Steamship Co., Inc. v. Court of Industrial Relations,*[83] petitioner vigorously argued that bonus or gratuity is not demandable by the employee as a matter of right because it is in the nature of a reward given by the employer for services rendered.

The Supreme Court, speaking through Mr. Justice Reyes, held that the grant of gratuity or bonus is normally discretionary but if the bonus or gratuity is regularly given over a period of years, then it becomes part of the regular compensation or wages of the employees and is no longer considered a gift or reward. This ruling is in line with the decisions of the Supreme Court starting with *Philippine Education Co., Inc. v. Court of Industrial Relations,*[84] *Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association,*[85] and *National Waterworks and Sewerage Authority v. Nawasa Consolidated Labor Unions,*[86] where the Supreme Court held that gratuities or bonuses paid regularly over a number of years become part of the wages or salaries of the employees. These conditions must be established by evidence.[87]

To this holding must be added another dimension, that gratuity or bonus based on the actual pay earned by the employees, or based

[83] G.R. No. 25389, June 27, 1968.
[84] 92 Phil. 382 (1952).
[85] G.R. No. 21120, Feb. 28, 1967.
[86] G.R. No. 20055, Sept. 27, 1967.
[87] Liberation Steamship Co., Inc. v. Court of Industrial Relations, *supra*, note 83.

on the percentage of profit realized by the employer are not to be regarded as gifts or rewards but part of the wages or salaries of the employees. Such gratuities or bonuses indeed change the wage structure of the employees.

VIII. Concerted Activities

During the year in review, the Supreme Court handled cases involving strike, picket, and secondary boycott.

A. *Strikes*

1. Validity

In 1967, the Supreme Court held in the case of *United Seamen's Union of the Philippines v. Davao Ship Owners Association*[88] that a strike is illegal even though it is for a valid purpose when the means to carry it out involves violence, coercion, intimidation, and the use of obscene language.

In the 1968 case of *Philippine Marine Officers' Guild v. Compañia Maritima,*[89] the union advanced the novel proposition that violence in labor activities should be viewed as a special class of unlawful acts to be overlooked in favor of union efforts to solve the underlying labor controversy that gave rise to the violence. Stated differently, the union argued that acts of violence in union activities should not be considered in determining the validity of the concerted action but only the purpose of the strike.

The Supreme Court, however, was not impressed with this proposition and reaffirmed its long held view that violent action taken to carry out a strike cannot be overlooked in determining its validity. Mr. Justice Makalintal felt that the union's proposal "would encourage abuses and subvert the very purpose of the law which provides for arbitration and peaceful settlements of disputes". The Supreme Court categorically ruled that unlawful means cannot be used in carrying out a valid purpose. This is as it should be because 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. As held in the case of *Kaisahan ng Mga Manggagawa sa Kahoy sa Filipinas v. Dee C. Chuan and Sons,*

[88] G.R. Nos. 18778-18779, Aug. 31, 1967.
[89] G.R. Nos. 20662-20663, March 19, 1968.

Inc.,[90] a strike by its very nature has a more serious impact upon the public interest and results in injury to another's business or property.

2. Reinstatement of employees in unjustified strikes

(a) Statement of the rule

In the case of *Philippine Marine Officers' Guild v. Compañia Maritima*,[91] the Supreme Court reaffirmed the rule that a strike which has no purpose at all or if its purpose is unjustified, as when it is for some trivial, unjust or unreasonable grounds, cannot give rise to an order compelling the employer to reinstate the strikers, citing its previous decisions in *Almeda v. Court of Industrial Relations*,[92] *Labor Union v. Philippine Match Manufacturing Co.*,[93] and *Luzon Marine Dept. Union v. Roldan*.[94]

This is not an inflexible rule though. Its application depends to a large degree on the circumstances of each case. This, in the case of *United Seamen's Union v. Davao Ship Owners' Association*,[95] the Supreme Court stated that if the strike is both unjustified as to purpose and illegal as to means, then there can be no reinstatement of the striking employees. But if there is no violence accompanying the strike, then the striking employees may be reinstated even though the purpose of the concerted activity is unjustified.

(b) Where question of validity is pending

In the case of *Philippine Long Distance Telephone Co. v. Free Telephone Workers Union*,[96] the employer questioned the order of the Court of Industrial Relations calling for the reinstatement of the striking employees notwithstanding the fact that when the return-to-work order was issued the question of the validity of the strike has not been resolved. According to the Supreme Court, speaking through Mr. Justice Bengzon, the rule enunciated in *Philippine Can Company v. Court of Industrial Relations*,[97] the *Marcelo Rubber and Latex Products, Inc. v. Court of Industrial Relations*[98] that the reinstatement of strikers cannot be ordered by the Court of Industrial Relations where the question of the validity of the strike is still pending is inapplicable to labor disputes certified by the President of the Philippines to the Court

[90] G.R. No. 8149, June 30, 1956.
[91] *Supra*, note 89.
[92] 97 Phil. 306 (1955).
[93] 70 Phil. 300 (1940).
[94] 86 Phil. 507 (1950).
[95] *Supra*, note 88.
[96] G.R. No. 25420, March 13, 1968.
[97] 87 Phil. 9 (1950).
[98] 93 Phil. 1024 (1953).

of Industrial Relations as affecting an industry indispensable to the national interest. According to the Supreme Court, the reason for this exception is the involvement of public interest in such a strike. It is on this basis that the Court of Industrial Relations may issue a return-to-work order pursuant to its authority under section 19 of the Commonwealth Act No. 103. Besides, there is a remedy in case of violation of the terms of the return-to-work order. The Supreme Court stated that the Court of Industrial Relations may dismiss the employees, or suspend them, or reprimand them.[99]

3. Employment status of striking employees

Section 2(d) and (j) of the Industrial Peace Act provides that the term "employee" includes even those whose work have ceased as a consequence of or in connection with a labor dispute or as a consequence of or in connection with any unfair labor practice and have not found substantially equivalent and regular employments.

But the problem of the reinstatement of striking employees depends on whether the stoppage of work is an economic strike or an unfair labor practice strike. In the former case, the employer has the right to secure replacements in order to keep his plant going. The striking employees have no right to reinstatement even after the termination of the strike. This is the risk they take and the consequence in this type of economic contest when they do not prevail.

But in an unfair labor practice strike, where no economic demands are involved but rather the oppressive acts of the employer, the strikers who have been directly prejudiced by the employer's unfair labor practice and those who have joined the strike merely to protest the unfair labor practice of the employer, are all entitled to reinstatement regardless of the fact that the employer may have in the meanwhile taken replacements to continue his operation. The reason for this, according to the Supreme Court in *Norton & Harrison Company Labor Union v. Norton & Harrison Co.*,[100] is that the replacements are deemed to have accepted their employment subject to the resolution of the unfair labor practice strike. This was reiterated by the Supreme Court in *Diwa ng Pagkakaisa v. Philtex International Corporation.*[101]

An employer cannot, therefore, refuse to comply with the order of the Court of Industrial Relations requiring him to reinstate unfair labor practice strikers on the pretext that it would mean the dismissal of their replacements in violation of the Separation Pay Law, Republic

[99] Philippine Long Distance Telephone Co. v. Free Telephone Workers Union, G.R. No. 25420, March 13, 1968.
[100] G.R. No. 18461, Feb. 2, 1967.
[101] G.R. Nos. 23960-61, Feb. 26, 1968.

Act No. 1052. There is a remedy, according to the Supreme Court. The employer can give the replacements either a one-month salary or a one-month notice as therein provided.

However, there are exceptions to the rule on reinstatement of unfair labor practice strikers. They cannot be reinstated when they commit violence or misconduct during the strike, or when they have found substantially equivalent and regular employment and their stay in their new jobs will effectuate the policies of the Industrial Peace Act. The first exception was enunciated in *Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations,*[102] *Consolidated Labor Association v. Marsman & Co.,*[103] and *United Seaman's Union v. Davao Shipowners Association.*[104] This was reiterated by the Supreme Court in *Cebu Portland Cement Company v. Cement Workers Union, Local 7-ALU.*[105] The second exception stated above which has so far been ignored by the Supreme Court is obvious from a reading of section 2(d) of the Industrial Peace Act.

4. Employment status of employees involved in illegal strikes

In the case of *Cebu Portland Cement Company v. Cement Workers Union, Local 7-ALU,*[106] the employer contended that the Court of Industrial Relations erred in refusing to order the dismissal of the employees who took an active part in an illegal strike. The employer based his argument on the decision of the Supreme Court in the pre-war case of *National Labor Union, Inc. v. Philippine Match Factory,*[107] where it was held that the dismissal of employees participating in an illegal strike is one of the consequences that they have to take and that the company cannot be compelled, under such circumstances, to re-admit them.

The Supreme Court, speaking through Mr. Justice Reyes, noted that the post-war decisions of the Supreme Court on the effect of illegal strike on the employment status of the striking employees reveal a marked albeit gradual departure from the doctrine enunciated in the pre-war *Philippine Match Factory* case. This was to be expected in view of the change of labor policy in the Industrial Peace Act, that is to say, from compulsory arbitration under Commonwealth Act No. 103 to unionization and collective bargaining under the Industrial Peace Act.

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[102] G.R. No. 19778, Sept. 30, 1964.
[103] G.R. No. 17038, July 31, 1964.
[104] G.R. Nos. 18778-79, Aug. 31, 1967.
[105] *Supra,* note 58.
[106] See note 105.
[107] 70 Phil. 300 (1940).

The Supreme Court noted in the 1968 Cebu Portland Cement case that for sometime the decisions on this problem have followed closely the ruling in the pre-war *Philippine Match Factory* case.[108] However, in the case of *Interwood Employees Association v. International Hardwood & Veneer Co.*,[109] some members of the Supreme Court changed their minds and viewed the dismissal as in excessive penalty for those who were merely misled by the union leaders to join an illegal strike.

The break from the doctrine enunciated in the pre-war *Philippine Match Factory* case occurred in *Dinglasan v. National Labor Union*,[110] where the Supreme Court re-organized the power of the Court of Industrial Relations to grant affirmative relief for such strikers and sustained the order of the Court of Industrial Relations returning the employees to their jobs. Finally, in the 1964 case of *Cromwell Employees and Laborers Union v. Court of Industrial Relations*,[111] the Supreme Court ruled that striking employees are entitled to reinstatement, except economic strikers whose employer in the meanwhile secured replacements and unfair labor practice strikers who have committed violence or other unlawful conduct. This was reiterated in the case of *Philippine Steam Navigation Co. v. Philippine Marine Officers' Guild*.[112]

Thus, in the 1968 *Cement Workers Union* case, the Supreme Court turned down the contention of the employer that the Court of Industrial Relations erred in refusing to order the dismissal of the employees who were involved in an illegal strike.

B. *Recognitional picketing*

The case of *United Restauror's Employees and Labor Union-PAFLU v. Torres*[113] is the leading case in this jurisdiction on the validity of recognitional picketing. While the Supreme Court did not expressly identify the nature of the picketing involved in this case, there is no doubt from the facts of the case that this was the type of picketing which the labor union engaged in.

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[108] The Court cited the following cases: Luzon Marine Department Union v Roldan, 86 Phil. 507 (1950); Philippine Can Co. v. Court of Industrial Relations, 87 Phil. 9 (1950); Standard Coconut Corporation v. Court of Industrial Relations, 89 Phil. 562 (1951); Liberal Labor Union v. Philippine Can Co., 91 Phil. 72 (1952); Manila Oriental Sawmill Co. v. National Labor Union, G.R. No. 6943, Dec. 29, 1954; Insular Refining Corporation Paper Pulp Workers Union v. Insular Refining Corporation, 95 Phil. 61 (1954); Almeda v. Court of Industrial Relations, 98 Phil. 17 (1955); National City Bank of New York v. National City Bank Employees Union, 98 Phil. 301 (1956); and Interwood Employees Association v. International Hardwood & Veneer Co., 99 Phil. 82 (1956).

[109] 99 Phil. 82 (1956).

[110] 106 Phil. 671 (1959).

[111] *Supra*, note 102.

[112] G.R. Nos. 20667-69, Oct. 29, 1965.

[113] G.R. No. 24993, Dec. 18, 1968.

It appears in this case that the petitioner labor union had the majority command of the employees of the respondent corporation when it picketed the latter's establishment. However, the union lost its majority control after another labor union was voted in by the employees in a consent election. The Court of Industrial Relations certified the new labor union as the exclusive collective bargaining representative of the employees of the respondent employer. It was under these circumstances that the petitioner, which then became the minority labor union, continued the picket peacefully at the employer's establishment for the sole purpose of getting the employer to continue recognizing it as the exclusive bargaining agent of his employees and to sign with it a collective bargaining contract.

The Supreme Court, speaking through Mr. Justice Sanchez, held that a minority labor union cannot engage in a concerted activity for collective bargaining because "to allow said union to continue picketing for the purpose of drawing the employer to a collective bargaining would obviously be to disregard the result of the consent election and to flaunt at the will of the majority".

There is need to put this ruling in its proper perspective and to provide it with adequate support. To begin with there is no provision in the Industrial Peace Act similar to section 8(b)(7) of the Taft-Hartley Act which makes it an unfair labor practice for a labor union to picket, or to cause or threaten to picket for recognitional or organizational purposes, unless it is currently certified as the employees' representative. In the absence of a similar provision in the Industrial Peace Act, it would seem that in this jurisdiction the validity of organizational and recognitional picketing is not open to question. For if the purpose of this type of picketing is to organize the unorganized workers and employees, then section 1 of the Industrial Peace Act which favors the organization or recognition of unions comes into full play.

But the absence in section 4(b) of the Industrial Peace Act of an express provision making organizational and recognitional picketing a union unfair labor practice is not a hindrance to hold these types of picketing as unprotected union activities.

First, both organizational and recognitional picketing are coercive techniques directed against the employer and his employees, which is then contrary to the provisions of section 3 and section 4(b)(1) of the Industrial Peace Act. Since the objective of this type of picketing is to compel an employer to enter into a collective bargaining agreement and to sign a collective bargaining contract with the picketing union which is not currently certified, then it is obvious that such

concerted activity disregards the right of the employees involved to decide for themselves whether they want a union or none at all.

However, it has been held that recognitional picketing by a minority union that does not involve violence, intimidation and reprisal or threat thereof is not a violation of section 4(b)(1).[114] There are two reasons for this rule. Unlike section 4(a)(1), section 4(b)(1) is not a "catch all" provision for it is not an unfair labor practice for labor unions to interfere with the exercise of the employees of their rights granted in section 3. Secondly, conduct which does not involve more than the general pressures implicit in economic concerted activities are not violations of section 4(b)(1). But if organizational and recognitional picketing is expressly made a union unfair labor practice in this jurisdiction, then the reason for the distinction is erased and all types of recognitional picketing becomes illegal, including peaceful recognitional picketing.

C. *Secondary boycott*

The case of *Associated Labor Union v. Borromeo*[115] is the leading case in our jurisdiction concerning secondary boycott activities. Until this case, the legal status of boycott in this jurisdiction was vague.

The gist of any boycott is the refusal of a labor union to deal with a primary employer involved in a dispute and the application of pressure on third parties who are not involved in the dispute to refrain from dealing with the primary employer. Under this characterization, the primary strike, the primary picket, and even the primary boycott are automatically withdrawn from the consideration of this type of concerted activities. There is no question that all primary boycotts are lawful. This is due to the fact that the concerted refusal to withdraw all business relations is applied directly and alone to the employer with whom a dispute is current.

But the moment a labor union applies pressure on secondary employers or other third parties to withdraw their economic or business relations with the primary employer, then there is a secondary boycott in which case different rules apply. And the fact that the labor union has made lawful demands on the primary employer does not alter the situation.

However, there are certain exceptions to the rule banning secondary boycott. Put differently, there are certain secondary boycotts that enjoy the protection of the law, that is to say, they are recognized and

[114] National Labor Relations Board v. Drivers, Chauffeurs and Helpers Union, 369 U.S. 92, 4 L.Ed. 2d 710, 80 S.Ct. 706 (1960).
[115] G.R. No. 26461, Nov. 27, 1968.

allowed as valid concerted activities. The protected secondary boycotts involve the following situations:

1. When there is a unity of commercial interest between the primary and secondary employers.
2. When the primary and secondary employers are economic allies.
3. Where the primary employer has a roving situs.
4. Where there is a common business situs organized by the primary and secondary employers.

In the 1968 *Associated Labor Union* case, the union went on strike and picketed the plant of Superior Gas and Equipment Company of Cebu, Inc. hereinfater referred to as SUGECO, on the ground that the latter was bargaining in bad faith and engaging in unfair labor practices. The union warned SUGECO that unless this was stopped and a collective bargaining agreement signed, the union would go on a strike and picket any and all places where the business of SUGECO may be found. Upon reply of SUGECO that the union no longer represented the majority of its employees, the union extended its concerted activities to the house of the general manager of SUGECO on Avellana St., Cebu City, on the ground that the yard serves as storage space for SUGECO products, and to the stores of Cebu Home and Industrial Supply, Inc. owned by the husband of the general manager of SUGECO situated on Gonzales St., Cebu City, on the ground that it serves as an outlet for the products of SUGECO. Thereupon, a complaint was filed in the Court of First Instance of Cebu for damages with a petition for preliminary injunction to restrain the union from picketing the aforementioned residence and store. Having been required by the Court of First Instance to show cause why the writ sought should not be issued, the union assailed the jurisdiction of the Court of First Instance on the ground that the subject matter involved or grew out of a labor dispute. Notwithstanding this fact, the Court of First Instance of Cebu issued an order restraining the union and its members from picketing the residence of the general manager of SUGECO on Avellana St., and the premises of the Cebu Home and Industrial Supply, Inc. on Gonzales St. The union moved for a reconsideration which the Court of First Instance of Cebu denied. Thereupon, the union commenced an action in the Supreme Court for certiorari and prohibition with preliminary injunction to annul the order of the Court of First Instance of Cebu.

This is a good example of the first type of secondary boycott protected by law. According to the Supreme Court, speaking through Mr. Chief Justice Concepcion, the picket extended by the union to

the places of business of the secondary employers was valid even if they are not parties to the dispute because there is a unity of commercial interest between SUGECO and the owners of the picketed establishment. The "unity of commercial interest" doctrine means that the primary and secondary employers are engaged in the same kind of business for profit.

There is, however, a matter which needs some clarification. In its decision, the Supreme Court emphasized the fact that Cebu Home and Industrial Supply, Inc. has an indirect interest in the labor dispute existing between SUGECO and the labor union. In protected secondary boycotts, there is no need for a labor dispute between the labor union and the secondary employer. As a matter of fact, the absence of any dispute between the union and the secondary employer is the very essence of a secondary boycott. But in emphasizing the indirect interest of the secondary employer in the current labor dispute between the primary employer and the labor union, the Supreme Court seems to require the existence of an industrial dispute, whether directly or indirectly. If this is the case, then the union activity against the secondary employer would no longer be a secondary boycott. It would be a primary boycott, in the sense that it is either a primary strike, or a primary picket, or both, in which event it would be a lawful union activity. The interesting aspect of a secondary boycott is the absence of any industrial dispute between the parties but is, nevertheless, recognized and protected by law, because it falls within the exceptions to the rule banning secondary boycotts.

IX. The Problem of the Scope of Jurisdiction of the Court of Industrial Relations

Except in the case of *Gallardo v. Corominas Richard Navigation Company, Inc.*,[116] the Supreme Court has relied on its decision in *Philippine Association of Free Labor Union v. Tan*[117] as to the scope of the jurisdiction of the Court of Industrial Relations. Here the Supreme Court held that the jurisdiction of the Court of Industrial Relations extends only to labor disputes in industries indispensable to the national interest so certified by the President to the Court of Industrial Relations; controversies about minimum wages under Republic Act No. 602; controversies regarding hours of employment under Commonwealth Act No. 444; and controversies involving unfair labor practices; provided, that in all such disputes and controversies there is an employer-employee relationship between the parties or in its

[116] G.R. No. 17453, Dec. 26, 1963, 62 O.G. 7937 (Oct., 1966).
[117] G.R. No. 9115, Aug. 31, 1956; 52 O.G. 5836 (Oct., 1956), 99 Phil. 854 (1956).

absence a petition for reinstatement is made. This decision has been restated in *Price Stabilization Corporation v. Court of Industrial Relations*[118] *and in Campos v. Manila Railroad Company, Inc.*[119]

But the Supreme Court itself is aware of the problem that has arisen under these decisions. In at least two cases, the Supreme Court has admitted giving contrary pronouncements on the scope of the authority of the Court of Industrial Relations to hear and decide cases. In *Philippine Wood Products v. Court of Industrial Relations,*[120] the Supreme Court took cognizance of the "confusion brought about by the contradictory rules in *PAFLU v. Tan,* on the one hand, and in subsequent cases, on the other hand" and absolved the Court of Industrial Relations of responsibility in misjudging the limits of its own jurisdiction. Here the Supreme Court said that the error of the Court of Industrial Relations can be traced to its reliance on the *PAFLU v. Tan* decision and subsequent cases based on it. In the 1968 case of *Centro Escolar University v. Wandaga,*[121] the Supreme Court acknowledged its awareness of cases contradicting the decision rendered in *PAFLU v. Tan.*

But during the year in review, the Supreme Court reiterated the *PAFLU v. Tan* decision in *Centro Escolar University v. Wandaga*[122] and *Luzon Stevedoring Company, Inc. v. Celorio.*[123]

There are two serious objections to the pronouncement of the Supreme Court in *PAFLU v. Tan* and the subsequent decisions based on it.

First, the view that the Court of Industrial Relations has no jurisdictional competence beyond the four types of cases specified in the *PAFLU v. Tan* case does not really coincide with the public policy expressed in section 7 of the Industrial Peace Act upon which this ruling was supposedly based. This section provides as follows:

> "*Fixing Working Conditions by Court Order.* In order to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the regulations between the employer and employee by means of an agreement freely entered into in collective bargaining, *no court of the Philippines shall have the power to set* wages, rates of pay, hours of employment or conditions of employment except as in this Act is otherwise provided and except as is provided in Republic Act Numbered Six Hundred Two and Commonwealth Act Numbered Four Hundred forty-four as to hours of work." (Emphasis supplied)

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[118] G.R. No. 13806, May 23, 1960.
[119] G.R. No. 17905, May 25, 1962.
[120] G.R. No. 15279, June 30, 1961, 61 O.G. 1345 (March, 1965).
[121] G.R. No. 25826, April 3, 1968.
[122] *Supra,* note 121.
[123] G.R. No. 22542, July 31, 1968.

Note that the crucial point in this section is the provision removing in general the power of the courts to compulsorily arbitrate questions which have to do with wages, rates of pay, hours of employment, and other working conditions and terms of employment. This implements the philosophical concept underlying the Industrial Peace Act that these matters should be the original concern of labor on the one hand and management on the other to be agreed upon by means of collective bargaining.

But the withdrawal from the Court of Industrial Relations of the power to compulsorily arbitrate bargainable matters is not inflexible. As provided also in section 7 of the Act, this court is empowered to compulsorily arbitrate questions involving bargainable matters when they get involved in a labor dispute in an industry indispensable to the national interest, present all conditions provided in section 10 of the Industrial Peace Act; or when such bargainable matters get entangled in a dispute concerning minimum wages above the applicable statutory minimum or wage-order minimum or get enmeshed in an actual strike, present all conditions respectively provided for them in subsection (b) and (c) of section 16 of Republic Act No. 602; or when such bargainable matters get involved in a dispute concerning the legal working day or compensation for overtime work, present in either case the conditions required in sections 1, 3 and 4 of Commonwealth Act No. 444. The reason why these issues become the business of the Court of Industrial Relations for compulsory arbitration is obvious to detail here.

Thus, the three exceptions mentioned in section 7 of the Industrial Peace Act are not the only types of cases falling within the jurisdiction of the Court of Industrial Relations but rather a statement of the cases involving bargainable matters still within the compulsory jurisdiction of this court. There are other types of cases in the Industrial Peace Act and other labor legislation over which the Court of Industrial Relations has jurisdiction. Under the Industrial Peace Act alone there are more classes of disputes over which the Court of Industrial Relations has jurisdictional competence than the types of cases enumerated in *PAFLU v. Tan.*

In 1965 the Supreme Court itself demonstrated the inadequacy of the holding in *PAFLU v. Tan.* In the case of *Young Men Labor Union Stevedores v. Court of Industrial Relations,*[124] the petitioner labor union assailed the jurisdiction of the Court of Industrial Relations over a case involving a certification election on the basis of the decision of the Supreme Court in *PAFLU v. Tan.* Why the union did

[124] G.R. No. 20307, Feb. 26, 1965.

this in the face of the provision of section 12(f) of the Industrial Peace Act is a problem in itself. At any rate, the full Court, speaking through Mr. Justice Felix Bautista Angelo (who also penned the *PAFLU v. Tan* decision), held that the enumeration in *PAFLU v. Tan* is not exclusive.

The second criticism against the holding in the *PAFLU v. Tan* case centers on the judicial requirement that there must be a claim for reinstatement when the employer-employee relationship no longer exists between the parties litigants. If this is valid, then it must have some basis in some specific provision of the Industrial Peace Act. There doesn't seem to be any. As a matter of fact, the pertinent provisions of the Act on this matter point to the contrary. Note that two of the four types of cases enumerated in the *PAFLU v. Tan* decision refers to labor disputes in industries indispensable to the national interest and to cases involving unfair labor practices. Now, section 2(j) of the Industrial Peace Act, in relation to section 9(f)(1) and (2), in defining the term "labor dispute" states very clearly that it includes any controversy concerning terms, tenure or conditions of employment, concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. There is realism in this labor policy. A labor dispute may exist even without this relationship. As a matter of fact, an "employee", as defined in section 2(d) of the Industrial Peace Act, need not be an employee of a particular employer for the simple reason that under modern business and industrial relations employees are brought into economico-legal relationship with employers who are not their own employers.[125]

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

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

X. Jurisdiction of the Court of Industrial Relations

Under existing legislation, the Court of Industrial Relations has the power to hear and decide cases under Commonwealth Act No. 103 (Court of Industrial Relations Act), Commonwealth Act No. 358 (Government Seizure of Public Utilities and Business Act), Commonwealth Act No. 444 (Eight-Hour Labor Law), Republic Act No. 602 (Minimum Wage Law), Republic Act No. 875 (Industrial Peace Act), and Republic Act No. 1052, (Termination Pay Law).

During the year in review, the types of cases decided by the Supreme Court involving the jurisdiction of the Court of Industrial Relations were those falling under Commonwealth Acts Nos. 103 and 444 and Republic Acts Nos. 602, 875 and 1052.

A. *Under Commonwealth Act No. 103*

Under this statute, the Court of Industrial Relations has authority to: 1) modify or reopen an award, order or decision, 2) terminate the effectiveness of an award, order or decision, 3) determine the meaning or interpretation of an award, order or decision, and 4) implement and enforce an award, order or decision.

In 1968 the only cases decided by the Supreme Court dealing with the jurisdiction of the Court of Industrial Relations under this law were those involving Items 1 and 3.

1. To interpret its awards, orders or decisions

The authority of the Court of Industrial Relations to interpret an award which it had previously issued was the subject of *Philippine Association of Free Labor Union v. Salvador*[126] and *Philippine Association of Free Labor Union v. Salvador and Court of Industrial Relations.*[127]

In both cases, the unions contended that the Court of Industrial Relations can exercise this authority only when there is a presidential certification of labor dispute involving the parties. The employers in both cases contended that this is not a prerequisite. Skirting this issue, the Supreme Court, through Mr. Justice Fernando, upheld the jurisdiction of the Court of Industrial Relations in accordance with the provision of section 18 of Commonwelath Act No. 103, provided that it is done during the effectivity of the award, order or decision as provided in section 17 of the Commonwealth Act No. 103.

[126] G.R. No. 29471, Sept. 28, 1968.
[127] G.R. No. 29487, Sept. 28, 1968.

2. To modify, set aside or reopen its awards, orders or decisions

Under section 17 of Commonwealth Act No. 103, the Court of Industrial Relations is empowered to: 1) alter, modify in whole or in part, an award, order or decision, 2) set aside an award, order or decision, and 3) reopen any question involved in an award, order or decision.

This particular jurisdiction of the Court of Industrial Relations was involved in the case of *Philippine Association of Free Labor Unions v. Salvador.*[128] Speaking through Mr. Justice Fernando, the Supreme Court re-affirmed the purpose of this jurisdiction: to give the lower court a continuing control over a case during the time it remains under its jurisdiction in order to give substantial justice to the parties without regard to technicality. But it can be exercised only during the effectiveness of the award, order or decision in question. Under the law, an award, order or decision of the Court of Industrial Relations is effective during the period therein specified, or in the absence of such specification three years from the date of the award, order or decision.

The Supreme Court, however, did not consider in this case the conditions for the exercise of this jurisdiction. This was taken up in the Survey of the 1966 Decisions of the Supreme Court in Labor Relations Law.[129] To summarize, the following are the conditions: 1) the petition must be filed during the effectivity of the award, order or decision and be heard upon due notice and hearing,[130] 2) the petition must be based only upon grounds coming into existence after the order, award or decision and only upon grounds which have been directly or indirectly litigated before and decided by the Court of Industrial Relations, or available to the parties in the former proceeding but were not, however, used by any of them,[131] 3) the petition must be identical or related to the original or main case,[132] and 4) the relief sought must not affect the period which has already elapsed at the time the order, award or decision to be altered or modified was issued.[133]

B. *Under Commonwealth Act No. 444*

The public policy concerning solution of issues involving hours of work as well as compensation for overtime work is expressed in section 7 of the Industrial Peace Act.

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[128] G.R. Nos. 29471 & 29487, Sept. 28, 1968.

[129] ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, PROCEEDINGS OF 1967, pp. 15-17.

[130] Com. Act No. 103 (1936), Sec. 17.

[131] Pepsi-Cola Bottling Co. v. Philippine Labor Organization, 88 Phil. 147 (1951); San Pablo Oil Factory v. Court of Industrial Relations, G.R. No. 18270, Nov. 28, 1962.

[132] Northwest Airlines, Inc. v. Northwest Airlines Philippine Employees Association, G.R. No. 17378, April 30, 1962.

[133] Nahag v. Roldan, 94 Phil. 87 (1953).

The decisions of the Supreme Court in *Puyat & Sons, Inc. v. Labayo*[134] and *Centro Escolar University v. Wandaga*[135] continue the rule laid down in previous cases.[136] Labor problems under the Eight-Hour Labor Law are cognizable by the Court of Industrial Relations while the employer-employee relationship still exists between the parties or absent such relationship, the complainant seeks his reinstatement.

There are two types of cases under the Eight-Hour Labor Law within the competence of the Court of Industrial Relations. The first deals with questions involving the legal working day. In the year under review, no case of this type was decided by the Supreme Court. However, reference is made to a previous case decided by the Supreme Court involving this question, namely, *San Miguel Brewery, Inc. v. Democratic Labor Organization.*[137]

The second type of cases under the Eight-Hour Labor Law falling within the jurisdiction of the Court of Industrial Relations refers to claims for compensation for overtime work under sections 3 and 4 of Commonwealth Act No. 444. Under these provisions, laborers and employees shall be entitled to overtime compensation at the same rate as their regular wages or salaries plus at least 25 per centum additional for work done beyond eight hours a day during regular days, Sundays and legal holidays.

In *Gonzalo Puyat & Sons, Inc. v. Labayo*[138] and *Luzon Stevedoring Corporation v. Celorio,*[139] the employers in both cases questioned the competence of the Court of Industrial Relations over cases involving overtime pay. The Supreme Court, in a decision penned by Mr. Justice Zaldivar, dismissed this contention in view of the settled doctrine that cases involving additional compensation for overtime work falls within the jurisdiction of the Court of Industrial Relations. There should be no question about this because the right to such pay is explicitly provided in section 4 of Commonwealth Act No. 444 and that by express provision of section 7 of the Industrial Peace Act the Court of Industrial Relations has jurisdiction to compulsorily arbitrate questions having to do with Commonwealth Act No. 444 as to hours of work.

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[134] G.R. No. 22215, Jan. 30, 1968.
[135] G.R. No. 25826, April. 3, 1968.
[136] Moncada Bihon Factory v. Court of Industrial Relations, G.R. No. 16037, April 29, 1964; Serrano v. Serrano, G.R. No. 19562, May 23, 1964; Gracella v. El Colegio de Hospicio de San Jose, Inc., G.R. No. 15152, Jan. 31, 1963. 61 O.G. 6804 (Oct., 1965); American Steamship Agencies, Inc. v. Court of Industrial Relations, G.R. No. 17878, Jan. 31, 1963; Perez, v. Court of Industrial Relations, G.R. No. 18182, Feb. 27, 1963; Naguiat v. Arcilla, G.R. No. 16602, Feb. 28, 1963; and Bank of America v. Court of Industrial Relations, G.R. No. 16904, Dec. 26, 1963.
[137] G.R. No. 18353, Jan. 31, 1963, 62 O.G. 6829 (Sept., 1966).
[138] G.R. No. 22215, Jan. 30, 1968.
[139] G.R. No. 22542, July 31, 1968.

Obviously, any question involving overtime compensation under section 3 of Commonwealth Act No. 444 involves the basic question of overtime hours of work.

C. *Under Republic Act No. 602*

By express provision of section 7 of the Industrial Peace Act, the Court of Industrial Relations is also authorized to compulsorily arbitrate questions involving wages and rates of pay.

Speaking through Mr. Justice Sanchez in *Gonzalo Puyat & Sons v. Labayo*[140] and Mr. Justice Bengzon in the case of *Centro Escolar University v. Wandaga,*[141] the Supreme Court reiterated the power of the Court of Industrial Relations to hear and decide cases involving money claims arising out of or in connection with employment provided that there exists an employer-employee relationship, or in the absence thereof, a claim for reinstatement is made by the dismissed employee.

D. *Under Republic Act No. 875*

Under the Industrial Peace Act, the Court of Industrial Relations has authority to hear and decide the following:

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

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

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

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

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

(6) Cases involving appeals from certification election, under section 12(f).

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

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[140] G.R. No. 22215, Jan. 30, 1968.
[141] G.R. No. 25826, April 3, 1968.

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

(9) Cases involving restoration of registrations and permits of labor organizations, under section 23(d).

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

Of the foregoing list, the types of cases decided by the Supreme Court in 1968 were those falling under Items 1, 2, 4, 7 and 8.

1. Cases involving unfair labor practices

Many Courts of First Instance still err in assuming jurisdiction over this type of cases. There should be no question about the exclusive jurisdiction of the Court of Industrial Relations over unfair labor practices cases. This is expressly provided in section 5(a) of the Industrial Peace Act. In *Associated Labor Union v. Borromeo,*[142] the Supreme Court, through Mr. Chief Justice Concepcion, reiterated this provision giving the Court of Industrial Relations *exclusive* jurisdiction over unfair labor practice cases.

No useful purposes will be served by discussing in detail each and every case where the erroneous decisions of the lower courts were corrected by the Supreme Court. It is enough to enumerate them here with a very brief statement of the nature of the issues involved in each case.

(a) *Philippine Association of Free Labor Unions v. Marcos,*[143] where the Court of First Instance of Baguio tried to assume jurisdiction over an unfair labor practice case by denying the motion to dismiss the complaint which the union based on the lack of jurisdiction of the trial court.

(b) *Security Bank Employees Union v. Security Bank and Trust Co.,*[144] where the Court of First Instance of Manila exercised jurisdiction over an unfair labor practice case by holding that the failure to comply with the collective bargaining agreement is not an unfair labor practice.

(c) *Regal Manufacturing Employees Association v. Reyes,*[145] where the Court of First Instance of Rizal tried to assert jurisdiction over

[142] G.R. No. 26461, Nov. 27, 1968.
[143] G.R. No. 26213, March 27, 1968.
[144] G.R. No. 28536, April 30, 1968.
[145] G.R. No. 24388, July 29, 1968.

an unfair labor practice case by taking cognizance of a petition for injunction filed by the employer to restrain the strike which the employees staged because of the dismissal of the union president.

(d) *Philippine Communications, Electronics and Electricity Workers Federation v. Nolasco,*[146] where the Court of First Instance of Manila assumed jurisdiction over an unfair labor practice case by granting the preliminary injunction in a complaint for damages allegedly sustained because of the strike.

(e) *Federacion Obrera de la Industria Tabaquera v. Mojica,*[147] where the Court of First Instance of Manila assumed jurisdiction over an unfair labor practice case simply because the complaint was so "artfully worded" that the case was presented to the court as one for damages with preliminary injunction.

(f) *Associated Labor Union v. Borromeo,*[148] where the Court of First Instance of Cebu assumed jurisdiction over an unfair labor practice case by issuing *ex parte* a writ of preliminary injunction restraining a strike and picket against respondent company as a result of an impasse in the negotiation for the renewal of a collective bargaining contract.

In the *Federacion Obrera* case, Mr. Justice Fernando, for the Court, showed undisguised disappointment with the respondent judge for not paying attention to an unbroken line of Supreme Court decisions on the exclusive jurisdiction of the Court of Industrial Relations in cases involving unfair labor practices. The Supreme Court admonished judges of Courts of First Instance to be very careful in considering pleadings involving employers and employees. Even if no unfair labor practice case has yet been filed in the Court of Industrial Relations, Courts of First Instance should not exercise jurisdiction over unfair labor practice cases. It is enough, said the Supreme Court, that the case involves an industrial dispute.

It's difficult then to follow the decision reached by the Supreme Court in the subsequent case of *Eastern Paper Mills Employees Association v. Eastern Paper Mills, Inc.*[149] Here the Supreme Court surprisingly allowed the Court of First Instance of Rizal to assume jurisdiction over a complaint for damages allegedly suffered by the employer as a result of the strike notwithstanding the fact that the employer himself admitted in his complaint that there was an existing labor dispute between the parties. Going over the pleadings, the Supreme Court found

[146] G.R. No. 24984, July 29, 1968.
[147] G.R. No. 25059, Aug. 30, 1968.
[148] G.R. No. 26461, Nov. 27, 1968.
[149] G.R. No. 23958, Sept. 28, 1968.

that the damages sought to be recovered by the employer was due to the strike staged by the employees in protest against the employer's unfair labor practice and that this unfair labor practice was the subject of a complaint filed by the union against the employer in the Court of Industrial Relations. This is fatal to the assumption of jurisdiction of the respondent judge of the Court of First Instance of Rizal. But the reason given by the Supreme Court in allowing the Court of First Instance of Rizal to assume jurisdiction over a case arising out of an unfair labor practice is that the union had erred in merely alleging in its motion to dismiss the existence of the unfair labor practice case against the employer in the Court of Industrial Relations. The Supreme Court felt that this was not sufficient and ruled that the union should have also submitted in evidence a copy of the complaint for unfair labor practice which it filed against the employer in the Court of Industrial Relations. Was there really need for this since there is no issue joined on this point.

And yet, this case is no different from the *Federacion Obrera* case,[150] where the employer also admitted in his pleading that there were two unfair labor practice cases pending in the Court of Industrial Relations. As stated above, in the *Federacion Obrera* case, the Supreme Court said that this admission of the employer in his pleadings is fatal to the assumption of jurisdiction by the respondent judge of the Court of First Instance of Manila. Indeed, Mr. Justice Fernando in speaking for the Supreme Court, said that while the averments of the complaint for damages with preliminary injunction would suffice for the respondent judge of the Court of First Instance to assume jurisdiction, still the pleadings filed in the case "ought to have put the respondent judge into a frame of mind, at the very least skeptical, of the correctness of the action taken by him".

2. Cases involving injunctions under sections 9(d) and 10 of the Industrial Peace Act

The treatment of cases involving labor injunctions is not the same as in ordinary cases. Different rules apply.

The problem is complicated when an employer attempts to secure an injunction from a Court of First Instance by omitting any reference to the existence of a labor dispute or unfair labor practice. In one case, Mr. Justice Fernando condemned the concealment of the real nature of the controversy in order to secure an ordinary injunction from the Court of First Instance on the basis of affidavits and a bond.[151]

[150] *Supra*, note 147.
[151] Federacion Obrera de la Industria Tabaquera v. Mojica, *supra*, note 147.

The resolution of the jurisdictional question involving injunctive relief depends on which court has jurisdiction over the main case. The Supreme Court emphasized this rule in two cases decided during the year in review. In *Regal Manufacturing Employees Association v. Reyes*[152] and *Philippine Communications, Electronics and Electricity Workers' Federation v. Nolasco,*[153] the Supreme Court stated that when the subject matter involved in the main case falls within the exclusive jurisdiction of the Court of Industrial Relations, then the injunction case falls also within its competence.

The holding in these decisions continues the rule expressed in *PAFLU v. Tan*[154] and *Cueto v. Ortiz*[155] that jurisdiction to issue injunction belongs to the regular courts if the main case does not come within the jurisdictional competence of the Court of Industrial Relations.

3. Cases involving determination of appropriate collective bargaining unit

Under section 12(a) of the Industrial Peace Act, collective bargaining can be held only between the employer and the union having control of the majority of the employees belonging to an appropriate collective bargaining unit. Under section 12(b) of the same Act, cases which have to do with the representation of employees fall within the jurisdiction of the Court of Industrial Relations which after investigation certifies to the parties in writing the name of the labor organization that has been designated or selected by the majority of the employees. The question, therefore, hinges on what an appropriate collective bargaining unit is. There is no provision in the Industrial Peace Act to determine this question.

The basic test applied by the courts is the existence of substantial mutual interest among the employees. This simply means that a group of employees is appropriate for the purpose of collective bargaining if they have substantial, mutual interest in working conditions and terms of employment as revealed by the type of work they perform.

Of course, the application of this basic test may not immediately yield the answer because of the varying types of units which meet this basic test. In this event, other factors are considered and applied to the particular facts of each case, such as the history, extent, and type of organization of employees in the other plants of the same employer, or other employers in the same industry; the history of

[152] *Supra,* note 145.
[153] G.R. No. 24984, July 29, 1968.
[154] 99 Phil. 854 (1956).
[155] G.R. No. 11555, May 31, 1960.

their collective bargaining; the skills, wages, work, and working conditions of the employees; and the desire of the employees.

During the year in review, the application of the last two factors mentioned above played an important role in deciding the case of *Mechanical Department Labor Union sa Philippine National Railways v. Court of Industrial Relations and Samahan ng mga Manggagawa sa Caloocan Shops.*[156] It appears that the Court of Industrial Relations issued an order directing the holding of a plebiscite to determine the desire of the employees in the Caloocan Shops of the Philippine National Railways located in the City of Caloocan to separate from the Mechanical Department Labor Union and join the respondent Samahan ng mga Manggagawa sa Caloocan Shop Union. Before the dispute, the Mechanical Department Labor Union was composed of the employees working exclusively at the Caloocan Shops of the Philippine National Railways handling major repairs of locomotive stock and engines. These employees work under the Operations Division and the Shops Rolling Stocks Maintenance Division of the Mechanical Department of the Philippine National Railways. The workers under the Shops Rolling Stock Maintenance Division wanted to separate from the rest of the workers under the Operations Division and to be represented by the respondent Samahan ng mga Manggagawa sa Caloocan Shops.

The Court of Industrial Relations relying on the "Globe Doctrine" held that the employees working under the Shops Rolling Stock Maintenance Division should be given a chance to vote on whether they should be separated from the employees working under the Operations Division also represented by the Mechanical Department Labor Union.

Upon denial of the motion for reconsideration filed by the Mechanical Department Labor Union, an appeal was taken to the Supreme Court where it argued that the application of the Globe Doctrine is not warranted because the workers under the Shops Rolling Stocks Maintenance Division do not require different skills from the rest of the workers in the Operations Division since all these workers are under the Caloocan Shops of the Mechanical Department of the Philippine National Railways.

The Supreme Court rejected this contention on the ground that the Court of Industrial Relations has previously found, as a matter of fact, that there is a basic difference between these two groups of employees, that is to say, the employees under the Shops Rolling Stocks Maintenance Division perform major repairs of railway rolling stock while the others perform only minor repairs. There is a bit of

[156] G.R. No. 28223, Aug. 30, 1968.

factual confusion here. Those performing minor repairs are under the Manila Area and Lines Division. But they are not involved in this representation dispute. The employees involved all belong to the divisions in the Caloocan Shops and are all involved in just one craft — major repairs of locomotives, engines and rolling stock.

There is need to analyze the application of the Globe Doctrine by both the Court of Industrial Relations and the Supreme Court. The National Labor Relations Board made it very plain in its decision in *Globe Machine and Stamping Company*[157] that the question of representation involved industrial and craft units.

It appears that the company's production workers can be considered either as a single unit appropriate for purposes of collective bargaining or as separate craft units. In resolving this issue, the members of the craft units were allowed to decide whether they want to retain their separate identities as such for the purpose of collective bargaining or whether they desire to become part of a larger industrial unit for such purpose. Thus, the units which did not choose the industrial or plant-wide union were allowed to constitute as separate units, while those units which decided to join the plant-wide union were placed under it.

According to the National Labor Relations Board, this approach to the solution of this type of representation question stems from the principle that the desires of the workers themselves are paramount when there is a question of representation of this nature. But "Globe" elections are not ordered in cases where there are no craft-industrial representation questions, apart from the fact that the Globe Doctrine is biased in favor of craft unionism. Furthermore, the application of the Globe Doctrine in the United States is only done to implement the provisions of section 9(b) of the Wagner Act in cases involving dispute between craft and industrial unions. There is no comparable provision in Republic Act No. 875. Section 9(b) of the Wagner Act provides that the National Labor Relations Board shall decide in each case whether the unit appropriate for the purpose of collective bargaining shall be the industrial unit, craft unit, plant unit or subdivision thereof. As Teller aptly said in his work,[158] the Globe Doctrine is applicable only in case a craft unit "wishes to retain its separateness as a bargaining unit, or whether it desires to become part of the larger industrial unit and has no application whatsoever to cases involving competing unions whose disagreement does not relate to a craft-industrial dispute". Certainly, the Globe Doctrine has no application

[157] 3 NLRB 294 (1937). This doctrine was first mentioned in Democratic Labor Association v. Cebu Stevedoring Company, G.R. No. 10321, Feb. 28, 1958.
[158] 2 LABOR DISPUTES AND COLLECTIVE BARGAINING, 918 (1940).

in a case where the question of representation involves only a single craft union and an employer.

In the case under review, there is no showing at all that the representation dispute involves a plant-wide unit and several craft units. In a different way of putting it, there is no craft-industrial dispute in the 1968 case under review. As a matter of fact, the issue of representation revolves around one craft unit, the Mechanical Department Labor Union, which draws its membership from the employees working exclusively at the Caloocan Shops of the Philippine National Railways engaged in major repairs of locomotive stock and engines. The dispute came to a head when the respondent union, Samahan ng mga Manggagawa sa Caloocan Shops, wanted to represent the employees in the Shops Rolling Stock Maintenance Division of the Mechanical Department of the Philippine National Railways.

The use of the Globe Doctrine in the 1968 *Philippine National Railways* case and the 1958 *Democratic Labor Union* case needs a complete reexamination by the Supreme Court.

4. Cases involving interpretation and enforcement of collective bargaining contracts

One of the problems where the Supreme Court cannot also seem to firm up its stand deals with the question of jurisdiction of the Court of Industrial Relations over cases involving the interpretation or enforcement of collective bargaining agreements.

During the year in review, the Supreme Court discarded the position it took on this problem in 1967 and ruled that the Court of Industrial Relations has authority to interpret and enforce collective bargaining contracts. For this reason, there is some need to go over very briefly the previous decisions of the Supreme Court on this question.

(a) Review of previous decisions

In 1954, in the case of *Pambujan Sur United Mine Workers v. Samar Mining Co.*,[159] the question squarely presented to the Supreme Court was whether the Court of Industrial Relations has authority to interpret and enforce collective bargaining contracts and, if it has, whether such jurisdiction is exclusive or merely concurrent. Speaking through Mr. Chief Justice Cesar Bengzon, the Supreme Court ruled that the Court of Industrial Relations has exclusive jurisdiction over this type of cases.

[159] 94 Phil. 932 (1954).

In 1957, the Supreme Court overruled the *Pambujan* decision in the case of *Dee Cho Lumber Workers Union v. Dee Cho Lumber Co.*,[160] holding that the Court of Industrial Relations has no jurisdiction even though a labor dispute may be involved. In an opinion by Mr. Justice Pastor Endencia, the Supreme Court reasoned that this was not among the four types of cases specified in the case of *Philippine Association of Free Labor Unions v. Tan*[161] to be within the competence of the Court of Industrial Relations.

In 1959, in *Benguet Consolidated Mining Co. v. Coto Labor Union*,[162] the Supreme Court reversed its decision in the *Dee Cho Lumber* case and reiterated the *Pambujan* decision that the Court of Industrial Relations has exclusive jurisdiction over cases involving interpretation and enforcement of collective bargaining agreement. But not five months after, in the case of *Philippine Sugar Institute v. Court of Industrial Relations*,[163] the Supreme Court changed its mind again, overruled the *Benguet Consolidated Mining Company* decision, and said that the Court of Industrial Relations has no jurisdiction to interpret and enforce collective bargaining agreements.

In 1960 the Supreme Court faced the same problem in *Elizalde Paint and Oil Company, Inc. v. Bautista*.[164] Speaking through Mr. Justice Felix Bautista Angelo, the Court overturned its decision in the *Philippine Sugar Institute* case and once more ruled that the Court of Industrial Relations is vested with authority to hear and decide cases involving interpretation and enforcement of collective bargaining agreements. However, the court's jurisdiction to interpret and enforce collective bargaining agreements was limited to the four types of cases enumerated in the case of *Philippine Association of Free Labor Unions v. Tan*,[165] namely, labor disputes in industries indispensable to the national interest certified as such by the President of the Philppines to the Court of Industrial Relations, claims for minimum wages under Republic Act No. 602, claims involving hours of work and overtime compensation under Commonwealth Act No. 444, and cases involving unfair labor practices.

But something unusual happened to this problem in 1964. In the case of *Manila Electric Co. v. Ortañez*[166] the Supreme Court threw over-board the limitation pressed by Mr. Justice Bautista Angelo in the *Elizalde Paint and Oil Company* case. Instead, Mr. Justice Labrador

[160] 101 Phil. 417 (1957).
[161] *Supra*, note 154.
[162] G.R. No. 12394, May 29, 1959.
[163] G.R. No. 13098, Oct. 29, 1959, 57 O.G. 635 (Jan., 1961).
[164] G.R. No. 15904, Nov. 23, 1960, 61 O.G. 137 (Jan., 1965).
[165] 99 Phil. 854 (1956).
[166] G.R. No. 19557, March 31, 1964.

who spoke for the Supreme Court advanced the view that the Court of Industrial Relations can assume jurisdiction over cases involving the interpretation and enforcement of collective bargaining agreements only if these agreements have been entered by the parties under the supervision of the Court of Industrial Relations. This is most surprising. The Industrial Peace Act shields the entire collective bargaining process from all governmental intervention, except only in the three instances expressly mentioned in section 7 of the Act. Thus, in the case of *National Mines and Allied Workers Union v. Philippine Iron Mines, Inc.*[167] the Supreme Court, this time speaking through Mr. Justice Regala, repudiated the conditions introduced by Mr. Justice Labrador and reiterated the limitation for the exercise of this particular jurisdiction of the Court of Industrial Relations advanced by Mr. Justice Bautista Angelo in the 1960 *Elizalde Paint and Oil Factory* case.

In 1966, in the case of *Nasipit Labor Union v. Court of Industrial Relations*[168] the Supreme Court, this time speaking through Mr. Justice Castro, reversed itself once more and ruled that the Court of Industrial Relations has no jurisdiction at all to interpret and enforce collective bargaining agreements on the ground that this type of cases is not among those mentioned in *PAFLU v. Tan.*

In 1967 the Supreme Court maintained this course. In the case of *National Brewery and Allied Industries Labor Union v. Cloribel*[169] the Supreme Court ruled that the Court of Industrial Relations has no jurisdiction but gave no support for its holding. In *Seno v. Mendoza,*[170] the Supreme Court ruled that the jurisdiction to enforce the provisions of a collective bargaining contract pertains to the ordinary courts and not to the Court of Industrial Relations because this is not one of the four types of cases mentioned in the *PAFLU v. Tan* decision, notwithstanding that the case involved a labor dispute.

(b) Decisions during the year in review

In the case of *Security Bank Employees Union v. Security Bank and Trust Co.*[171] the Supreme Court seemed to have started on an *ad hoc* consideration of the question. Speaking this time through a new member, Mr. Justice Fernando, the Court stated that while this question has been decided before in some cases as within the jurisdiction of the Courts of First Instance, the same cannot be applied in the present case. The Court relied on the principle earlier advanced in the case

[167] G.R. No. 19372, Oct. 31, 1964.
[168] G.R. No. 17838, Aug. 3, 1966.
[169] G.R. No. 25171, Aug. 17, 1967.
[170] G.R. No. 20565, Nov. 29, 1967.
[171] G.R. No. 28536, April 30, 1968.

of *Republic Savings Bank v. Court of Industrial Relations*[172] that collective bargaining as an economic relationship does not end with the execution of an agreement but is a continuing process. In such a case, jurisdiction over this type of cases belongs to the Court of Industrial Relations. Mr. Justice Fernando continued to say that no agency is better equipped by training, experience and background to handle labor controversies than the Court of Industrial Relations. Citing Mr. Justice Reyes' opinion in *Allied Free Workers' Union v. Apostol,*[173] Mr. Justice Fernando stated that the regular courts are ill prepared to apply labor laws and policies.

But, in less than five months, the Supreme Court, this time speaking through Mr. Justice Reyes in *Tanglaw Ng Paggawa v. Court of Industrial Relations,*[174] departed completely from the ruling in the *Security Bank Employees* case and held that cases involving the interpretation and enforcement of collective bargaining agreements belong to the jurisdiction of the regular courts and not the Court of Industrial Relations. What comes as a surprise is that Mr. Justice Fernando, who penned the decision in the Security Bank Employees case joined Mr. Justice Reyes in the *Tanglaw Ng Paggawa* case, who in the earlier case joined with Mr. Justice Fernando in the Security Bank Employees case. And yet neither of them even explained nor referred to their previous vote.

(c) Basis of jurisdiction of the Court of Industrial Relations

Sections 13 and 16 of the Industrial Peace Act provide the basis for the authority of the Court of Industrial Relations to assume jurisdiction over this type of cases, provided that the action is for the vindication of the rights of the parties to the collective bargaining agreement and is filed after the exhaustion of the remedies established in the collective bargaining agreement, *e.g.* the grievance procedure. Naturally the intervention of the Court of Industrial Relations is all the more urgent when there is no machinery for the adjustment of grievances and the settlement of conflicts of interests in the collective bargaining contract. Perhaps there is need to repeat the warning of the Supreme Court of the United States on this question in the case of *Smith v. Evening News Association*[175] that the rights and obligations of employers and employees concerning the matters contained in the collective bargaining agreement are a "major focus of the grievances and administration of collective bargaining and to a large degree inevitably interwind with union interest and many times precipitate grave

[172] G.R. No. 20303, Sept. 27, 1967.
[173] 102 Phil. 292 (1957).
[174] G.R. No. 24498, Sept. 21, 1968.
[175] 371 U.S. 195, 9 L.Ed 2d 246, 83 S.Ct. 267 (1962).

questions concerning the interpretation and enforcement of collective bargaining contracts in which they are based".

Obviously, violations of collective bargaining contracts involve the administration and handling of grievances. Under section 13 of the Industrial Peace Act the duty to bargain collectively includes also "the mutual obligation to meet and confer promptly and expeditiously and in good faith, . . . for the purpose of adjusting any grievances or question arising under such agreement". And, under section 16 of the Industrial Peace Act, the grievances or question that may be adjusted by collective bargaining include issues arising from the interpretation and application of collective bargaining contracts. Even sections 4(a)(6) and 4(b)(3) of the Industrial Peace Act are involved when either party fails to adjust, without reason, any grievance or question arising under a collective bargaining agreement because this is refusal to bargain collectively.

5. Cases involving rights and conditions of membership in labor organizations

In the case of *Capistrano v. Bocar*,[176] the question revolved on whether it is the Court of First Instance that has jurisdiction over a case involving a protest filed by a losing candidate for the presidency of a labor union under section 17(c) and (e) of the Industrial Peace Act. The Supreme Court, speaking through Mr. Justice Bengzon, ruled that it is the Court of Industrial Relations that has jurisdiction over cases involving rights and conditions of membership in labor organizations. This decision continues the position expressed last year by the Supreme Court on this issue in the case of *Kapisanan ng mga Manggagawa sa Manila Railroad Co. v. Hernandez*[177] and *National Brewery and Allied Industries Labor Union v. Cloribel*.[178]

E. *Under Republic Act No. 1052*

1. Claims for separation pay

To fall within the jurisdiction of the Court of Industrial Relations, claims of this nature must also include a petition for reinstatement. If the claimant does not wish to be reinstated, then he should file his complaint in the regular court. According to the Supreme Court in the case of *Gonzalo Puyat & Sons v. Labayo*,[179] a complaint asking for separation pay on the ground that the claimant has been unjustly dismissed from employment coupled with a claim for reinstatement does not fall within the jurisdiction of the regular courts. This pro-

[176] G.R. No. 24707, Jan. 18, 1968.
[177] G.R. No. 19791, May 16, 1967.
[178] G.R. No. 25171, Aug. 17, 1967.
[179] G.R. No. 22215, Jan. 30, 1968.

nouncement is in line with the previous decisions of the Supreme Court on a similar issue.[180]

However, there is need to direct attention to the decision in the case of *Magdalena Estate, Inc. v. Bangilan.*[181] There the Supreme Court, speaking through Mr. Justice Makalintal, stated that:

> "With respect to the claim for separation or terminal pay . . . the same is not within the jurisdiction of the Industrial Court."

This pronouncement must be understood in terms of the qualification set by the Supreme Court. It is true only when the qualifying or concurring condition is absent. Thus, if the employer-employee relationship is no longer existing and is not sought to be reestablished, then indeed the case involves only a claim for recovery of a sum of money and is not within the jurisdiction of the Court of Industrial Relations. But if the dismissed employee seeks his reinstatement then the Court of Industrial Relations would have jurisdiction over the case.

XI. RECENT LEGISLATION

During the year in review, several statutes were passed amending Republic Act No. 602, (otherwise known as the Minimum Wage Law) and Repubic Act No. 875 (otherwise known as the Industrial Peace Act). One piece of legislation dealing with dismissal of employees and workers was enacted amending Republic Act No. 180 (otherwise known as the Revised Election Code).

A. *Minimum Wage Law*

1. Republic Act No. 5388

This Act, approved on June 15, 1968, amends section 3(d) of Republic Act No. 602. As amended, the Minimum Wage Law shall not apply to farm tenancy, to domestic servants, and to persons working in their respective homes in any cottage industry registered under the provision of Republic Act No. 3470.

2. Republic Act No. 5434

This Act, approved on September 9, 1968, provides a procedure for appeal by any person aggrieved by an order or ruling of the Secretary

[180] Elchico v. Court of Industrial Relations, G.R. No. 17285, July 31, 1963; American Steamship Agencies, Inc. v. Court of Industrial Relations, G.R. No. 17878, Jan. 21, 1963; New Angat-Manila Transportation Co. v. Court of Industrial Relations, G.R. No. 16283, Dec. 27, 1960; and Price Stabilization Corporation v. Court of Industrial Relations, G.R. No. 13806, May 27, 1960.

[181] G.R. No. 16357, April 22, 1963.

of Labor under the Minimum Wage Law. The essential features of the procedure for appeal are stated below.

B. *Industrial Peace Act*

1. Republic Act No. 5241

This Act, approved on June 15, 1968, refers to the abolition of the requirement of non-subversive affidavits by officers of labor organizations. It repeals section 23(b)(2) of the Industrial Peace Act as well as the other portions of the said Act inconsistent with it.

2. Republic Act No. 5434

This Act, approved on September 9, 1968, fills in the gaps in the procedure for appeals from the final ruling, order, or decision of the Department of Labor under section 23 of the Industrial Peace Act. Although the new legislation refers generally to section 23 of the Industrial Peace Act, the former applies only to the right of the labor union to appeal the denial by the Department of Labor of the petition for registration under subsection (c) and the right to appeal the cancellation by the Department of Labor of the registration and permit under the first paragraph of subsection (d) of section 23 of the Industrial Peace Act. The new legislation does not apply to the second paragraph of subsection (d) of section 23, which vests in the Court of Industrial Relations exclusive jurisdiction to restore the registration and permit of a union, upon compliance with certain requisites, whose registration and permit was previously cancelled or refused by the Department of Labor because of a final declaration under sections 5 and 6 of the Industrial Peace Act that it was a company union.

Under Republic Act No. 5434, the questions that may be brought on appeal may involve questions of fact, questions of law, mixed questions of fact and law, or all three kinds of questions. Under section 3 of the said Act, the notice of appeal to be filed with the appellate court and with the lower court that rendered the award, order, or decision appealed from must state, under oath, the material dates to show that the appeal was filed within the period fixed in Republic Act No. 5434. The docket fee fixed in section 2(a) of Rule 141 of the Rules of Court has been adopted. However, this is subject to the provisions of section 4 of Republic Act No. 3870 requiring payment of the additional sum of ₱5.00. The new legislation also provides for a deposit of ₱50.00 for cost. Exemption from the payment of the docket fee and the deposit for cost is provided in the new legislation if the appellant is a laborer, employee, agricultural lessee, or tenant, who must set forth such fact

under oath in his petition. The other provisions of the new legislation deals with details which need not be taken up in this article.

C. *Republic Act No. 5218*

This Act, approved June 15, 1968, inserts a new section in the Election Code, Republic Act No. 180, prohibiting the dismissals of employees or laborers for refusing or failing to vote for any candidate of the employer. Any employee or laborer so dismissed shall be reinstated and his salary or wage shall be paid to him. The law provides penalties for its violation.