

# LABOR RELATIONS LAW

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## I. THE COURT OF INDUSTRIAL RELATIONS

### A. *Conclusiveness of findings of fact*

Up to the end of 1968, the application of the substantial-evidence-on-the-record rule in appeals in unfair labor practice cases was a recurring problem with the Supreme Court. Section 6 of the Industrial Peace Act provides that the findings of fact of the Court of Industrial Relations shall be conclusive if supported by substantial evidence on the record.

The question is whether it is enough that the findings of fact of the Court of Industrial Relations are supported by some evidence on the record to be conclusive, regardless of the possibility, not entirely remote, that there may be contrary evidence on the record or that such findings of fact were arbitrarily arrived at.<sup>1</sup> Put in another way, should not the test of "substantial evidence on the record" be taken to mean preponderance of evidence, that is, evidence based on the record as a whole, considering the legislative history of this provision?

It will help a lot to look at the history back of this test. Prior to the amendment of the U.S. National Labor Relations Act, from which Section 6 of the Industrial Peace Act was copied verbatim, the findings of fact of the National Labor Relations Board are conclusive so long as there is evidence to support it.<sup>2</sup> But in *Washington V. and M. Coach Co. v. National Labor Relations Board*,<sup>3</sup> 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 whatever on the record of the case fairly detracts from the evidence on which the findings of fact of the National Labor Relations Board is based. Obviously, the courts felt that the evidence on which the findings of fact is based would not be "substantial", that is to say, it would not be true, credible, strong, or positive, if contrary evidence on the record of the case were not also taken into account in the determination of facts. Two years after the

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<sup>1</sup> See *Nevans v. Court of Industrial Relations*, G.R. No. 21510, June 29, 1968; *Carillo v. Allied Workers' Association of the Philippines*, G.R. No. 23689, July 31, 1968.

<sup>2</sup> National Labor Relations Act, sec. 10(e) and (f), (1936).

<sup>3</sup> 301 U.S. 142, 81 L.Ed. 965, 57 S.Ct. 648 (1937).

*Washington Coach* case, the U.S. Supreme Court held in *National Labor Relations Board v. Columbian Enameling and Stamping Company, Inc.*<sup>4</sup> that pursuant 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 U.S. 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 expressly required the "substantial evidence" test for the conclusiveness of the Board's findings of fact on the reviewing courts. This was the state of the American federal legislation and judicial decisions on the matter when Section 6 of Republic Act No. 875 was patterned after it.

And it was this interpretation that the Philippine Supreme Court adopted in the early case of *United States Lines v. Associated Watchmen and Security Union*.<sup>5</sup> In this case, our Supreme Court, relying on the decisions of the U.S. Supreme Court, ruled that the "substantial evidence" test provided in the Industrial Peace Act does not mean just any evidence on the record of the case, and quoted the *Columbian Enameling* case, that 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 ruling of the Court in *Associated Watchmen* case 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.<sup>6</sup>

Prior to 1969, the year in review, the record of the Supreme Court concerning this problem was not consistent. The contrasting decisions of the Supreme Court have been perplexing to the bench and the bar.<sup>7</sup>

In 1968, for example, the decisions of the Supreme Court on this matter moved from one position to the other. Some decisions interpreted Section 6

<sup>4</sup> 306 U.S. 292, 83 L.Ed. 660, 59 S.Ct. 501 (1939).

<sup>5</sup> G.R. Nos. 1228-11, May 21, 1958.

<sup>6</sup> ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, Proceedings of 1967, 7-9 (U.P. Law Center, 1968).

<sup>7</sup> See Critical Surveys of Decisions of the Supreme Court on this question in 39 PHIL. L. J., 17-20 (1965); 41 PHIL. L. J., 20-22 (1966), ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, Proceedings of 1966, 202-204 (U.P. Law Center, 1967); 42 PHIL. L. J., 56-58 (1967), ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, Proceedings of 1967, 6-10 (U.P. Law Center, 1968); 44 PHIL. L. J., 16-21 (1969).

to mean preponderance or weight of the evidence while other decisions held the view that it is enough that there is some evidence on the record upon which the findings of fact of the Court of Industrial Relations is based. The surprising thing though about this situation is the lack of any explanation or reason for the frequent changes in positions.

The score in previous years is no different than that in 1968.

But the situation is gratifying in 1969, the year in review. The trend towards the preponderance or weight of the evidence rule is noticeable. As a matter of fact not one decision in 1969 departed from this position.

The Supreme Court started the year in review by reversing its decision in *G. Liner v. National Labor Union*,<sup>8</sup> which ruled that the substantial-evidence-on-the-record test required in Section 6 of the Industrial Peace Act should not be understood to mean preponderance of evidence.

In the case of *Philippine Embroideries, Inc. v. Embroideries and Garment Workers Union*,<sup>9</sup> the Court of Industrial Relations found that the employer had committed unfair labor practices in violation of Section 4(a)(1), (4), and (6) of the Industrial Peace Act. On appeal, the employer alleged that the lower court failed to consider certain indubitable facts which are on the record of the case. The employer strongly argued that in view of this failure, the Court of Industrial Relations erred in concluding that the employer had committed the alleged unfair labor practices. The Supreme Court, in an opinion prepared by Mr. Justice Querube Makalintal, sustained the employer's contention because upon examination of the record of the case there really were certain indubitable facts on the record which the Court of Industrial Relations merely glossed over. The Supreme Court concluded that if these indubitable facts were considered by the Court of Industrial Relations, together with the other facts of the case, there would be no question that the employer did not commit the unfair labor practices which were leveled against it.

The Supreme Court reiterated this view in *National Waterworks and Sewerage Authority v. NAWASA Consolidated Unions*.<sup>10</sup> Speaking through Mr. Justice Enrique M. Fernando, the Supreme Court ruled that while the Court of Industrial Relations enjoys a wide discretion in ascertaining the facts involved in a labor case and that its findings as to the facts are invariably accepted by the Supreme Court, nevertheless, the Court has the power to consider the other facts on the record when there is "rank failure" on the part of the Court of Industrial Relations to observe the requirement of the Industrial Peace Act in making its findings of fact. Mr. Justice Fernando impliedly referred to the limitations expressed in the deci-

<sup>8</sup> G.R. No. 24963, November 29, 1968.

<sup>9</sup> G.R. No. 20143, January 27, 1969.

<sup>10</sup> G.R. Nos. 26894, 26895 & 26896, February 28, 1969.

sions in *Del Rosario v. De los Santos*<sup>11</sup> and *Carillo v. Allied Workers' Association of the Philippines*<sup>12</sup> where it was held that the findings of fact of the Court of Industrial Relations are not binding on the appellate court when made without basis, arbitrarily arrived at, or done without consideration of the contrary evidence on the record.

*Sanchez v. The Preservers Shoe Workers' Union*,<sup>13</sup> the third case decided by the Supreme Court in the year in review, Mr. Justice Fernando was somewhat upset by the failure of the Court of Industrial Relations to heed the requirement of the substantial-evidence-on-the-record rule in making its findings of fact. Mr. Justice Fernando reiterated the proposition that the findings of fact of the Court of Industrial Relations can not be arbitrarily arrived at because that would be "a manifest failure to observe the requirement that the evidence be substantial in nature."

Speaking again for the Supreme Court in *Victorias Milling Company, Inc. v. Workmen's Compensation Commission*,<sup>14</sup> Mr. Justice Fernando stated that "as a general rule, findings of fact by the Industrial Court . . . is final and conclusive . . . unless the lower court acted with grave abuse of discretion, or said findings of fact find absolutely no support in the evidence on record, or are unsupported by substantial or credible evidence . . ."

The trend continued in the case of *Alhambra Industries, Inc. v. Kapsanan ng mga Manggagawa sa Alhambra*<sup>15</sup> and in *De Leon v. Pampanga Sugar Development Company, Inc.*<sup>16</sup>

In the *Alhambra* case, the Supreme Court, through Mr. Justice Francisco R. Capistrano this time, held that "it is now *too well settled* to need any citation of authorities that the findings of fact of the Court of Industrial Relations if supported by substantial evidence are binding on us."<sup>17</sup> But citing, nevertheless, the holding in *National Waterworks and Sewerage Authority v. NAWASA Consolidated Unions*,<sup>18</sup> the Supreme Court said that only a showing of clear and grave abuse of discretion on the part of the Court of Industrial Relations in reaching its findings of fact, that is to say, failure on the part of the Court of Industrial Relations to consider the evidence as a whole in its findings of fact, will justify the Supreme Court in disturbing such findings of fact.

And in the *De Leon* case, the Supreme Court, through Mr. Justice Fred Ruiz Castro, held that the findings of fact of the Court of Industrial Relations are conclusive on the appellate court, where they are supported by

<sup>11</sup> G.R. Nos. 20589 & 20580, March 21, 1968.

<sup>12</sup> G.R. No. 23689, July 31, 1968.

<sup>13</sup> G.R. No. 26932, March 28, 1969.

<sup>14</sup> G.R. No. 25665, May 22, 1969.

<sup>15</sup> G.R. No. 22219, August 28, 1969.

<sup>16</sup> G.R. No. 26844, September 30, 1969.

<sup>17</sup> Emphasis supplied.

<sup>18</sup> G.R. Nos. 26894, 26895 & 26896, February 28, 1969.

substantial evidence and the lower court has not acted with grave abuse of discretion.

Finally, in *Gonzalez v. Victory Labor Union*,<sup>19</sup> the Supreme Court, again speaking through Mr. Justice Makalintal, refused to be bound by the arbitrary evaluation of the facts made by the Court of Industrial Relations. While the findings of fact of the lower court was supported by some evidence on the record of the case still it was made in disregard of other reliable evidence. The Supreme Court criticized the Court of Industrial Relations for disregarding "other evidence" on the record which are "undoubtedly more reliable". Mr. Justice Makalintal then proceeded to state that the "substantial evidence" test required by Section 6 of the Industrial Peace Act has two aspects, namely, the quantitative and the qualitative. Only by applying this test, that is to say, the combination of these aspects, can the substantiality of the evidence be truly arrived at and making it credible.

It is refreshing to note that after a long and hard pull the Supreme Court is now aware of its responsibility for the credibility, reasonableness and sufficiency of the findings of fact of the Court of Industrial Relations.

#### B. *Relief from ruling or decision of a judge of the Court of Industrial Relations*

The decisions of the Supreme Court in 1967 on this question are clearer than the 1969 decision in *Vidal v. Court of Industrial Relations*.<sup>20</sup>

Section 1 of Commonwealth Act No. 103 provides, among others, that any of the judges of the Court of Industrial Relations or any party aggrieved by a ruling or decision of a judge of the said Court may request a reconsideration thereof, in which case the judges shall sit together and the concurrence of at least three of the five judges shall be necessary for the pronouncements of a decision, order or award. And Section 15 of Commonwealth Act No. 103 provides that the Supreme Court, in the exercise of its discretion, may review a decision, order or award of the Court of Industrial Relations on a question of law upon petition of the party aggrieved by the action of the court.

Simple as it is, these provisions figured nevertheless in the *Vidal* case. Speaking through Mr. Chief Justice Roberto Concepcion, the Supreme Court stated that a ruling or decision of a judge of the Court of Industrial Relations may not be reviewed directly by the Supreme Court. There must be a prior motion filed with the Court of Industrial Relations seeking the reconsideration of the said ruling or decision. Therefore, only the orders, awards, or decisions of the Court of Industrial Relations reached *en banc* are reviewable by the Supreme Court, pursuant to Sections 1 and 15 of Commonwealth Act

<sup>19</sup> G.R. No. 23256, October 31, 1969.

<sup>20</sup> G.R. No. 29002, July 30, 1969.

No. 103. Mr. Chief Justice Concepcion cited *NAMARCO Employees and Workers Association v. Tabigne*,<sup>21</sup> and *Broce v. Court of Industrial Relations*,<sup>22</sup> where the Court stated that "it is well settled that only an award, order or decision of the Court of Industrial Relations *en banc*, and not that of any of its judges, is appealable to this Court."

The decisions in *Mayormente v. Rabago Corporation*<sup>23</sup> and *Maritime Company of the Philippines v. Paredes*<sup>24</sup> state the rule better. In the *Mayormente* case, the respondents argued that the filing in the Supreme Court of a petition for certiorari was premature because the petitioner had failed to file a motion with the Court of Industrial Relations seeking the reconsideration of the disputed order of a judge of the Court of Industrial Relations. Mr. Justice Castro, who delivered the opinion of the Supreme Court, patiently explained to the respondents the distinction between a petition for certiorari and an appeal by certiorari. The former is governed by Rule 65 of the Revised Rules of Court because it is a special civil action, whose purpose is to put in issue an action of any tribunal, board or officer done without or in excess of jurisdiction or with grave abuse of discretion, subject only to the condition that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law open to the aggrieved party. An appeal by certiorari, on the other hand, is governed by Sections 1 and 15 of Commonwealth Act No. 103 in connection with Rule 43 of the Revised Rules of Court, whose purpose is to get a question of law involved in a decision, order or award of the Court of Industrial Relations reviewed by the Supreme Court.

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

The question is does it make any difference if an aggrieved party, without waiting for the resolution on his pending motion for reconsideration in the Court of Industrial Relations proceeds under Rule 65 of the Revised Rules of Court by filing with the Supreme Court an original special civil action for certiorari and prohibition with preliminary injunction? This is the novel question raised in *Maritime Company of the Philippines v. Paredes*.<sup>25</sup> In a decision by Mr. Justice Calixto Zaldivar, the Supreme Court

<sup>21</sup> G.R. No. 23294, April 30, 1966.

<sup>22</sup> 106 Phil. 388 (1959).

<sup>23</sup> G.R. No. 25337, November 27, 1957.

<sup>24</sup> G.R. No. 24811, March 3, 1967.

<sup>25</sup> G.R. No. 24811, March 3, 1967.

held that Rule 65 of the Revised Rules of Court applies only when the petition is directed against an act taken by any tribunal, board or officer exercising judicial functions without or in excess of its or his jurisdiction or with grave abuse of discretion, and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. The Supreme Court noted that the aggrieved party had a remedy available to him in the ordinary course of law. Indeed, he actually used it when he asked for the reconsideration of the order of the trial judge. His motion for reconsideration was pending before the Court of Industrial Relations at the time he filed with the Supreme Court an original special civil action for certiorari with preliminary injunction.

## II. EMPLOYER UNFAIR LABOR PRACTICES

Is the practice of laying off employees who are not able to fill their respective work quotas an employer unfair labor practice?

In the case of *Philippine Embroideries, Inc. v. Embroidery and Garment Workers Union*,<sup>26</sup> the Supreme Court ruled that it is not, under the facts of the case. The employer proved that the arrangement was necessary in order to avoid financial loss. Furthermore, it was the subject of a conference between management and the union before it was put into effect and that prior thereto the employees were warned of the impending lay-off unless the work quotas were met. It was only when the lay-off became unavoidable that the employees concerned hurriedly affiliated with the respondent labor union as a means of preventing the loss of their jobs. Since the lay-off was not motivated by the union activity or union affiliation of the workers but by a valid economic reason, the Supreme Court ruled that there was no unfair labor practice under Section 4(a) of the Industrial Peace Act.

Is it an unfair labor practice for an employer to ask a union to prove its majority command of his employees?

In the *Philippine Embroideries* case,<sup>27</sup> the union submitted its economic demands on the employer who asked the union to submit proof that it counted with the majority of his employees. The Supreme Court ruled that this is not a refusal to bargain collectively under Section 4(a)(6) of the Industrial Peace Act because this is a legitimate request.

But this is a rather sweeping statement. While it is a lawful request, nevertheless, it can be vitiated by the employer's anti-union background.<sup>28</sup> In other words, it is not an unfair labor practice under all circumstances.

Although the Supreme Court did not elaborate, this case is a good illustration of the collective bargaining procedure contemplated in Section 12(a)

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<sup>26</sup> G.R. No. 20143, January 27, 1969.

<sup>27</sup> *Ibid.*

<sup>28</sup> National Labor Relations Board v. Ford, 170 F. 2d 735 (1948).

of the Industrial Peace Act, where the parties may negotiate a collective bargaining contract without resorting to a certification election under Section 12(b) of the Industrial Peace Act. Under Section 12(a), if an employer is satisfied that a union has been designated or selected by a majority of his employees and no question as to representation exists, then he can forthwith negotiate with the bargaining agent of his employees without further action on the part of the Court of Industrial Relations.

Is the elimination of an employee from the company roster an unfair labor practice?

The answer, of course, depends on the facts which precipitated the exclusion of the employee from the list of employees. In the case of *Union of the Philippine Education Employees v. Philippine Education Company, Inc.*,<sup>29</sup> the Court of Industrial Relations found that the employee in question had remained unheard from even after the expiration of his leave of absence. The lower court also found that it was only after the employer had finally removed his name from the company's list of employees that he showed up not to report for work but only to file an action for unfair labor practice with a petition for reinstatement and back wages. The Supreme Court, speaking through Mr. Justice Makalintal, held that this is not an unfair labor practice under Section 4(a)(1) of the Industrial Peace Act which would justify reinstatement and the payment of back wages.

### III. REGISTRATION OF LABOR ORGANIZATIONS

#### A. *Registration and cancellation proceedings*

The case of *Philippine Association of Free Labor Unions v. Secretary of Labor*<sup>30</sup> clarified the provisions of the Industrial Peace Act governing registration of labor organizations and cancellation of registration certificates of labor organizations. The former is governed by Section 23(b), where a period of 30 days is provided for the holding of a public hearing counted from the receipt of the data requirements therein mentioned. The latter is governed by Section 23(d) of the Industrial Peace Act.

#### B. *Finality of decisions of Registrar of labor organizations*

In *Philippine Association of Free Labor Unions v. Secretary of Labor*,<sup>31</sup> Mr. Chief Justice Concepcion stated for the Supreme Court that "there is no law requiring the approval by the Secretary of Labor of the decision of the Registrar of Labor Organizations decreeing the cancellation of a registration certificate" because the language used in Section 23(d) suggests that

<sup>29</sup> C.R. Nos. 24634 & 24635, March 28, 1969.

<sup>30</sup> C.R. No. 22228, February 27, 1969.

<sup>31</sup> *Ibid.*

once the condition therein specified are present, the "office" concerned shall have no choice but issue the order of cancellation.

However, a close reading of Section 23(d) of the Industrial Peace Act does not show, expressly or impliedly, that there is an Office of the Registrar of Labor Organizations as such in the Department of Labor. Indeed, under this provision, the cancellation of the registration and permit of a labor organization can be done only by the Department of Labor. This is the "office" that has the power to cancel registration certificates of labor organizations. Furthermore, under Section 23(a) the Registrar of Labor Organizations acts only as the representative of the Secretary of Labor, custodian of records of labor organizations, and performs functions prescribed by the Secretary of Labor. Said section provides that "it shall be the duty of the Registrar to act as the representative of the Secretary of Labor in any proceeding under this Act upon any question of the association or representation of employees, to keep and maintain a registry of legitimate labor organization and of their branches or locals, and to perform such other functions as the Secretary of Labor may prescribe. Also, in all of Section 23, the only "office" referred to is the Office of the Secretary of Labor, as shown in Section 23(b). In any case, what the Supreme Court said on this matter is *obiter dictum* because it is not involved in the actual issue of the case. But there is need to be careful here because an *obiter dictum* has a very peculiar characteristic of becoming the starting point for subsequent decisions.

Concerning the appeal of the affected organization, the same may now be brought to the Court of Appeals and from there to the Supreme Court pursuant to the procedure provided in Republic Act No. 5434.

### C. *Constitutionality of data requirement*

Section 23(b) of Republic Act No. 875 provides that a labor organization shall acquire legal personality and be entitled to all the rights and privileges granted by law to legitimate labor organizations within 30 days of filing with the Office of the Secretary of Labor the data requirement therein mentioned. The data requirements are: (1) notice of due organization, (2) constitution and by-laws, (3) list of officers together with their addresses and the address of the principal office of the organization and (4) last annual financial report if the organization has been in existence for at least one year.

In the case of *Philippine Association of Free Labor Unions v. Secretary of Labor*,<sup>32</sup> the constitutionality of Section 23(b) was challenged on the ground that it violates freedom of assembly and association. The Supreme Court dismissed the argument as unmeritorious because the registration prescribed in Section 23(b) is not a limitation at all of the constitutional right of assembly or association. It is nothing but a condition *sine qua non* for the

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<sup>32</sup> *Ibid.*

acquisition of legal personality by a labor organization for the enjoyment of the rights and privileges granted by law to legitimate labor organizations.

According to the Supreme Court, speaking through Mr. Chief Justice Concepcion, the Constitution does not guarantee the statutory rights and privileges granted by law to legitimate labor organizations. Indeed, the enjoyment of such rights depends on the registration required by Section 23(b) of the Industrial Peace Act in order to protect both labor and the public against abuses, fraud, or impostors who do not have the interest of laborers and workers at heart. In this context, such data requirement is a valid exercise of the police power of the State inasmuch as the activities of labor organizations affect also the public welfare.

#### D. *Non-Communist affidavit requirement*

In the case of *Philippine Association of Free Labor Unions v. Secretary of Labor*,<sup>33</sup> the Supreme Court in enumerating the data requirement for registration of labor organizations under Section 23(b) of the Industrial Peace Act, still mentioned the requirement that all officers of a labor organization seeking registration with the Office of the Secretary of Labor must file a sworn statement that they are not members of the Communist Party nor members of any organization teaching the overthrow of the government by violence or by any illegal or unconstitutional method.

The inclusion, by the Court, of the affidavit requirement is only due to inadvertence. Under the provisions of Republic Act No. 4241, approved on June 15, 1968, this filing requirement was abolished by the repeal of Section 23(b)(2) of the Industrial Peace Act. Whether this is a wise legislative move or not remains to be seen. The purpose behind the affidavit requirement was to prevent political strikes as a cover for non-economic concerted activities.

#### E. *Effect of cancellation of registration permit*

In the case of *Philippine Association of Free Labor Unions v. Secretary of Labor*,<sup>34</sup> the Supreme Court held that the cancellation of the registration certificate of a labor organization does not mean its corporate dissolution. It only means the suspension of its enjoyment of the statutory rights and privileges granted to it, as distinguished from those conferred by the Constitution.

The Supreme Court had no occasion to discuss in the *Philippine Association of Free Labor Unions* case, the effect of the cancellation of the registration permit of a labor organization in so far as the Court of Industrial Relations is concerned. But it should be obvious that the services of this

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

court are available to a labor organization only upon the filing of the data requirement mentioned in Section 23(b) of the Industrial Peace Act. However, this does not mean that a labor organization whose registration certificate has been cancelled can no longer engage in concerted activities for the purpose of mutual aid or protection nor is it disqualified from filing charges of unfair labor practices. However, in the latter case, the Court of Industrial Relations cannot process such unfair labor practice charges.

#### IV. EMPLOYMENT IN THE GOVERNMENT

##### A. *Governmental and proprietary functions*

The pertinent portion of Section 11 of the Industrial Peace Act provides that the terms and conditions of employment in the government, including any political subdivision or instrumentality thereof, are governed by law. It also articulates the national policy that employees engaged in governmental functions shall not strike for the purpose of securing changes or modification in their terms and conditions of employment but they may form, join or assist any labor organization which does not impose the obligation to strike or to join in a strike. Those engaged in proprietary functions of the government are expressly excepted from the prohibition imposed on employees performing governmental functions.

In two cases decided by the Supreme Court during the year in review, namely, *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations and Offices*<sup>35</sup> and *Agricultural Credit Administration v. ACCFA Supervisors Association*,<sup>36</sup> the Supreme Court moved away from the holding in the case of *Bacani v. National Coconut Corporation*<sup>37</sup> as to the distinction between the governmental and proprietary functions of the State. In the *Bacani* case, the Supreme Court leaned heavily on the opinion of Woodrow Wilson, in his work entitled "The State", on the scope of the term "governmental functions" (which he called "constituent functions") as distinguished from the term "proprietary functions" (which he called "ministrant functions").

Mr. Justice Makalintal, who spoke for the Supreme Court in these two 1969 cases, stated that the Agricultural Credit Administration is a government office or agency engaged in governmental functions even though its operation or work is not strictly within the scope of the term as defined by Wilson. Mr. Justice Makalintal felt that the growing complexities of modern society have rendered the Wilsonian classification of the functions of the government quite unrealistic. Rather, if the government is to meet the increasing social challenges of the times, then it must undertake in its sove-

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<sup>35</sup> G.R. No. 21484, November 29, 1969.

<sup>36</sup> G.R. No. 23605, November 29, 1969.

<sup>37</sup> G.R. No. 9657, November 29, 1956; 100 Phil. 468 (1956).

reign capacity "the areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally only because it was better equipped to administer such areas for the public welfare than is any private individual or group of individuals." Thus it is that Mr. Justice Makalintal rationalized the apparent tendency towards greater socialization of economic forces even in the areas which used to be left to private enterprise, and cited the constitutional mandate that the promotion of social justice to insure the well-being and economic security of the people should be the concern of the State.

The view of Mr. Justice Makalintal found support in the concurring opinion of Mr. Justice Fernando, who was sure that he saw in the decisions reached in these two 1969 cases the trend away from the *Bacani* decision as to what activities of the State are classified as governmental and proprietary. Mr. Justice Fernando asserted that the significance of the decisions in these two 1969 cases is the definite rejection of the "constituent-ministrant" criterion of governmental functions laid down in the *Bacani* case.

In the long list of cases discarded by the Supreme Court in the 1969 cases, that of *Angat River Irrigation System v. Angat River Workers Union*<sup>88</sup> was not included. The reason is clear. It contains the criterion (which is not based on Wilson's standard) used by the Court in determining what functions of the State are governmental and what functions are proprietary in nature. In the *Angat River Irrigation System* case, the Supreme Court used a very simple but realistic formula, namely, that the government, in its public capacity, has a responsibility in the performance of acts for the public benefit and in this respect is part of the sovereign authority of the State but, in its private capacity, the government is conferred powers not from considerations of the public welfare but from its private advantage as a distinct legal personality. Therefore, in its public aspect the government is an instrumentality of the State empowered to act for the well-being and economic security of the people, but in its proprietary aspect the government exercises its powers primarily for its private advantage and acts as a private rather than a public corporation.

#### B. *Civil service unionism*

Section 11 of the Industrial Peace Act provides as follows:

*Prohibition Against Strikes in the Government.* — The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike: *Provided,*

<sup>88</sup> G.R. No. 10943, December 28, 1957.

*however*, That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to governmental corporations.

Two cases jointly decided by the Supreme Court in 1969 involving this provision reveal the thinking of the Supreme Court on the question of civil service unionism.

In *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Governmental Corporations and Offices*<sup>39</sup> and *Agricultural Credit Administration v. ACCFA Supervisors Association*<sup>40</sup> the petitioners challenged the jurisdiction of the Court of Industrial Relations over a petition of the respondent labor unions for a certification election on the ground that the ACCFA and the ACA are engaged in governmental functions and as such are not under any duty to bargain collectively with its employees.

After holding that the employees involved in these cases are indeed employed in governmental functions, the Supreme Court, speaking through Mr. Justice Makalintal, found as a matter of fact that the petitions for certification election filed by the respondent unions were for the purpose of collective bargaining and to exercise the right to strike as a coercive economic weapon. The Court ruled that the respondent unions are not entitled to the benefits of the provisions of Section 12(b) of the Industrial Peace Act which allows the holding of certification election as a means of ascertaining the collective bargaining agent of the employees.

An analysis of the provisions of Section 11 of the Industrial Peace Act shows two important points: (1) the provision that the terms and conditions of employment in the government, including any political subdivision or instrumentality, are governed by law and that the declared policy of the Industrial Peace Act is to remove from the employees engaged in governmental functions the right to strike for the purpose of securing changes or modification in their terms and conditions of employment, and (2) the provision permitting such employees to join any labor organization of their own choosing which does not impose on its members the obligation to strike or to join in strike.

The Supreme Court held that the respondent labor unions are not entitled to certification under Section 12(b) of the Industrial Peace Act because their objectives in seeking certification happened to combine collective bargaining and concerted activities.

This pronouncement is rather sweeping for it confuses two separate concepts provided in Section 11 of the Industrial Peace Act. Analysis of this provision shows that while it removes from employees engaged in govern-

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<sup>39</sup> G.R. No. 21484, November 29, 1969.

<sup>40</sup> G.R. No. 23605, November 29, 1969.

mental functions the right to strike to secure changes or modification of the terms and conditions of their employment in the government, it explicitly allows them to form, join or assist labor unions of their own choosing for whatever civil service unionism may be worth to them. The ruling of the Supreme Court is also contrary to the provisions of Section 11 because the decision of the Court prohibits even the right of the employees engaged in governmental functions to join labor organizations of their own choosing for purposes of collective bargaining. This is not contemplated in Section 11 of the Industrial Peace Act. The only prohibition contained therein is that employees engaged in governmental functions shall not strike for purposes of collective bargaining. Even the mechanics of Section 11 of the Industrial Peace Act support this view. The section heading expressly states that only the right to strike is withdrawn from employees engaged in governmental functions. To be sure that there is no confusion, this prohibition is punctuated by a period mark to clearly separate it from the right to unionization and collective bargaining reserved even to employees engaged in governmental functions.

We cannot read anything in Section 11 of the Industrial Peace Act that such employees cannot form, join, or assist unions of their own choosing for the purpose of collective bargaining. Put differently, employees employed in governmental functions may form, join or assist labor organizations of their own choosing for the purpose of collective bargaining although they cannot engage in concerted activities in order to secure changes or modification in the terms and conditions of their employment in the government. If these employees can effect changes or modification in the terms and conditions of their employment across a bargaining table without having to use the economic weapon of strike, then that is within the policies of the Industrial Peace Act and there is nothing in Section 11 to prevent such employees from gaining such economic advantages.

In a footnote to Mr. Justice Makalintal's opinion in the above mentioned cases, he stated that the Supreme Court did not decide the question — because it was not raised as an issue — of whether or not a labor organization composed of employees discharging governmental functions may petition for certification election or compel their employer to bargain collectively with them for purposes *other* than to secure changes in the terms and conditions of their employment. Even so, Mr. Justice Makalintal went on to observe in passing that "the right to organize thus allowed, would be meaningless unless it is a correlative right on the part of the organization to be recognized as the proper bargaining agent of the employees." Pursuing this thinking of Mr. Justice Makalintal, it would seem that there is nothing in Section 11 of the Industrial Peace Act prohibiting employees engaged in governmental functions from filing petitions for certification election for the purpose of

collective bargaining and other purposes so long as they do not engage in concerted activities. If they do, then injunction will lie.<sup>41</sup>

It is significant to mention here that there is an increasing number of legislation in the States of the American union embodying constructive and progressive policies regarding unionism in the civil service.<sup>42</sup> Some States have even moved in the direction of furnishing some kind of substitute for strike or picket, like mediation,<sup>43</sup> or findings of fact and recommendations,<sup>44</sup> or arbitration procedure with respect to certain categories of employees engaged in governmental functions.<sup>45</sup>

#### V. INJUNCTIONS IN LABOR DISPUTES

Section 9(a) and (d) of Republic Act No. 875 allows the issuance of a labor injunction by the Court of Industrial Relations only in cases involving or growing out of a labor dispute, as this term is defined in Section 9(f)(1) in relation to Section 2(j) of the said Act.

In *Philippine Association of Free Labor Unions v. Cloribel*,<sup>46</sup> the Supreme Court applied this legal provision in turning down the contention of the petitioner that the respondent judge acted without jurisdiction and with grave abuse of discretion in issuing a writ of injunction *ex parte* prohibiting the petitioner from picketing in front of and/or along the passageways of the six-story Wellington Building in Binondo, Manila. The respondent judge issued the *ex parte* injunction on the ground that there was no labor dispute between the petitioner and the other respondents who were the lessees of the second up to the sixth floors of the building. As a matter of fact, the labor dispute was between the petitioner union and the Metropolitan Bank and Trust Company which occupies the entire ground floor of the Wellington Building.

The Supreme Court, therefore, applied the provisions of Rule 58 of the Revised Rules of Court on ordinary injunction. The Court, speaking through Mr. Justice J. B. L. Reyes, held that the order of the respondent judge did not curtail the right of the petitioner to picket the Metropolitan Bank and Trust Company but merely regulated it in order to protect the rights of the other business offices occupying the second to the sixth floors of the same building. However, the Supreme Court annulled the injunction issued by the respondent judge because of the latter's failure to require the filing of the

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<sup>41</sup> See e.g., *City of Manchester v. Manchester Teachers Guild*, 131 A.2d 59 (1957); *City of Pawtucket v. Pawtucket Teachers Alliance*, 141 A.2d 624 (1958); *City of Alcoa v. IBEW*, 308 S.W.2d 476 (1957).

<sup>42</sup> Alaska, California, Connecticut, Florida, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, Oregon, Rhode Island and Wisconsin.

<sup>43</sup> Michigan, Minnesota and Oregon.

<sup>44</sup> North Dakota and Wisconsin.

<sup>45</sup> Rhode Island.

<sup>46</sup> G.R. No. 25878, March 28, 1969.

necessary bond pursuant to Section 9(d) of the Industrial Peace Act. The Supreme Court ruled that in accordance with the same provision this is a mandatory requirement and failure to require the filing of a bond amounts to a grave abuse of discretion because it is a violation of a legal requirement.

But apart from this technicality, if a bond had been filed, is the larger problem of protecting the rights of the petitioner union to make known to the public the facts involved in the labor dispute with the respondent bank occupying the entire first floor of the Wellington Building. The injunction issued by the respondent judge ordered the union to lift its picket in front of and/or along common passageways of the building used by the respondent employer and persons and business firms occupying the other floors of the building. This is a complicated question in view of the fact that there is a labor dispute existing between the union and the respondent bank and the fact that the bank and other business firms are situated in the *same* premises and use *common* entrances and passageways. How should the right of the union to picket be protected in a case like this? The Supreme Court concedes that the union has a right to picket peacefully the respondent bank but the Court sustained the lower court's injunction ordering the lifting of the picketing "in front or along the passageways of the Wellington Building" on the ground that the lower court did not totally ban but merely regulated the picketing. There is nothing in the decision indicating how the picketing was regulated by the lower court. The fact is it could no longer be regulated because it was stopped by the injunction issued by the lower court. And the union could not picket anywhere else because that would be plainly illegal. The injunction issued by the lower court was a complete ban.

The economic contests between employers and employees have never concerned merely the immediate parties to a labor dispute, *i.e.*, the primary employer and his employees. Put differently, a union picket may affect secondary employers and still be valid. Thus, as in the case under analysis, more than one employer (the respondent primary employer occupying the first floor of the building and the other secondary or neutral business firms occupying spaces in the second up to the sixth floors of the same premises) were affected by the peaceful picketing of the petitioner union. A labor union involved in a labor dispute with the primary employer may have no other way of putting pressure on the primary employer except at the common business situs occupied by him and the secondary or neutral employers.<sup>47</sup> In order to solve the problem of picketing in a situation such as this, certain criteria have been devised which have gained wide acceptance by the courts.<sup>48</sup> The case of *Republic Flour Mills Workers Association v.*

<sup>47</sup> C. PASCUAL, LABOR AND TENANCY RELATIONS LAW, 292-293 (3rd Ed., 1966).

<sup>48</sup> *Id.*

*Reyes*<sup>49</sup> which the Court cited is not in point because there no labor dispute was involved in that case. Any economic concerted activity in such a situation would naturally be invalid not only against the primary employer but also to netural employers.

## VI. PICKETING

Until the case of *Philippine Association of Free Labor Unions v. Cloribel*,<sup>50</sup> the judicial attitude over the years on the question of picketing as free speech in action has been that picketing cannot be curtailed or enjoined as long as it is peacefully carried out.<sup>51</sup>

The decisions of the Supreme Court prior to the *Cloribel* case were all based on the cases of *Thornhill v. Alabama*<sup>52</sup> and *Carlson v. State of California*.<sup>53</sup> But the Supreme Court of the United States has already retreated from the *Thornhill* decision starting with *Giboney v. Empire Storage and Ice Company*.<sup>54</sup> Here the union engaged in peaceful picketing to attack the Missouri Anti-Trust Law as invalid and challenged the power of the state to issue an injunction against the union for peacefully publicizing the facts about the labor dispute. The Court held that the union picket was a violation of Missouri's valid law and that neither the *Thornhill* and *Carlson* cases support the union contention that an unlawful purpose is immune from state regulation when carried out by peaceful means. The subsequent cases are: *Hughes v. Supreme Court of California*,<sup>55</sup> concerning peaceful picketing involving a violation of a state public policy; *International Brotherhood of Teamsters v. Hanke*,<sup>56</sup> involving peaceful picketing for an unlawful purpose; *Building Service Employees International Union v. Gazzam*,<sup>57</sup> concerning peaceful picketing carried out to coerce company employees in their choice of bargaining representative; and *International Brotherhood of Teamsters v. Vogt, Inc.*,<sup>58</sup> involving peaceful picketing carried out to force company employees to join the picketing union.

In the case of *Philippine Association of Free Labor Unions v. Cloribel*,<sup>59</sup> the Supreme Court, speaking through Mr. Justice Reyes, held that "the right

<sup>49</sup> G.R. No. 21378, November 28, 1966.

<sup>50</sup> G.R. No. 25878, March 28, 1969.

<sup>51</sup> *Mortera v. Court of Industrial Relations*, 79 Phil. 345 (1947); *Philippine Association of Free Labor Unions v. Barot*, 99 Phil. 1008 (1956); *De Leon v. National Labor Union*, 100 Phil. 792 (1957); *Cruz v. Cinema, Stage and Radio Entertainment Free Workers Union*, 101 Phil. 1259 (1957); *Malayang Manggagawa sa Esso v. Esso Standard Eastern*, G.R. No. 24224, July 30, 1965; and *Security Bank Employees Union v. Security Bank and Trust Company*, G.R. No. 28536, April 30, 1968.

<sup>52</sup> 310 U.S. 88, 84 L.Ed. 1093, 60 S.Ct. 736 (1940).

<sup>53</sup> 310 U.S. 106, 84 L.Ed. 1104, 60 S.Ct. 746 (1940).

<sup>54</sup> 336 U.S. 490, 93 L.Ed. 834, 69 S.Ct. 684 (1949).

<sup>55</sup> 339 U.S. 460, 94 L.Ed. 985, 70 S.Ct. 718 (1950).

<sup>56</sup> 339 U.S. 470, 94 L.Ed. 995, 70 S.Ct. 773 (1950).

<sup>57</sup> 339 U.S. 532, 94 L.Ed. 1095, 70 S.Ct. 784 (1950).

<sup>58</sup> 354 U.S. 284, 1 L.Ed. 2d 1347, 77 S.Ct. 1166 (1957).

<sup>59</sup> G.R. No. 25878, March 28, 1969.

of peaceful picketing is not absolute and that courts are not without power to confine or localize the sphere of communication or the area of demonstration to the parties to a labor dispute, including those with related interest, and to insulate establishments or persons with no industrial connection or having interests totally foreign to the context of the dispute."

The opening paragraph of the decision penned by Mr. Justice Fernando in *People of the Philippines v. Barba*<sup>60</sup> also dwells on this point, that while peaceful picketing is part of free speech nevertheless it has a coercive effect and is thus not immune to that extent from state restrictions and limitations. Indeed, continued Mr. Justice Fernando, certain activities on the picket line may make a mockery of peaceful pretension and thus lose the protection of the law.

Thus, even though picketing is peacefully carried out, it may still be regulated in the interests of the society in which the labor dispute occurs. The *Cloribel* decision is something to watch, for it signals the retreat from *Mortera v. Court of Industrial Relations* decided in 1947.<sup>61</sup>

#### VII. INDEPENDENT CONTRACTORS

One of the problems in labor relations law where the Supreme Court is also firming up its position is the question of whether an employer-employee relationship exists when a person happens to have certain characteristics of an employee, as this term is defined in Section 2(d) of the Industrial Peace Act, and some attributes of an independent contractor, as this concept is known in labor relations law.

In 1967 (there were no cases on this problem decided in 1968), the Supreme Court promulgated two contradictory decisions on this point, namely, *Allied Free Workers Union v. Compañía Marítima*<sup>62</sup> and *Visayan Stevedore Transportation Company v. Court of Industrial Relations*.<sup>63</sup> In these 1967 cases, as in *Cruz v. Manila Hotel*,<sup>64</sup> and *LVN Pictures, Inc. v. Philippine Musicians Guild*,<sup>65</sup> the Supreme Court used the older common law right-of-control test to determine the type of economic relationship existing between the contending parties.

In the *Allied Free Workers Union* case, the Supreme Court, in an opinion prepared by Mr. Justice Jose P. Bengzon, ruled that an employer-independent contractor relationship existed between the parties on the ground that the respondent company had limited its intervention over the result of the stevedoring and arrastre services rendered by the petitioner Union and did not

<sup>60</sup> G.R. No. 27615, September 30, 1969.

<sup>61</sup> 79 Phil. 345 (1947).

<sup>62</sup> G.R. Nos. 22951-52 & 22971, January 21, 1967.

<sup>63</sup> G.R. No. 21696, February 25, 1967.

<sup>64</sup> 101 Phil. 358 (1957).

<sup>65</sup> G.R. No. 12582, January 28, 1961.

concern itself over the conduct or method used in the accomplishment of the results. As stated in the survey of the 1967 decisions, this approach seemed to me to be an oversimplification, because no attempt at all was made to relate the economic arrangement existing between the parties and the solution of the problem to the newer socio-economic concepts and objectives of the Industrial Peace Act. The fact of the matter is that the right of control exercised by an employer is but one of the many economic factors that the courts must now consider in the solution of this problem. Stated in another way, this particular factor may be outweighed by other economic factors involved in the relationship between the parties. If this is the case, then the relationship must be that of an employer and an employee, notwithstanding the fact that the former may have reserved the right of control over the result of the work done by the employees. On the other hand, if this is not correct, then an employer may be able to undermine, by the mere expedience of limiting his control over the result of the work, the policies of the Industrial Peace Act, avoid his statutory responsibilities thereunder, and even resort to individual bargaining, anti-unionism and unfair labor practices which are precisely the mischiefs which the Industrial Peace Act seeks to eradicate.

In the *Visayan Stevedore Transportation Company* case, the employer argued that there was no employer-employee relationship with the complaining laborers because he had limited his control over the result of the work performed by the laborers and did not assume control over the method or means of accomplishing the work. In an opinion prepared by Mr. Chief Justice Concepcion, to which the Justices who had previously concurred in the application of the right-of-control test in the earlier *Allied Free Workers Union* case agreed, the Supreme Court disregarded this contention because of the existence of other economic facts showing that the relationship was indeed that of an employer and an employee. Here, Mr. Chief Justice Concepcion ignored the fact of the employer's control over the result of the work performed by the laborers. In other words, this economic fact is not to be considered in disregard of other countervailing economic factors but must be weighed carefully with the rest because it is easy for an employer to use the right-of-control arrangement to avoid his obligations and responsibilities under the Industrial Peace Act.

During the year in review, the case of *Social Security System v. Court of Appeals*<sup>66</sup> reached the Supreme Court. Although not a labor relations case, nevertheless it involved the question of which yardstick to apply, the right-of-control test or the economic-facts-of-the-relation test. Mr. Justice Fernando, who analyzed the case for the Supreme Court, saw immediately the error of the petitioner, Social Security System, in citing the case of *Na-*

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<sup>66</sup> G.R. No. 26146, October 31, 1969.

*tional Labor Relations Board v. Hearst Publications, Inc.*<sup>67</sup> as authority for its proposition that the economic-facts-of-the-relation test should determine whether or not the jockeys connected with the respondents Manila Jockey Club, Inc. and the Philippine Racing Club, Inc. may be considered their employees for purposes of coverage under the Social Security Act. The petitioner Social Security System tried to persuade the Supreme Court to reverse the decision of the Court of Appeals with the plea that instead of the right-of-control test, the economic-facts-of-the-relation test should be the criterion. The position of the petitioner is obvious. If the jockeys are classified as employees, then the respondents racing clubs would be liable for employment contributions under the Social Security Act.

Mr. Justice Fernando correctly disregarded the appeal to the *Hearst Publications* case in view of a prior decision of the Court in the case of *Investment Planning Corporation v. Social Security System*<sup>68</sup> where it was ruled that where the element of control is absent and payment for services is based on the result of the work done, the relationship is not that of an employer and employee.

In the 1969 *Social Security System* case, a resolution was issued by the Social Security System that for purposes of coverage under the Social Security Act (Republic Act No. 1161, as amended by Republic Act No. 2868) an employer-employee relationship exists between the respondents Manila Jockey Club, Inc. and the Philippine Racing Club, Inc. on the one hand and the jockeys connected with the said respondents on the other hand. The Social Security System based its resolution on the economic-facts-of-the-relation test expressed in the *Hearst Publications* case. The validity of the resolution was raised in the Court of Appeals which ruled, in reversing the Social Security System, that the jockeys were not employees of the respondent racing clubs within the purview of the Social Security Act on the ground that upon consideration of the economic facts involved in the relation between the racing clubs on the one hand and the jockeys on the other, the jockeys are independent contractors. Here is a situation where the same test was applied with different results.

The Supreme Court affirmed the conclusion of the Court of Appeals by applying the right-of-control test in the light of the economic facts found by the Court of Appeals. This is rather confusing because the Supreme Court itself agreed with the findings of fact of the Court of Appeals that the respondent racing clubs did not exercise any control over the jockeys. Thus, when the Supreme Court stated that it had to affirm the decision of the Court of Appeals "in the light of the facts as found by the Court of Appeals" by the application of the right-of-control test it is very difficult to see what the Supreme Court means. I suppose that the

<sup>67</sup> 322 U.S. 111, 88 L.Ed. 1170, 64 S.Ct. 851 (1944).

<sup>68</sup> G.R. No. 19124, November 18, 1967.

statement of the Supreme Court that the "light of the facts as found by the Court of Appeals" refers to the several economic facts found by the Court of Appeals, which, by the way, the Supreme Court copied verbatim on page 3 of its decision in the *Social Security System* case. These economic facts precisely prompted the Court of Appeals to conclude that there was no employer-employee relationship.

Mr. Justice Fernando was, however, correct in disregarding the argument of the Social Security System that the decision of the Court of Appeals must be reversed in view of the economic-facts-of-the-relation test on the authority *Hearst Publications* case. This American case is a labor relations case involving the definition of the term "employee" as used in Section 2(3) of the National Labor Relations Act, which is the basis of the definition of the term "employee" in Section 2(d) of the Industrial Peace Act. Obviously, the legislation involved in the *Hearst Publications* case is different from the legislation involved in the *Social Security System* case, which involves employer liability for contributions to the fund of the Social Security System. The term "employee" is defined differently in Section 8(d) of the Social Security Act, as amended by Republic Act No. 2658, from the definition of the term "employee" in Section 2(d) of Republic Act No. 875.

In the United States, the Social Security Act of 1935 did not define the term "employee" although an officer of a corporation was deemed an employee. This is the reason that prompted the adoption in the United States of the economic-facts-of-the-relation test in social security cases. This continued up to the case of *Bartels v. Birmingham*.<sup>69</sup> The U.S. Congress, however, felt that its intention was not read properly by the U.S. Supreme Court and amended the definition of the term "employee" in 1948 to exclude an independent contractor under the common law right-of-control test, *i.e.*, one who has contracted to do work according to his own methods without being subject to the control of the prime contractor except as to the result of the work.

Mr. Justice Fernando felt that the decision of the Supreme Court in the 1967 *Investment Planning Corporation* case is persuasive in this case because of the similarity between the definition of the term "employee" in the U.S. Federal Social Security Act, as amended, and the definition of the same term in the Philippine Social Security Act, which was patterned after the U.S. legislation.

#### VIII. JURISDICTION OF THE COURT OF INDUSTRIAL RELATIONS

For the first time since I started surveying the decisions of the Supreme Court in labor relations law, no question concerning the scope of jurisdiction

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<sup>69</sup> 332 U.S. 126, 91 L.Ed. 1947, 67 S.Ct. 1547 (1947).

of the Court of Industrial Relations reached the Supreme Court during the year in review. Stated, differently, no case during this period involved the controversial decision in *Philippine Association of Free Labor Unions v. Tan*,<sup>70</sup> where the Supreme Court restricted the jurisdiction of the Court of Industrial Relations to only four types of cases, namely, cases involving labor disputes in industries indispensable to the national interest so certified by the President to the Court of Industrial Relations, under Section 10 of the Industrial Peace Act; cases involving controversies about minimum wages above the statutory or wage-order minimum, under Republic Act No. 602; cases involving controversies regarding hours of work below the legal working day or cases involving claims for overtime work, under Commonwealth Act No. 444; and cases involving unfair labor practices, under Section 4 of the Industrial Peace Act. The last time this issue was raised was in 1968 where the *PAFLU* decision was applied in *Centro Escolar University v. Wandaga*<sup>71</sup> and in *Luzon Stevedoring Co. v. Celorio*.<sup>72</sup> The objections to these decisions are discussed in the survey of the 1968 decisions of the Supreme Court.<sup>73</sup>

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 concerning the jurisdiction of the Court of Industrial Relations involved Commonwealth Act Nos. 103 and 444 and Republic Act Nos. 875 and 1052.

#### A. Under Commonwealth Act No. 103

Under this law, the Court of Industrial Relations is authorized to: (1) modify or re-open 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 1969, the only cases decided by the Supreme Court dealing with the jurisdiction of the Court of Industrial Relations under Commonwealth Act No. 103 were those falling under Item No. 1.

Under the provisions of Section 17 of Commonwealth Act No. 103, the Court of Industrial Relations is authorized to alter or modify in whole or in

<sup>70</sup> 99 Phil. 854 (1956).

<sup>71</sup> G.R. No. 25826, April 3, 1968.

<sup>72</sup> G.R. No. 22542, July 31, 1968.

<sup>73</sup> See 44 PHIL. L. J., 39-42 (1969); ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, Proceedings of 1969, 222 *et seq.* (U.P. Law Center, 1970).

part an award, order or decision; set aside an award, order or decision; and re-open any question involved in an award, order or decision.

In the case of *Sanchez v. The Preserver Shoe Company*,<sup>74</sup> the Supreme Court, in a decision prepared by Mr. Justice Fernando, reaffirmed the long standing rule in this jurisdiction that the Court of Industrial Relations is empowered to hear and decide cases involving the matters mentioned above and characterized this jurisdiction as comprehensive in scope. Citing the 1968 case of *Philippine Association of Free Labor Unions v. Salvador*<sup>75</sup> the Supreme Court stated that it has recognized this authority of the Court of Industrial Relations fully and sympathetically, consistent with the reach of the language used by the legislature in enacting the said provision.

In another case, *La Campana Food Products, Inc. v. Court of Industrial Relations*,<sup>76</sup> the jurisdiction of the Court of Industrial Relations to reopen any question involved in an award, order or decision issued by it was taken up in connection with the issue of whether the Court of Industrial Relations may legally reopen the case after judgment thereon had become final and executory.

Section 17 of Commonwealth Act No. 103, provides that at any time during the effectiveness of an award, order or decision, the Court of Industrial Relations may, on application of an interested party, and after due hearing . . . reopen any question involved therein. The Court of Industrial Relations, sitting *en banc* took the position that even when its decision has become final and executory it nevertheless felt that it was still within its jurisdiction to reopen the case on the basis of the foregoing provision of Section 17 of Commonwealth Act No. 103.

In turning down the argument of the Court of Industrial Relations, the Supreme Court, speaking through Mr. Justice Conrado V. Sanchez, held that the decisions in the cases cited by the respondent court<sup>77</sup> are not decisive in the *La Campana Food Products* case for the simple reason that the intervening events in the cases cited by the respondent were not present in the *La Campana Food Products* case. The Supreme Court held that the jurisdiction of the Court of Industrial Relations to reopen a case under Section 17 of Commonwealth Act No. 103 must be based only upon grounds coming into existence after the order or decision was rendered by the Court of Industrial Relations but not upon grounds which have already been directly or impliedly decided by the lower court nor upon grounds which were available to the parties in the lower court but were not availed of by any of them. The Supreme Court cited *Pepsi-Cola Bottling Company v. Philippine Labor*

<sup>74</sup> G.R. No. 26932, March 28, 1969.

<sup>75</sup> G.R. Nos. 29471 & 29487, September 28, 1968.

<sup>76</sup> G.R. No. 27907, May 22, 1969.

<sup>77</sup> *Church v. La Union Labor Union*, 91 Phil. 163, 168-169 (1952) and *Apo Workers Union v. Castillo*, 97 Phil. 998 (1955).

*Organization.*<sup>78</sup> In this connection, the Supreme Court made a similar ruling in *San Pablo Oil Company v. Court of Industrial Relations*.<sup>79</sup> In conclusion, the Supreme Court stated that "if we interpret Section 17 of Commonwealth Act No. 103 as conferring on the Court of Industrial Relations unconditional power to reopen cases which have been finally adjudicated, then its decisions and orders could never be relied upon as final; conflicts between capital and labor would be interminable; and industrial planning would become impossible."<sup>80</sup>

The Supreme Court, however, did not consider in the *La Campana Food Products* case the other conditions for the exercise of this particular jurisdiction of the Court of Industrial Relations. This was taken up in the survey of the 1966 decisions of the Supreme Court in labor relations law.<sup>81</sup> The other conditions are: (1) the petition must be filed during the effectivity of the award, order or decision and be heard upon due notice and hearing,<sup>82</sup> (2) the petition must be identical or related to the original or main case,<sup>83</sup> and (3) the relief sought must not affect the period which has already elapsed at the time of the order, award, or decision to be altered or modified was issued.<sup>84</sup>

In the case of *Alhambra Industries, Inc. v. Kapisanan ng mga Mangagawa sa Alhambra*,<sup>85</sup> the petitioner sought to prevent the execution of a final judgment of the Court of Industrial Relations ordering it to reinstate several employees to their former positions or to substantially equivalent positions. The employer filed a petition in the Court of Industrial Relations to hold in abeyance the reinstatement of the dismissed employees and in the meanwhile to conduct a hearing to enable it to present evidence supporting its contention that it should be exempted from the decision ordering the reinstatement of the employees with back wages. The petitioner advanced two grounds, namely, that the former positions of the dismissed employees were abolished for bona fide reasons, and that there were no substantially equivalent positions where they could be appointed. The Supreme Court, in an opinion prepared by Mr. Justice Capistrano, overruled the employer's petition as an attempt to avoid the effects of an executory judgment and that the petitioner's persistence in refusing to comply with it shows a disregard for the principle of the case. The Supreme Court stated that the grounds advanced by the employer were available to him during the trial

<sup>78</sup> 88 Phil. 147 (1951).

<sup>79</sup> G.R. No. 18270, November 23, 1962.

<sup>80</sup> Philippine Land-Air-Sea Labor Union v. Cebu Portland Cement Company, G.R. No. 20987, June 23, 1965.

<sup>81</sup> See 42 PHIL. L. J., 61-63 (1967); ASPECTS OF PHILIPPINE LABOR RELATIONS LAW, Proceedings of 1967, 14-16 (U.P. Law Center, 1968).

<sup>82</sup> Com. Act No. 103, sec. 17.

<sup>83</sup> Northwest Airlines, Inc. v. Northwest Airlines Philippine Employees Association, G.R. No. 17373, April 30, 1962.

<sup>84</sup> Nahag v. Roldan, 94 Phil. 87 (1953).

<sup>85</sup> G.R. No. 22219, August 23, 1969.

of the case and therefore may no longer be availed of thereafter. Mr. Justice Capistrano cited the ruling in the case of *Rattan Art v. Rattan Art Union*<sup>86</sup> to the effect that a proceeding may be reopened only upon grounds coming into existence after the issuance of the order of the Court of Industrial Relations, but not upon grounds which have already been directly or impliedly litigated and decided by the said court, nor upon grounds which were available to the parties but were not availed of by any of them. This is similar to the ruling of the Supreme Court in the *Pepsi-Cola Bottling Company* case<sup>87</sup> and *San Pablo Oil Company* case<sup>88</sup> previously cited.

#### B. *Under the Eight-Hour Labor Law*

Section 7 of the Industrial Peace Act lays down the policy concerning issues involving hours of work as well as compensation for overtime work. 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. During the year under review, no case of this type was decided by the Supreme Court. There is a 1963 case though decided by the Supreme Court involving this question, namely, *San Miguel Brewery, Inc. v. Democratic Labor Organization*.<sup>89</sup>

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. During the year in review, no case reached the Supreme Court questioning this jurisdiction of the Court of Industrial Relations. But two cases involving the computation of premium pay under Section 4 of Commonwealth Act No. 444 were decided by the Court.

##### 1. *Scope.*

Section 2 of Commonwealth Act No. 444, as amended by Republic Act No. 2377, and further amended by Section 43 of Republic Act No. 3844, provides the coverage of the Eight-Hour Labor Law to all persons employed in any industry or occupation, whether public or private, except laborers

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<sup>86</sup> G.R. No. 6466, May 21, 1954.

<sup>87</sup> 88 Phil. 147 (1951).

<sup>88</sup> G.R. No. 1827, 18270, November 28, 1962.

<sup>89</sup> G.R. No. 18353, January 31, 1963, 62 O.G. 6829 (Sept. 1966).

who prefer to be paid on piece work basis, managerial employees, outside sales personnel, domestic servants, persons in the personal service of another and members of the families of the employer working for him.

In *National Waterworks and Sewerage Authority v. NAWASA Consolidated Unions*<sup>90</sup> the Supreme Court, in an opinion by Mr. Justice Fernando, made very clear that employees whose functions, duties and responsibilities do not bear any direct relation with management, who have no participation in the formulation of management policies or in the hiring and firing of employees are not barred from filing claims or over-time pay because they do not come within the category of "managerial employees" as this term is defined in the Eight-Hour Labor Law, as amended, even though they hold positions of responsibility as chiefs of divisions or heads of sections.

## 2. *Computation of Premium Pay.*

The cases of *Manalo v. Pampanga Sugar Development Company, Inc.*<sup>91</sup> and *De Leon v. Pampanga Sugar Development Company, Inc.*,<sup>92</sup> reiterated the ruling of the Supreme Court in the case of *Atok-Big Wedge Mutual Benefit Association v. Atok-Big Wedge Mining Company, Inc.*<sup>93</sup> on the meaning of premium pay of employees for work performed on Sundays and legal holidays.

The pertinent provision of Section 4, Commonwealth Act No. 444, otherwise known as the Eight-Hour Labor Law, provides that "no person, firm, or corporation, business establishment or place or center of labor shall compel an employee or labor to work during Sundays and legal holidays, unless he is paid an additional sum of at least twenty-five per centum of his regular remuneration: *Provided, however,* That this prohibition shall not apply to public utilities performing some public service such as supplying gas, electricity, power, water, or providing means of transportation or communication."

The Supreme Court, speaking through Mr. Justice Reyes in the *Manalo* case and through Mr. Justice Castro in the *De Leon* case, drew a distinction between work done on Sundays and holidays where the monthly or yearly salaries agreed upon by the parties are intended to cover work on ordinary working days only or where the nature or conditions of employment do not require work on Sundays and holidays, from a situation where the parties in agreeing to the monthly or yearly salaries knew or had reason to know that the work would be continuous without interruption on Sundays and holidays.

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<sup>90</sup> G.R. Nos. 26894, 26895 & 26896, February 28, 1969.

<sup>91</sup> G.R. No. 26776, June 30, 1969.

<sup>92</sup> G.R. No. 26844, September 30, 1969.

<sup>93</sup> 97 Phil. 294 (1955).

In the 1969 *Manalo* case, the Supreme Court found that the employees of Pampanga Sugar Development Company, Inc. were aware of the nature and condition of their employment which obliged them to work everyday, including Sundays and holidays. In a case such as this, the Supreme Court held the laborer or employee would only be entitled to the additional sum of at least 25 per centum of his regular remuneration as his premium pay. Thus, if an employee or laborer regularly receives ₱6.00 a day for an eight-hour work on an ordinary day and he is made to work for eight hours on a Sunday or legal holiday and the nature of his employment obliges him to work continuously without interruption including Sundays and holidays, then he is entitled to an additional amount of ₱1.50 to his base pay of ₱6.00 a day, which is 25 per centum of ₱6.00, or a total of ₱7.50 for work done on Sunday or legal holiday. His premium pay, therefore, is only ₱1.50.

However, the Supreme Court held that computation would be different if it is shown that the monthly or yearly salaries agreed upon by the parties are intended to cover work on ordinary working days only or where the nature or condition of employment does not oblige them to work on Sundays and legal holidays in a given calendar month or year. In this case, the premium pay will be 125% for work done on each Sunday or legal holiday. Thus, in this situation, if the employee or laborer regularly receives ₱6.00 a day for an eight-hour work on an ordinary day and was made to work for eight hours on a Sunday or legal holiday, then he is entitled to his base pay of ₱6.00 plus ₱7.50 (125 per cent of ₱6.00) or a total of ₱13.50.

It is, therefore, essential that there be a finding of fact as to whether or not the monthly or annual salary were intended to cover work on ordinary days only or whether or not the stipulated monthly or annual salary also includes work done on Sundays and holidays in a given calendar month or year. In the former case, the premium pay is at least 125% of the base pay whereas in the latter case, the premium pay is at least 25% of the base pay.

### C. Under the Industrial Peace Act

What procedure governs the exercise by the Court of Industrial Relations of its power of compulsory arbitration under Section 10 of the Industrial Peace Act, considering that this legislation does not contain any procedure for compulsory arbitration in view of the fact that it is based on the concept of free enterprise for capital and labor?

The Supreme Court in the case of *Pan American World Airways, Inc. v. Pan American Employees Association*<sup>94</sup> following the decisions promulgated theretofore, namely, *Bachrach Transportation Company v. Rural Transit Shop Employees Association*,<sup>95</sup> *Feati University v. Bautista*,<sup>96</sup> *Feati Uni-*

<sup>94</sup> G.R. No. 25094, April 29, 1969.

<sup>95</sup> G.R. No. 26764, July 25, 1967.

<sup>96</sup> G.R. No. 21278, December 27, 1966.

*versity v. Feati University Faculty Club*,<sup>97</sup> *Hind Sugar Company v. Court of Industrial Relations*,<sup>98</sup> and *Philippine Marine Radio Operators Association v. Court of Industrial Relations*,<sup>99</sup> held that the procedure in Commonwealth Act No. 103 should be followed.

Sections 1, 6 and 20 of this law, provides the procedure which the Court of Industrial Relations follows when it exercises its power to compulsory arbitrate cases. Under these provisions, a case involving labor disputes in industries indispensable to the national interest may be compulsorily arbitrated by the court when the President certifies the case to the Court of Industrial Relations. Thus, an order issued by the Court of Industrial Relations in the exercise of its power of compulsory arbitration, pending resolution of the merits of the case, cannot be said to be a grave abuse of the discretion because the Industrial Peace Act does not carry any provision defining the procedure for compulsory arbitration. Section 10 of the Industrial Peace Act grants the Court of Industrial Relations the authority to look for a solution to the existing labor dispute. According to the Supreme Court, if part of the solution decided by the Court of Industrial Relations consists of ordering the employees back to work and the employer to accept the striking employees back to work pending adjudication of the case, then there is no point in arguing that the Court of Industrial Relations does not have the power or jurisdiction to carry that particular solution into effect. As stated in the 1957 case of *Philippine Marine Radio Operators Association v. Court of Industrial Relations*,<sup>100</sup> if the Court of Industrial Relations has the power to set or fix the terms and conditions of employment under Section 10 of the Industrial Peace Act, then "it certainly can order the return of the workers with or without back pay as a term or condition of employment."

#### D. Under Republic Act No. 1052

The Supreme Court ruled in a number of cases that the Court of Industrial Relations has jurisdiction over cases involving claims for separation pay, provided that an employer-employee relationship exists between the parties or in the absence thereof a claim for reinstatement is demanded by the dismissed employee. Otherwise, such claims are mere collection cases falling within the jurisdiction of the regular courts.

##### 1. Termination of employment not subject to separation pay.

The case of *Baltazar v. San Miguel Brewery, Inc.*<sup>101</sup> reiterates the settled rule in this jurisdiction that a person who is employed for an indefinite period and whose employment is terminated for a just cause is not entitled

<sup>97</sup> G.R. Nos. 21462 & 21500, December 27, 1966.

<sup>98</sup> G.R. No. 12264, July 26, 1960.

<sup>99</sup> G.R. Nos. 10095 & 10115, October 31, 1957.

<sup>100</sup> See note 99.

<sup>101</sup> G.R. No. 23076, February 27, 1969.

to one month notice or to one month salary in lieu thereof. The conditions for the termination of, not dismissal from, employment are provided in Section 1 of the Termination Pay Law, Republic Act No. 1052, as amended.

What is the meaning of the term "just cause" in Section 1 of the Termination Pay Law?

2. *Scope of the term "just cause" under Republic Act No. 1052, as amended.*

The case of *Insular Lumber Company v. Eulogio R. Ronales*<sup>102</sup> lays down the scope of this term. An employer dismissing his employees for an act coming within the scope of this term is excused from giving separation pay to his dismissed employees.

The Supreme Court, speaking through Mr. Justice Sanchez, stated that the meaning of the term "just cause" must be measured strictly by the catalog of causes provided in Section 1 of the Termination Pay Law, as amended. Stated in a different way, the just causes enumerated in the statute determine the liability or non-liability for separation pay of an employer. Thus, the dismissal of an employee based on a ground which is just under the general moral connotation of such term is determinative only of the propriety or impropriety of the dismissal and the action for reinstatement. It does not solve the legal question. The test to apply on the employer is whether or not his act is among the list of just causes enumerated in Section 1 of the Termination Pay Law. But in case of the claim for reinstatement alone of a dismissed employee, the test is not confined to those enumerated in the Act but includes causes which are just under moral law.

The first just cause provided by the Termination Pay Law under which an employer can be lawfully excused from giving separation pay in cases of employment for an indefinite period is the closing or cessation of operation unless it is for the purpose of defeating the intention of the Termination Pay Law.

In the case of *Insular Lumber Company v. Eulogio R. Ronales*,<sup>103</sup> the question presented is whether a retrenchment program, under which the termination of employment of several employees were made, was within the meaning of this particular just cause. Mr. Justice Sanchez, who prepared the decision for the Supreme Court, correctly stated that a retrenchment program is not within the meaning of the first ground provided in Section 1(1) of the Act. It may be morally just but it is not legally just. And there is a good reason for this distinction. Thus, under Section 1(1)(f) of the Termination Pay Law, retrenchment even though for economic reasons is not even analogous to, but is indeed below the level of, "closing or cessation of operation" of the establishment or enterprise.

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<sup>102</sup> G.R. No. 23857, August 29, 1969.

<sup>103</sup> *Ibid.*

This holding should be distinguished from the ruling in *Wenceslao v. Carmen Zaragosa, Inc.*<sup>104</sup> where the Supreme Court held that a mere closing or cessation of operation of any part, division or department of the employer's business is not the same as closing or cessation of operation of the establishment or enterprise of an employer. In the former the closing or cessation could be temporary but in the latter the closing or cessation is final.

Is the mechanization or modernization of the operation analogous to "closing or cessation" of operation of an enterprise?

In the same 1969 case, the employer argued that he has the right to use labor saving devices in order to insure profit. Thus, the resulting dismissal of a number of employees due to the mechanization of his business operation would be a just cause under the Termination Pay Law exempting him from giving separation pay to dismissed employees or laborers.

The Supreme Court, however, felt that mechanization or modernization of an enterprise is not analogous to the closing or cessation of operation of the enterprise. And with good reason because obviously an enterprise does not close or cease when it modernizes or mechanizes its operation. It continues perhaps even better than before. As such the employer cannot be absolved from his legal obligation to give termination pay. According to Mr. Justice Sanchez, the mechanization or modernization of an enterprise is precisely to produce savings for the employer which puts him all the more under a duty to cushion the impact of the lay-off of his employees by providing separation benefits. Thus, the Supreme Court ruled that while labor saving devices, such as mechanization or modernization of operation, are allowed, this will not relieve an employer who introduces these steps in his enterprise or establishment from his obligation to give separation pay. There is, of course, no problem if the mechanization or modernization of operation is for the purpose of defeating the intention of the Termination Pay Law. Here the cause for termination of employment is not just.

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<sup>104</sup> G.R. No. 22577, July 31, 1968; 24 SCRA 554, 558 (1968).