LABOR RELATIONS LAW

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I. COLLECTIVE BARGAINING

A. Bargaining Units

Can managerial officers be the object of unfair labor practices? Can they organize into a labor union?

These question were raised in *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[1] to which the Supreme Court gave affirmative answers.

ANALYSIS

There is need to scrutinize the opinion of the Supreme Court on these questions because in labor relations law managerial officers are persons who perform managerial functions and participate in the formulation, determination and effectuation of management policies and decisions.[2] It is precisely due to the nature of the functions of managerial officers and their unique relationship with employers that Congress deliberately excluded managerial personnel from the last sentence of Section 3 of the Industrial Peace Act and limited the right of unionization and collective bargaining in the management bracket to supervisory employees only.

It appears in the present case[3] that respondent Caltex (Philippines), Inc. was condemned for refusal to bargain collectively with the Caltex Filipino Managers and Supervisors Association, a labor union composed of management personnel and supervisory employees. In a bid to have that decision reconsidered, the respondent corporation contended, among others, that managerial executives, being a constituent part of management, cannot organize into a labor union and cannot be the object of unfair labor practice.

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[1] No. L-30632, September 28, 1972; 47 SCRA 112.

[2] *Allied Supermarkets, Inc.*, 167 NLRB 48 (1968); *St. Louis Independent Packing Company*, 67 NLRB 543 (1946); *Ford Motor Company (Chicago)*, 66 NLRB 1317 (1946).

[3] No. L-30632, April 11, 1972; 44 SCRA 350.

Mr. Justice Enrique M. Fernando, who spoke for the Supreme Court, was careful in dealing with this contention. He conceded that there is indeed identity of interest between the managerial officials and the employer corporation, especially where the controversy or dispute is between management on the one hand and the rank-and-file employees on the other. But, according to the Supreme Court, the unique bond that exists between the managerial personnel and the employer does not necessarily foreclose the possibility of conflict between them. This is indeed correct up to a certain point. The disagreement that may occur between managerial officers and employers is not the kind of differences that happen or exist between employers and the rank-and-file employees. In this particular case, the Supreme Court noted that the controversy between the managerial officials and the respondent employer came to a head when the latter, an alien corporation, had failed to negotiate the claims and demands of its Filipino managerial executives. What are those differences? The Supreme Court alluded to them in its decision. Basically, they boil down to the failure of this alien corporation to implement the economic principle of equal pay for equal work among its alien and Filipino managerial officers. Nonetheless, the Supreme Court chided the respondent employer for "lack of appreciation of what is truly impressed with legal relevance" in the case. The question, said the Supreme Court, is not simply whether managerial personnel could be the object of unfair labor practice but whether they could organize into a labor union. According to the Supreme Court this is not debatable. The right of managerial officers to organize into an association, said the Supreme Court, is buttressed by Article III, Section 1(6) of the Constitution, which provides that "the right to form associations or societies for purposes not contrary to law shall not be abridged."

But the question is better framed, it seems to me, when it is related to the Industrial Peace Act. Can managerial officials organize into a labor union under the Industrial Peace Act for purposes of collective bargaining and concerted activities? There is no question about the constitutional right to form associations or societies. But it is also well-settled that the right to form associations is not inflexible for it is always subject to the exercise of the overriding police power of the State,[4] provided that the public interest involved is "more important than the interest of the individual" and that "the means employed must have a substantial and reasonable relation to the end sought to be achieved."[5] It has always appeared to me that the legislative policy expressed in Section 3 of the Industrial Peace Act, which excludes managerial executives from the right to form a labor organization, is substantially and reasonably related to the

[4] Tañada and Fernando. I Constitution of the Philippines. 4th Ed., 264-265.
[5] *U.S. v. Villareal*, 28 Phil. 390 (1914); *U.S. v. Toribio*, 15 Phil. 85 (1910).

achievement of the broader policy underlying the Industrial Peace Act. Section 1 thereof lays down as a matter of national policy the promotion of sound stable industrial peace and the elimination of the causes of industrial unrest, both of which are unquestionably geared towards the promotion of the general welfare. It is obvious from the definition of managerial personnel given above why Congress deliberately provided that all individuals who participate in devising and effectuating employers' policies and decisions cannot be deemed to be employees for purposes of the Industrial Peace Act and are excluded from its coverage.[6] Managerial executives have always been employed on a case to case basis. The terms and conditions of their employment are not considered on the basis of a collective-bargaining agreement but on an individual basis because of the unique relationship that exists between employers and managerial officers. They become part and parcel of management. Thus, the provision of Section 3 of the Industrial Peace Act expressly limits the right to self-organization and to form, join or assist labor organizations for the purpose of collective bargaining only to rank-and-file employees and supervisory personnel. It does not include managerial officers. Indeed, they have no bargaining rights under the Industrial Peace Act either as a group[7] or in conjunction with supervisory employees or with rank-and-file employees.[8]

B. Appropriate Bargaining Units

Can a labor union be composed of managerial officers and supervisory employees? Can confidential employees be included in a bargaining unit composed of supervisory employees?

The first question was raised in *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations.*[9] The second question figured in the case of *Filoil Refinery Corporation v. Filoil Supervisory and Confidential Employees Association.*[10]

In both cases the Supreme Court answered the questions affirmatively.

In the *Caltex Filipino Managers and Supervisors* case, Mr. Justice Fernando observed that since the right to form associations for purposes not contrary to law is fortified by the Constitution and that the managerial officers and the supervisory employees have already banded together into a labor union and having been duly registered with the Department of

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[6] See *Santa Fe Trail Transportation Company*, 119 NLRB 1302 (1958); *Swift & Company*, 115 NLRB 752 (1956).

[7] See *Swift & Company*, 115 NLRB 752 (1956).

[8] See *Allied Supermarkets, Inc.*, 167 NLRB 48 (1968).

[9] No. L-30632, September 28, 1972; 47 SCRA 112.

[10] No. L-26736, August 12, 1972; 46 SCRA 512.

Labor as such, then their union is entitled to all rights granted to labor by the Industrial Peace Act. This sounds as if the operative fact for the enjoyment of the rights granted by the Act is the registration with the Department of Labor and not the fact that there is substantial mutuality of interests among the employees.

In the *Filoil Refinery Corporation* case, the Supreme Court, in an opinion prepared by Mr. Justice Claudio Teehankee, ruled that confidential employees should be included in the bargaining unit supervisors because the former are identified in interest with the latter on the basis of the trust and confidence reposed in them by management.

ANALYSIS

As stated above, the term "managerial officers" has been defined as persons who perform managerial functions and participate in the formulation, determination and effectuation of management policies and decisions.[11] On the other hand, confidential employees are persons who, in the regular course of their duties, assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. Thus, employees who possess information in the nature of trade secrets are not confidential employees, since the information does not pertain to their employer's labor relations.[12] Like supervisors, confidential employees are excluded from collective-bargaining units composed of rank-and-file employees.

The nature of the employment of managerial officers and confidential personnel, as revealed by the type of work they perform for management, is very different from the nature of the function of supervisory employees as provided in Section 2(k) of the Industrial Peace Act. It is this basic difference between the functions of managerial, confidential and supervisory personnel that shows the weakness of the holding of the Supreme Court that a unit made up of managerial officers and supervisory personnel and a unit composed of supervisors and confidential employees are appropriate for purposes of collective bargaining. It would just be too unfair for management if this were ever permitted. Besides, the holding of the Supreme Court in the *Filoil Refinery Corporation* case that there is identity of interest between supervisory employees and confidential employees simply because they enjoy the trust and confidence of their em-

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[11] *Allied Supermarkets, Inc.*, 167 NLRB 48 (1968); *St. Louis Independent Packing Company*, 67 NLRB 543 (1946); *Ford Motor Company (Chicago)*, 66 NLRB 1317 (1946).

[12] *National Labor Relations Board v. Poultrymen's Service Corporation*, 138 F.2d 204 (1943); *Arnold Constable Corporation*, 150 NLRB 80 (1965); *Sargent & Co.*, 95 NLRB 1515 (1951); *International Harvester Co.*, 82 NLRB 185 (1949).

ployer is open to question. The issue of appropriateness of a collective-bargaining unit is determined by a long-standing rule—a unit to be considered appropriate for purposes of collective bargaining must be composed of employees who have substantial, mutual interests in terms of employment and working conditions as revealed by the type of work they perform. Identity in interest in terms of the trust and confidence reposed by the employer would not be a criterion at all because even rank-and-file employees should enjoy this credit otherwise they would not be working for the employer. In short, this is a common denominator for all classes of employees.

C. Scope of Bargaining Agency

In *Mactan Workers Union v. Aboitiz*,[13] the bargaining agent, Associated Labor Union, and the Cebu Shipyard and Engineering Works, Inc. entered into a collective-bargaining agreement providing, among others, for a profit-sharing plan amounting to ten percent of the company's annual net profits. The Associated Labor Union opposed the move of the Company to pay the bonus of the members of the rival Mactan Workers Union on the theory that they do not belong to the bargaining union.

The Supreme Court, through Mr. Justice Fernando, held that the benefits to workers contained in the collective-bargaining agreement extend to all employees and laborers in the appropriate collective-bargaining unit, including those who do not belong to the bargaining union. This being so, the bargaining agent, said Mr. Justice Fernando, had no reason to object to the claim of the members of Mactan Workers Union for their share in the profit-sharing plan provided in the collective-bargaining agreement. The exclusive bargaining agent, said the Supreme Court, does not act for its members alone but represents all the employees and laborers within the collective-bargaining unit.

COMMENTS

Mr. Justice Fernando could not conceal his amazement that the bargaining union could advance such a theory and dismissed it as utterly devoid of merit. Indeed, under Section 24 of the Industrial Peace Act, two of the rights of a legitimate labor organization are to act as the representative of its members for the purpose of collective bargaining and to act as the exclusive representative of the employees in an appropriate collective-bargaining unit. The first refers to its own members. The second refers to all the employees in an appropriate collective-bargaining unit, regardless of the fact that some of them may belong to another union. Of course, when the employer and the bargaining union enter

[13] No. L-30241, June 30, 1972; 45 SCRA 577.

into a closed-shop employment arrangement, there is no more reason for the existence of another union since the prime condition for employment in such a situation is membership in good standing with the bargaining union, provided that the conditions of the closed-shop arrangement are clearly and unequivocally stated in the collective-bargaining agreement.

II. UNFAIR LABOR PRACTICES

A. Scope of Term "Unfair Labor Practice"

In the case of *Philippine Association of Free Labor Unions v. Court of Industrial Relations*,[14] the collective-bargaining agreement between Trinity Steel Products, Inc. and Trinity Steel Labor Union contained a provision for check-off. Soon after the collective-bargaining agreement went into effect, the rival union, Philippine Association of Free Labor Unions, submitted a list of the employees of Trinity Steel Products, Inc. whom it claimed to be its members, including the authorizations for check-off signed by the said employees in its favor. Some employees of the Company who were claimed by the Philippine Association of Free Labor Unions as its members turned out to be members also of the bargaining agent, Trinity Steel Labor Union. Unable to come to a decision on the matter, the Company filed a petition with the Court of Industrial Relations to determine the union affiliation of the employees of the Company who were claimed by both the bargaining union and the rival union as their members and which of the two unions is entitled to check-off.

The Supreme Court, speaking through Mr. Justice Fernando, ruled that the dues collected by the Company, pursuant to the check-off provision in the collective-bargaining agreement, must go to the Trinity Steel Labor Union, the certified bargaining agent. The Supreme Court further ruled that if the union dues collected by management under the terms of the collective-bargaining agreement were not transmitted to the bargaining union, there would be a violation of the said agreement.

COMMENTS

The ruling is in consonance with the law and the decided cases. However, the Supreme Court, in deciding the specific issue of whether the bargaining union is entitled to the union dues checked off by virtue of the collective-bargaining agreement made a hypothetical proposition. Said the Court:

> In the face of the collective bargaining agreement, it can be plausibly asserted by respondent labor union if respondent Trinity

[14] No. L-33781, October 31, 1972; 47 SCRA 390.

> Steel Products, Inc. would accede to the demand of petitioner labor union that entitled as it is to such check-off dues, there was a violation of the terms of their contract. Repeatedly, this Court has held that the failure to abide by the terms of a collective bargaining agreement amounts to an unfair labor practice, cognizable by respondent Court.

Normally, this should not evoke any reaction because it can be considered simply as an elaboration of the decision on the issue. Even so there is need to handle it very carefully because this is not the first time that the Court has made this pronouncement. And over the years, since it was first enunciated in **Pambujan Sur United Mine Workers v. Samar Mining Company, Inc.,**[15] this ruling has been reiterated in **Republic Savings Bank v. Court of Industrial Relations,**[16] **Security Bank Employees Union v. Security Bank and Trust Company,**[17] **Manila Hotel Company v. Pines Hotel Employees Association,**[18] **Alhambra Industries, Inc. v. Court of Industrial Relations,**[19] and **Shell Oil Workers Union v. Shell Company of the Philippines.**[20]

In order to provide continuing protection of the rights of labor guaranteed in Section 3 of the Industrial Peace Act, certain unfair labor practices on the part of management and on the part of labor were specifically defined in Section 4(a) and 4(b) of the Industrial Peace Act. These acts are characterized by the Industrial Peace Act as prejudicial to the exercise by the employees of the rights granted to them in Section 3 and should be prevented and remedied affirmatively when committed. To prevent any expansion of these provisions, Congress deliberately limited the scope of the term "unfair labor practice" in Section 2(i) of the Industrial Peace Act only to those expressly catalogued in Section 4(a) and 4(b) of the Industrial Peace Act, no more than six in the case of employers and no more than four in the case of labor organizations. There is nothing in these provisions which states that violation of the terms and conditions of a collective-bargaining agreement is an unfair labor practice.

In the second place, the pronouncement of Supreme Court in the 1972 *Trinity Steel Products* case that failure to abide by the terms and conditions of a collective-bargaining agreement is an unfair labor practice, cognizable by the Court of Industrial Relations, "was first announced by this Court, through Justice Castro, in **Republic Savings Bank v. Court of Industrial Relations**" and subsequently followed in other cases. It appears then that the justices who penned the subsequent decisions of the Supreme

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[15] G.R. No. L-5694, May 12, 1954; 94 Phil. 932.
[16] G.R. No. L-20303, September 27, 1967; 21 SCRA 226.
[17] G.R. No. L-28536, April 30, 1968; 23 SCRA 503.
[18] G.R. No. L-24314, September 28, 1970; 35 SCRA 96.
[19] G.R. No. L-25984, October 30, 1970; 35 SCRA 550.
[20] G.R. No. L-28607, May 31, 1971; 39 SCRA 276.

Court on this issue have placed their reliance on the opinion of Mr. Justice Castro in the 1967 **Republic Savings Bank** case.

What then did Mr. Justice Castro say in his opinion for the Court in the 1967 **Republic Savings Bank** case? He said:

> Some other members of this Court believe, without necessarily expressing approval of the way the respondents expressed their grievances, that what the Bank should have done was to refer the letter-charge to the grievance committee. This was its duty, failing which it committed an unfair labor practice under section 4(a)(6). For collective bargaining does not end with the execution of an agreement. It is a continuous process. The duty to bargain imposes on the parties during the term of their agreement the mutual obligation "to meet and confer promptly and expeditiously and in good faith x x x for the purpose of adjusting any grievances or question arising under such agreement" and a violation of this obligation is, by section 4(a)(6) and 4(b)(3) an unfair labor practice. As Professors Cox and Dunlop point out:
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> > Collective bargaining x x x normally takes the form of negotiations when major conditions of employment to be written into an agreement are under consideration and of grievance committee meetings and arbitration when questions arising in the administration of an agreement are at stake.
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> Instead of stifling criticism, the Bank should have allowed the respondents to air their grievances. Good faith bargaining required of the Bank an open mind and a sincere desire to negotiate over grievances. The grievance committee, created in the collective bargaining agreement, would have been an appropriate forum for such negotiation. Indeed, the grievance procedure is a part of the continuous process of collective bargaining. It is intended to promote, as it were, a friendly dialogue between labor and management as a means of maintaining industrial peace.

Note that Mr. Justice Castro was talking about two things only. First, that it is an unfair labor practice under Section 4(a)(6) and 4(b)(3), as the case may be, when a party fails to meet and confer promptly and expeditiously and in good faith for the purpose of negotiating any grievance or question arising under a collective-bargaining agreement. Second, that the refusal of the employer to refer the grievances of the complaining employees to the grievance committee which was created in the collective-bargaining agreement, was an unfair labor practice because the grievance procedure had become, by agreement of the parties, part and parcel of the collective-bargaining process. Thus, Mr. Justice Castro was referring to the refusal of the employer to bargain collectively on the grievances of his employees. This, and not the generic failure to live up to the terms and conditions of a collective-bargaining agreement, is

the unfair labor practice.[21] But Mr. Justice Castro's insight was sidetracked in the subsequent cases. Mr. Justice Castro himself appears to have overlooked his analysis of the problem in the 1967 **Republic Savings Bank** case and has even joined the contrary opinion of the other justices in the subsequent decisions.

A closer look at Section 4(a)(6) and Section 4(b)(3) of the Industrial Peace Act shows that the acts classified as unfair labor practices are, respectively, the **refusal of the employer to bargain collectively** with the representatives of his employees, subject to the provisions of Sections 13 and 14, and the **refusal of a labor organization or its agents to bargain collectively** with the employer, provided it is the representative of the employees, again subject to the provisions of Sections 13 and 14 of the Act.

Section 14 refers to the procedure for collective bargaining which the Industrial Peace Act requires to be followed, in the absence of an agreement or other voluntary arrangement providing for a manner of collective bargaining that is more expeditious than the procedure spelled out in Section 14. On the other hand, Section 13 of the Industrial Peace Act defines the duty to bargain collectively by separating it into two independent 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 with respect to wages, hours, and/or other terms and conditions of employment, and of executing a written contract incorporating such agreement if requested by either party, 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 grievance or question arising under such agreement.

It is the second aspect of the duty to bargain collectively that is decisive to the problem that has arisen as a result of the decisions of the Supreme Court, starting with the 1968 **Security Bank Employees Union** case to the 1972 *PAFLU* case, that the "failure" to live up in good faith to the terms of a collective-bargaining agreement is a violation of the duty to bargain collectively and constitutes an unfair labor practice.

Non-compliance with the terms and conditions of a collective bargaining agreement is not a violation of the duty to bargain collectively, whether in the first or second statutory sense. To put it differently, what is proscribed explicitly as an unfair labor practice in Section 4(a)(6) and 4(b)(3) of the Industrial Peace Act is not the "failure to live up in good faith to the terms and conditions of a collective-bargaining agreement" but the **refusal** of either the employer or the labor organization to bargain

[21] 21 SCRA 234-235.

collectively with the other party, which means, under the express language of Section 13, the refusal to meet and confer promptly and expeditiously and in good faith for either or both of the purposes of collective bargaining. In a word, a party to a collective-bargaining agreement may violate the terms and conditions of the agreement but so long as he does not refuse to meet promptly and expeditiously and in good faith with the other party across a bargaining table for the purpose of negotiating such question, then he does not commit an unfair labor practice under Section 4(a)(6) or Section 4(b)(3), as the case may be. The aggrieved party has another remedy in law but not under Section 4(a)(6) or Section 4(b)(3).

B. Unfair Labor Practices on the Part of the Employer

1. Discrimination in Regard to Hire or Tenure of Employment to Encourage or Discourage Membership in any Labor Organization

In *United Central and Cellulose Labor Association v. Santos*,[22] the parties incorporated in their collective-bargaining agreement a union-shop employment arrangement. Pursuant thereto, the employer threatened to dismiss employees who resign their membership in or fail to affiliate with the bargaining union. The Supreme Court, speaking through Mr. Justice Antonio P. Barredo, held that the threat of dismissal from employment of employees who are not members of the bargaining union is an unfair labor practice under Section 4(a)(1) and 4(a)(4) of the Industrial Peace Act when it is applied to those who are already members of other labor unions or otherwise employed on or before the date of the execution of the collective-bargaining agreement.

2. Refusal to Bargain Collectively

In *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[23] the Supreme Court, through Mr. Justice Julio Villamor, held that an employer is guilty of an unfair labor practice under Sections 4(a)(1) and 4(a)(6) when he fails to participate fully and promptly in the meetings called by the Bureau of Labor Relations pursuant to Section 14(c) of the Industrial Peace Act in order to settle the dispute arising from an impasse in collective bargaining.

COMMENTS

The Supreme Court did not state why it is an unfair labor practice for an employer to fail to send his representative to the meeting called by the Bureau of Labor Relations for the purpose of settling the bargain-

[22] No. L-21049, May 30, 1972; 45 SCRA 147.
[23] No. L-30632 and No. L-30633, April 11, 1972; 44 SCRA 350.

ing impasse between the parties. Presumably, the Court felt that there is no need to belabor an obvious legal point. In any case, it is important to clarify this matter.

Section 4(a)(6) provides that it shall be unfair labor practice for an employer to refuse to bargain collectively with the representative of his employees subject to the provisions of Sections 13 and 14 of the Act.

Section 13 defines the meaning of the duty to bargain collectively, while Section 14 provides the procedure of collective bargaining. Thus, the failure of a party to meet and confer promptly and expeditiously and in good faith with the other party, as required by Section 13, is a violation of Section 4(a)(6). Similarly, the failure of a party to abide by the procedure of collective bargaining spelled out in Section 14 is a violation of Section 4(a)(6). In different words, meetings or conferences between the parties called by the Bureau of Labor Relations, pursuant to Section 14(c), whether *motu proprio* or at the request of either party, form part of the statutory procedure of collective bargaining. Therefore, it becomes the legal duty of the parties to participate fully and promptly in such meetings or conferences.

3. Failure to Comply with Terms of Collective-Bargaining Agreement

The resolution of the Supreme Court on the motion for reconsideration of the decision of the Court in *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*,[24] prepared by Mr. Justice Fernando, reiterates the pronouncement in **Republic Savings Bank v. Court of Industrial Relations,**[25] **Security Bank Employees Union v. Security Bank and trust Company,**[26] **Manila Hotel Company v. Pines Hotel Employees Association,**[27] and **Alhambra Industries, Inc. v. Court of Industrial Relations.**[28] In these cases, the Supreme Court held that the failure to live up to or abide by the terms and conditions of a collective-bargaining agreement is an unfair labor practice under Section 4(a)(6) or Section 4(b)(3), as the case may be.

ANALYSIS

The Ruling expressed by the Supreme Court in the 1972 *Shell Oil Workers' Union* case is quite sweeping. It generalizes the solution of a problem which calls for careful distinction.

Section 4(a) and (b) is a verbatim copy from the Wagner Act. It is not, therefore, amiss to refer to the legislative history of these provisions

[24] No. L-28607, February 12, 1972; 43 SCRA 224.
[25] G.R. No. L-20303, September 27, 1967; 21 SCRA 226.
[26] G.R. No. L-28536, April 30, 1968; 23 SCRA 503.
[27] G.R. No. L-24314, September 28, 1970; 35 SCRA 96.
[28] G.R. No. L-25984, October 30, 1970; 35 SCRA 550.

in order to find out the intention of the lawmaking body. In the enumeration of the unfair labor practices in the Bill, which later became the Wagner Act, non-compliance with the terms and conditions of a collective-bargaining agreement was specifically included in the list of unfair labor practices. But after further deliberation on the matter, Congress finally excluded it when the Bill was finally approved.[29] As a result of this deliberate policy of the lawmaking body, courts have ruled that violations of the terms and conditions of a collective-bargaining agreement as such are not unfair labor practices within the meaning of that term.[30] This decision was later applied in **Independent Petroleum Workers of New Jersey v. Esso Standard Oil Company.**[31]

In the second place, Section 2(i) of the Industrial Peace Act explicitly states that the term "unfair labor practice **means** any unfair labor practice listed in section four." This is a meaningful definition of the term "unfair labor practice" because Section 2(i) uses the transitive verb "means" and not the phrase "including but not limited to", which the Industrial Peace Act uses whenever it intends an open-ended enumeration. Stated differently, the verb "means" takes for its direct object only the unfair labor practices enumerated in Section 4 to complete the legislative intention. Thus, courts are not at liberty to imply or infer other so-called unfair labor practices than those which are expressly listed in Section 4. Otherwise, many other acts, which Congress had never intended to be unfair labor practices, would, by judicial legislation, fall within the scope of the term "unfair labor practice." This, obviously, would give rise to interminable differences of interpretations and opinions, whether among the parties or the courts, which could only lead to industrial unrest rather than industrial peace.

In the third place, Section 4(a)(6) and Section 4(b)(3) dealing with refusal to bargain collectively make express reference to the provisions of Sections 13 and 14 of the Industrial Peace Act. This is very significant in relation to the intention of Congress to limit the scope of the term "unfair labor practice" only to those specifically enumerated in Sections 4(a) and 4(b). Section 14 provides in detail the procedure for collective bargaining. The pertinent provision of Section 14 is subparagraph (c) which requires that a written notice of intent to bargain collectively must be served by the interested party together with a statement of his proposals. Section 13, on the other hand, defines the duty to bargain collectively as: 1) the performance of the mutual obligation

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[29] H.R. Conference Report No. 510, 80th Congress (U.S.), First Session, 442 (1947).

[30] See *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation*, 348 U.S. 437 at 443, 99 L.Ed. 510 at 513, 75 S.Ct. 489 at 492 (1955).

[31] 235 F.2d 401 at 403 (1956).

to meet and confer promptly and expeditiously and in good faith for the purpose of negotiating an agreement with respect to wages, hours, and other terms and conditions of employment, 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 grievance or question arising under such agreement. It is the second aspect of the duty to bargain collectively that is involved in this issue. Thus, not all violations of the terms and conditions of a collective-bargaining agreement are unfair labor practices. The failure of a party to comply with the terms and conditions of a collective-bargaining agreement is an unfair labor practice under Section 4(a)(6) or Section 4(b)(3), as the case may be, **only** if the respondent has refused the request of the other party to adjust or negotiate any grievance or question arising under the terms and conditions of the collective-bargaining agreement. In other words, a violation of the terms and conditions of a collective-bargaining agreement, standing alone, is not an unfair labor practice. It is only after the request for adjustment or negotiation of any grievance or question arising under such agreement has been turned down that there is an unfair labor practice under either Section 4(a)(6) and Section 4(b)(3).

There is nothing in the cases decided by the Supreme Court on this issue to show that a prior written request by the aggrieved party to negotiate the question of violation of the terms and conditions of the collective-bargaining agreement had been refused by the other party.

C. Amicable Settlement of Unfair Labor Practice Cases

The case of *TIP Workers Union v. Tobacco Industries of the Philippines, Inc.*[82] involves an alleged unfair labor practice consisting of the dismissal of certain employees on the basis of a maintenance-of-membership shop arrangement in the collective-bargaining agreement. The petitioners challenged the validity of the decision of the Court of Industrial Relations in the Supreme Court. But before briefs could be filed, the parties submitted a joint motion asking for the dismissal of the appeal on the ground that the parties had come to an amicable settlement of their differences. The parties further alleged that their joint petition for the dismissal of the appeal from the decision of the Court of Industrial Relations is allowed by Section 4 of Rule 50 of the Rules of Court. The Supreme Court, speaking through Mr. Justice Fernando, correctly gave due course to the joint petition and ordered the dismissal of the appeal as moot and academic.

[82] No. L-35067, October 31, 1972; 47 SCRA 435.

COMMENTS

This case must be distinguished from **Kapisanan ng mga Manggagawa sa Alak v. Hamilton Distillery Company.**[33]

In the 1972 *TIP Workers Union* case, it should be noted that the Court of Industrial Relations had **absolved** the employer from the unfair labor practice complained of when the Supreme Court granted the joint motion asking for the dismissal of the case. In the 1970 **Hamilton Distillery** case, the Court of Industrial Relations had condemned the employer of unfair labor practice for which a general cease and desist order was issued together with a remedial order requiring the employer to pay backwages from the date of dismissal to the date of reinstatement. It was during the pendency of the proceeding for the execution of the judgment that the unfair labor practice case was ordered terminated upon the petition of the Union and the Company on the basis of a Compromise Agreement which called for the dismissal of the case, including all claims for backpay which the Court of Industrial Relations had ordered as a remedial measure. Surprisingly, the Court of Industrial Relations entertained the compromise agreement of the unfair labor practice case and issued an order approving the Amicable Settlement on the ground that it was a full settlement of the respective claims of the parties and that there was nothing about it that is contrary to law, morals, or public policy.

While it may be conceded that there is nothing immoral in the amicable settlement of the unfair labor practice case, still it is definitely contrary to law and public policy.

Section 5(a) of the Industrial Peace Act provides the Court of Industrial Relations with exclusive jurisdiction over unfair labor practice cases, clothes it with authority to prevent any person from engaging in any unfair labor practice, and states that this power **shall not be affected by any other means of adjustment or prevention that has been or may be established by an agreement, code, law or otherwise.**

If this underlying policy of the law means anything at all, it is simply this—that the only method or procedure for the adjustment or prevention of unfair labor practices is that provided in Section 5(b) and (c) of the Industrial Peace Act. It does not matter how the other means of prevention or adjustment of an unfair labor practice may have been established —whether by agreement, code, law or otherwise. Thus, an amicable settlement of an unfair labor practice cannot oust the jurisdiction of the Court of Industrial Relations in preventing any person from engaging in any unfair labor practice. The Court of Industrial Relations can also as-

[33] G.R. No. L-18112, October 30, 1962.

sert its jurisdiction over an unfair labor practice case despite a concurrent arbitration proceeding under the Arbitration Law.[34]

The purpose and the genius of Section 5(a) of the Industrial Peace Act is the requirement of a thorough ventilation of any unfair labor practice case in order that proper remedial measures may be ordered by the Court of Industrial Relations. And the reason for this is that unfair labor practice cases are not concerned only with private conflicts of interests. The productive economy is likewise involved. Thus, the Industrial Peace Act recognizes only two instances when an unfair labor practice case may be dismissed. First, when as a result of an investigation no person named in the complaint has engaged in or is engaging in any such unfair labor practice. Second, when the complaining party himself withdraws the complaint at any time prior to the decision of the case.

It should be noted that in the 1970 **Hamilton Distillery Company** case the Court of Industrial Relations had already ordered backpay as a remedial step for the adjustment of the unfair labor practice involved in the case. As such, it can no longer be compromised or waived, pursuant to the policy of the law.[35]

D. Dismissal of Unfair Labor Practice and Relief to be Granted

In *Colgate-Palmolive Philippines, Inc. v. Dela Cruz*,[36] the issue revolved on whether the Court of Industrial Relations has the discretion to order the payment of the money equivalent of the unused sick leave after absolving the Company of the unfair labor practice complaint filed against it.

It appears that certain employees filed an unfair labor practice case accusing the Company of illegally dismissing them from work for having engaged in unionization and concerted activities. The Court of Industrial Relations dismissed the complaint but ordered, as a remedial measure, the payment of the money equivalent of the unused leave benefits which the employees had accumulated.

The Supreme Court, through Mr. Justice Felix V. Makasiar, did not consider the merit of the remedial measure taken by the Court of Industrial Relations but merely ruled that it had authority to take such a remedial step under Section 20 of Commonwealth Act No. 103, which empowers the Court of Industrial Relations to act according to justice and equity in determining any question.

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[34] Republic Act No. 876 (1953).

[35] See *Dimayuga v. Court of Industrial Relations*, G.R. No. L-10213, May 27, 1957.

[36] No. L-23015, May 30, 1972; 45 SCRA 190.

ANALYSIS

Under Section 5(b) of the Industrial Peace Act, the Court of Industrial Relations must dismiss an unfair labor practice case whenever the employer is not engaged in or is not engaging in any unfair labor practice. The reason for this is obvious. There is simply no unfair labor practice to prevent, no harm to be undone, and no employee to be made whole. Putting it in another way, there is simply no occasion for any affirmative action by the Court of Industrial Relations. Section 5(c) of the Industrial Peace Act requires the Court of Industrial Relations to take affirmative steps to effectuate the policies of the Industrial Peace Act only when a person has engaged in or is engaging in any unfair labor practice. The appeal by both the Court of Industrial Relations and the Supreme Court to Section 20 of Commonwealth Act No. 103 is rather misplaced. This provision explicitly gives the Court of Industrial Relations the privilege of appealing to justice and equity in the exercise of its powers and duties only in cases arising under Commonwealth Act No. 103. Ordering an employer brought before the Court of Industrial Relations under Republic Act No. 875, to pay the employees the money equivalent of their unused leave after having been absolved of the unfair labor practice complaint filed against him is bending back too much in favor of labor to the prejudice of the innocent employer.

III. COMPULSORY UNIONISM

A. Closed-Shop Employment Arrangement

In *United Central and Cellulose Labor Association v. Santos*,[37] the following closed-shop arrangement was agreed upon by the employer and the bargaining union:

> **SEC. 2. All employees who are members of the UNION as of June 30, 1961 shall retain their membership in good standing in accordance with the constitution and by-laws of the UNION, a copy of which has been furnished the COMPANY by the UNION, as a condition of their continued employment with the COMPANY. Within fifteen (15) days from receipt of written notice from the UNION, the COMPANY shall terminate the employment of such employees who fail or have failed to retain such membership in good standing with the UNION.**

The Supreme Court, expressing itself through Mr. Justice Barredo, gave the foregoing shop-arrangement clause a restrictive interpretation holding that it cannot be given retroactive effect on the ground that compulsory membership shop arrangements cover only persons to be hired

[37] No. L-21049, May 30, 1972; 45 SCRA 147.

and employees who are not yet members of any labor organization. In other words, it is not applicable to those who are already employed at the time of the execution of the collective-bargaining agreement containing such shop-arrangement clause.

COMMENTS

Essentially, the holding of the Supreme Court that the foregoing closed-shop arrangement cannot be given retroactive effect is correct, but not for the reason the court has given. If it could not be applied to those already employed at the time of its execution, it is due to the fact that it did not state clearly and unequivocally the two requisites for a valid compulsory membership shop arrangement. Had the collective-bargaining agreement done so, then it could have been applied **de respicit.**

There is, therefore, need to review the reason given by the Supreme Court that compulsory unionism covers only job applicants and employees who are not yet members of any labor organization. This examination becomes urgent because the Supreme Court has stated that it has "consistently" applied compulsory unionism only to job applicants and employees who are not yet members of any labor organization on the date of the execution of the collective-bargaining agreement.

But a review of the decisions of the Supreme Court on the scope of compulsory unionism shows that the Supreme Court has actually promulgated, over the years, two contrasting positions on this issue which it has applied alternately. Indeed, it has caused some confusion as to the real scope of compulsory unionism authorized in the first proviso of Section 4(a)(4) of the Industrial Peace Act.

One view of the Supreme Court holds that compulsory unionism cannot operate **de respicit** as to compel employees who are members of another labor organization to join the bargaining union with which the employer has entered into a compulsory membership shop employment arrangement, but only **de prospicit** as to apply only to those employed after execution of the collective-bargaining agreement and are not yet members of any labor organization.[38]

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[38] *Sta. Cecilia Sawmills, Inc. v. Court of Industrial Relations*, G.R. Nos. L-19273 and L-19274, February 29, 1964; *National Brewery & Allied Industries Labor Union v. San Miguel Brewery, Inc.*, G.R. No. L-18170, August 31, 1963; *Big Five Products Workers Union v. Court of Industrial Relations*, G.R. No. L-17600, July 31, 1963; *United States Lines Company v. Associated Watchmen and Security Union*, G.R. No. L-15508, June 29, 1963; *Industrial, Commercial and Agricultural Workers Organization v. Jose S. Bautista*, G.R. No. L-15639, April 30, 1963; *Kapisanan ng mga Manggagawa sa Alak v. Hamilton Distillery Company*, G.R. No. L-18112, October 30, 1962; *Findlay Millar Timber Company v. Philippine Land-Air-Sea Labor Union*, G.R. Nos. L-18217 and L-18222, September 29, 1962;

The other view which the Supreme Court also holds is that compulsory unionism is applicable to all employees regardless of whether they are members of other labor unions or not prior to the execution of the collective-bargaining agreement and must become and remain members in good standing of the bargaining union to keep their jobs.[39]

The question really is when does compulsory unionism cover all employees in the collective-bargaining unit and when does it cover only job applicants and employees who are not yet members of any labor organization. The answer would depend on the intention of the parties as well as the syntax of the closed-shop employment arrangement contained in the collective-bargaining agreement. The basis for this distinction is due to the presence of discrimination and compulsion in the closed-shop or union-shop arrangement. And this is the reason why certain conditions must be met if the compulsory unionism allowed in Section 4(a)(4) of the Industrial Peace Act is to be enforceable between the employer, the bargaining union and the employees. These conditions are: 1) the closed-shop or union-shop arrangement must be entered into by mutual consent,[40] and 2) the intention of the parties must be expressed clearly and unequivocally in the compulsory unionism provision of a collective-bargaining agreement and that the employees must be informed of the nature of the particular shop arrangement entered into.[41] Thus, if the parties have for their ultimate purpose the incorporation of the closed-shop arrangement, for example, then the collective-bargaining agreement must clearly provide that old and new employees must become and remain members in good standing of the bargaining union to keep their jobs and that failure to do so is a ground for dismissal.[42] If this intention of the parties is explicitly and unequivocally articulated in the collective-bargaining agreement, then all persons, regardless of the date of their job applications or the date of their employment, or the fact that they are already members of another labor union at the time of the execution of the collective-bargaining agreement, must sign up with the bargaining union or lose their jobs. On

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Talim Quarry Company, Inc. v. Bartola, G.R. No. L-15768, April 29, 1961; *Freeman Shirt Manufacturing Co., Inc. v. Court of Industrial Relations*, G.R. No. L-16561, January 28, 1961; *Local 7, Press & Printing Free Workers Union v. Emiliano Tabigne*, G.R. No. L-16093, November 29, 1960.

[39] *Victorias-Manapla Workers Organization v. Court of Industrial Relations*, G.R. No. L-18470, September 30, 1963; *Victorias Milling Company, Inc. v. Victorias-Manapla Workers Organization*, G.R. No. L-18467, September 30, 1963; *Confederated Sons of Labor v. Anakan Lumber Co.*, G.R. No. L-12503, April 29, 1960.

[40] Section 4(a)(4); as amended, Rep. Act No. 875.

[41] *Confederated Sons of Labor v. Anakan Lumber Company*, G.R. No. L-12503, April 29, 1960; *Freeman Shirt Manufacturing Company, Inc. v. Court of Industrial Relations*, G.R. No. L-16561, January 27, 1961; *Talim Quarry Company, Inc. v. Bartola*, G.R. No. L-15768, April 29, 1961.

[42] *Industrial-Commercial-Agricultural Workers Organization v. Central Azucarera del Pilar*, G.R. No. L-17422, February 28, 1962; *Confederated Sons of Labor v. Anakan Lumber Company*, G.R. No. L-12508, April 29, 1960.

the other hand, if the shop arrangement agreed upon does not provide that old and new employees must become and remain members in good standing of the bargaining union to keep their jobs and that failure to do so is ground for dismissal, as in the 1972 *Cellulose Labor Association* case, then the closed-shop arrangement would be applicable only to job applicants and to employees who are not yet members of any labor organization. This is in conformity with the proviso of Section 4(a)(4) of the Industrial Peace Act as well as the labor history behind the said proviso. In a different way of putting it, failure of the parties to articulate clearly and unequivocally the requisites for compulsory unionism does not render a closed-shop or union-shop arrangement void. It only means that non-membership or discontinuance of membership in the bargaining union is not a ground for dismissal from employment for those who belong to other labor unions or for those who have been employed prior to the execution of the collective-bargaining agreement. Obviously, in such a situation, the contracting parties had no intention at all of entering into the closed-shop or union-shop arrangement that is authorized in Section 4(a)(4) of the Industrial Peace Act. Instead, they are considered to have entered into what Mr. Chief Justice Concepcion calls a "limited closed-shop" or a "limited union-shop" arrangement only. This means that a closed-shop or union-shop employment arrangement is limited only to those employed after the execution of the collective-bargaining agreement and are not yet union members. Phrased differently, these are the only persons who are required to become members and remain members in good standing of the bargaining union during the existence of the collective-bargaining agreement.[43]

IV. BACKPAY

A. Computation; Deductions

The computation of backpay award in *Diwa ng Pagkakaisa v. Filtex International Corporation*[44] is a departure from the formula adopted in **East Asiatic Company, Ltd. v. Court of Industrial Relations.**[45]

In the 1972 *Diwa ng Pagkakaisa* case, the Supreme Court, in a decision penned by Mr. Justice Querube C. Makalintal, ordered the reinstatement with backpay of the officers of the union who were wrongfully dismissed by the Company less whatever amounts had been earned or could have been earned with the exercise of reasonable diligence by the said employees from other employment during the period of illegal dismissal on the basis

[43] *Confederated Sons of Labor v. Anakan Lumber Company*, G.R. No. L-12503, April 29, 1960.
[44] No. L-23960, February 12, 1972; 43 SCRA 217.
[45] G.R. No. L-29068, August 31, 1971; 40 SCRA 521.

of the guidelines enunciated by the Supreme Court in **Itogon-Suyoc Mines, Inc. v. Sangilo-Itogon Workers Union.**[46] The pertinent guideline provides that the **total** amount of earnings from other employment should be deducted from the backwages accruing to each employee or laborer to be reinstated.

COMMENTS

The 1968 guidelines laid down in the **Itogon-Suyoc Mines** case were repudiated by the Supreme Court in the 1971 **East Asiatic Company** case.[47] The Court felt that the **Itogon-Suyoc** guidelines were actually unjust and inequitable because an employer's liability for backwages to an illegally dismissed employee could be reduced considerably, under the said guidelines, when the employee gets another job with a higher salary rate or wage than what he received in his previous employment. Thus, in the 1971 **East Asiatic Company** case, the Supreme Court, in an opinion prepared by Mr. Justice Barredo, enunciated a different and better guideline in the computation of the backpay award. "It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working, but it is the right, on the other hand, of the employer to deduct from the total of these, the amount equivalent to the salaries or wages the employee or worker would have earned in his old employment on the corresponding days that he was actually gainfully employed elsewhere with an equal or higher salary or wage, such that if his salary or wage in his other employment was less, the employer may deduct only what has been actually earned. For instance, if the lay-off period is one year and the monthly salary of the employee or worker is ₱300.00, which is equivalent to ₱10.00 a day, he would be entitled to backwages of ₱3,600.00, plus benefits, bonuses and general increases, but if during the year of lay-off, he was employed off and on, and at one time earned ₱12.00 a day but at another time only ₱8.00 a day, what should be deducted would be ₱10.00 for everyday that he was earning ₱12.00 and only ₱8.00 for everyday that he was earning such amount. Otherwise stated, all earnings of the dismissed employee or worker elsewhere over and above what he would have earned with his old employer during the corresponding period belong to the employee or worker to the exclusion of any right on the part of the employer to use the same to minimize the damages he has to pay."

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[46] G.R. No. L-24189, August 30, 1968; 24 SCRA 873.
[47] 40 SCRA 547-548.

Thus it comes as a surprise when the Supreme Court revived the 1968 **Suyoc-Itogon** guidelines in the 1972 *Diwa ng Pagkakaisa* case in the face of the reasoning of the Court in the 1971 **East Asiatic Company** case. What is even more surprising is that the Justice who expressed the opinion of the Supreme Court in the 1972 *Diwa ng Pagkakaisa* case had concurred **in toto** with the **ponente** of the decision in the 1971 **East Asiatic Company** case and the latter, perhaps through inadvertence, overlooked his fine analysis of the problem and agreed **in toto** with the former in the 1972 *Diwa ng Pagkakaisa* case.

Furthermore, the holding in the 1972 *Diwa ng Pagkakaisa* case that "whatever amounts earned [by the employees] from other employment during the [period of illegal dismissal] or could have been earned with the exercise of reasonable diligence" must be deducted from the backpay award is not sound because it does not take into account the concept of net interim earnings. The better rule is not to deduct the gross interim earning from the backpay but only the net interim earnings during the period of illegal dismissal[48] plus interest at the legal rate per annum.[49] Net interim earnings means income after deducting expenses which an illegally dismissed employee may have incurrred in looking for another employment and keeping it until reinstated, **e.g.**, reasonable amounts for transportation, room and board.

V. STRIKES

A. Determining Question of Validity

In 1967 the Supreme Court held in **United Seamen's Union of the Philippines v. Davao Shipowners Association**[50] 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.

This rule received some refinement from the Supreme Court in 1972 in the case of *Shell Oil Workers Union v. Shell Company of the Philippines, Ltd.*[51] and applied subsequently in *Caltex Filipino Managers and Supervisors Union v. Court of Industrial Relations.*[52] Expressing the view of the Court, Mr. Justice Fernando warned the administrators of the Industrial Peace Act to be watchful and cautious in dealing with the question of validity of strikes. Care must be taken, said Mr. Justice Fernando, in classifying

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[48] *Crosset Lumber Company*, 8 NLRB 440 (1938).

[49] *Isis Plumbing and Heating Company*, 138 NLRB 97 (1962).

[50] G.R. Nos. L-18778 and L-18779, August 31, 1967; 20 SCRA 1226.

[51] No. L-28607, February 12, 1972; 43 SCRA 224. See also G.R. No. L-28607, May 31, 1971; 39 SCRA 276.

[52] No. L-30632 and No. L-30633, April 11, 1972; 44 SCRA 350.

a strike as illegal simply because it is tainted by violence, coercion, intimidation and obscene language, especially when the strike is the result of an unfair labor practice of the employer. If this matter is not paid enough attention, the right to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection guaranteed by the Industrial Peace Act might become illusory and meaningless. To arrive at a correct solution, the Supreme Court stated that a strike pervaded by violence, force, coercion or intimidation and deliberately resorted to as such by the union as a matter of policy must be distinguished from one where the existence of force, violence, coercion or intimidation is not pervasive and widespread and is not deliberately promoted or countenanced by the union. In the former case, responsibility for injury to persons and destruction of property should be treated on a collective basis. In the latter case, responsibility is individual in nature. This means that the strike called by a union is nonetheless valid.

VI. COURT OF INDUSTRIAL RELATIONS

A. Basis for Determination of Jurisdiction

During the year in review, three decisions were promulgated by the Supreme Court stating the test to determine the jurisdiction of the Court of Industrial Relations over the subject-matter in as many different ways.

In *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[53] the Supreme Court, through Mr. Justice Villamor, held that the jurisdiction of the Court of Industrial Relations must be tested by the allegations in the complaint or petition in relation to the applicable provisions of law. This is the **Suanes** test, articulated in **Suanes v. Almeda-Lopez.**[54]

In *Filipino, Inc. v. Court of Industrial, Relations*,[55] the Supreme Court, in an opinion prepared by Mr. Justice Makasiar, ruled that the jurisdictional competence of the Court of Industrial Relations can be determined by the allegations in the complaint or by the issues raised by the parties.

In *Philippine Association of Free Labor Unions v. Quicho*,[56] the Supreme Court, speaking through Mr. Justice Felix Q. Antonio, ruled that the clear inferences flowing from the allegations of a complaint or petition

[53] No. L-30632, April 11, 1972; 44 SCRA 350.
[54] 73 Phil. 573 (1942).
[55] No. L-30827, August 18, 1972; 46 SCRA 621.
[56] No. L-30153, September 13, 1972; 47 SCRA 11.

must also be considered in appreciating the problem of jurisdiction of the Court of Industrial Relations.

COMMENTS

One should be aware of the changing posture of the Supreme Court in the determination of the jurisdictional competence of the Court of Industrial Relations over the subject-matter of a case.

In **Manila Stevedoring and General Workers Union v. Lantin,**[57] the Supreme Court, expressing itself through Mr. Justice Fred Ruiz Castro, disregarded the **Suanes** test by going beyond the allegations in the complaint and reaching for the "actionable wrong" sought to be redressed by the plaintiff. In the survey of the 1971 decisions of the Supreme Court on this question,[58] I noted that there was no clear indication in the decision of the Supreme Court that the **Suanes** test was done away with. Indeed, the shift to the "actionable wrong" test was short-lived. In the subsequent cases of **Leoquinco v. Canada Dry Bottling Company of the Philippines Employees Association,**[59] **Rustan Supervisory Union v. Dalisay and Rustan Pulp and Paper Mills, Inc.,**[60] **Time, Inc. v. Reyes,**[61] and **Union Obrera de Tabaco, Inc. v. Quicho**[62] the Supreme Court returned to the **Suanes** test.

However, in **Mindanao Rapid Co., Inc. v. Omandam,**[63] the last case decided by the Supreme Court on this issue in 1971, the Supreme Court, this time through Mr. Justice Roberto Concepcion, disregarded once more the **Suanes** test and ruled that it should no longer be adhered to on the ground that the Rules of Court permits a motion to dismiss a complaint or petition based upon facts which may not even be alleged in the complaint, **e.g.**, pendency of another action between the same parties for the same cause, statute of limitation, **res adjudicata.** This, of course, is an entirely different matter, that is to say, these are affirmative defenses really. Of course, if a motion to dismiss is based on any of these collateral attacks, then the Court must take the matter into consideration.

In any case during 1972 the Supreme Court, as stated above, has once more returned to the **Suanes** test.

This is, indeed, the better rule. However, there is a tendency on the part of the bench and bar to overlook the refinement made by Mr.

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[57] G.R. No. L-29785, January 28, 1971; 37 SCRA 88.
[58] 47 Phil. L.J. 1 at 9-10.
[59] G.R. No. L-28621, February 22, 1971; 37 SCRA 535.
[60] G.R. No. L-32819, April 29, 1971; 38 SCRA 500.
[61] G.R. No. L-28882, May 31, 1971; 39 SCRA 303.
[62] G.R. No. L-25799, August 31, 1971; 40 SCRA 589.
[63] G.R. No. L-23058, November 27, 1971; 42 SCRA 250.

Justice J. B. L. Reyes of the **Suanes** test in **Insular Sugar Refining Corporation v. Court of Industrial Relations.**[64] There, the Supreme Court ruled that the jurisdictional competence of the Court of Industrial Relations over the subject-matter of a case is determined by the allegations of the complaint or petition,[65] the truth of which must be considered as theoretically admitted by the plaintiff or petitioner.[66]

As refined, the test was applied during the year in review in *Philippine Association of Free Labor Unions v. Quicho.*[67] There Mr. Justice Antonio, who expressed the opinion of the Supreme Court, stated that the clear inferences or necessary connotations flowing from the allegations of a complaint or petition must also be admitted in determining the jurisdictional competence of the Court of Industrial Relations, especially where the complaint ingeniously avoids any reference to facts showing the jurisdiction of the Court of Industrial Relations.

If an example is necessary, take the allegations made by the plaintiff Benito Navarro in his complaint in the case of **Manila Stevedoring and General Workers Union v. Lantin**[68] that after the breakup of the partnership between him and the defendant Emiliano Romeo the stevedores and workers who were for the plaintiff joined the co-plaintiff National Workers & Stevedoring Union, while those for the defendant Romeo joined the co-defendant Manila Stevedoring & General Workers Union. By this allegation, plaintiff Navarro, theoretically admitted that there was an existing controversy as to the appropriate collective-bargaining unit in the Company, that there was a question of representation, and that there was an existing struggle between the two competing labor unions for the bargaining agency. Consequently, this allegation and its logical connotations placed the case within the exclusive jurisdiction of the Court of Industrial Relations and not in the Court of First Instance of Manila, where the case was filed. Or take, for another illustration, another allegation in the same complaint that the co-defendant Manila Stevedoring & General Workers Union presented to the Company a packaged demand for union recognition, privileges and fringe benefits, as well as the execution of a collective-bargaining agreement which the Company denied. Accordingly, the plaintiff by this allegation theoretically admitted that there was an existing labor dispute between the Manila Union and the Company and that the Manila Union had already taken positive steps to avail itself of the rights guaranteed in Section 3 of the Industrial Peace Act. Again, this particular allegation and its logical implications show that the case

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[64] G.R. No. L-19249, May 31, 1963; 8 SCRA 270.

[65] *Suanes v. Almeda-Lopez*, 73 Phil. 573 (1942).

[66] *Insular Sugar Refining Corporation v. Court of Industrial Relations*, G.R No. L-19249, May 31, 1963; 8 SCRA 270.

[67] No. L-30153, September 13, 1972; 47 SCRA 11.

[68] G.R. No. L-29785, January 28, 1971; 37 SCRA 88.

was exclusively within the jurisdiction of the Court of Industrial Relations and not of the Court of First Instance.

A 1972 example is supplied in the case of *Philippine Association of Free Labor Unions v. Quicho*,[69] where the plaintiff, Legaspi Oil Company, Inc., in a complaint for damages filed in the Court of First Instance of Albay, alleged that the labor union declared a strike against the Company and in pursuance of such an illegal act picketed the premises of the Company in Legaspi City. Notwithstanding the adroit drafting of the complaint by avoiding any reference to the existence of a labor dispute in order to justify the action for recovery of damages in the Court of First Instance of Albay, the Supreme Court stated that as a logical consequence of such an allegation the plaintiff, Legaspi Oil Company, Inc., had theoretically admitted that there was a temporary stoppage of work in the Company by the concerted action of the Union members as a result of an industrial dispute and that the strikers were exerting pressure on the Company to yield to their economic demands. Mr. Justice Antonio correctly concluded that the Court of First Instance of Albay erred in assuming jurisdiction over a case that rightfully belongs to the Court of Industrial Relations.

However, just four months after the **Cafimsa** case, the Supreme Court held in *Filipro, Inc. v. Court of Industrial Relations*[70] that the jurisdiction of the Court of Industrial Relations can be determined by the allegations in the complaint or by the issues raised by the parties. One wonders why the statement of the test in determining the jurisdiction of the Court of Industrial Relations was again incompletely stated. From this decision of the Supreme Court, it would now appear that the jurisdictional competence of the Court of Industrial Relations is determinable either by the allegations in the complaint or by the issues raised by the parties.

The second alternative advanced by the Supreme Court in the 1972 *Filipro* case was first articulated as a test to determine the jurisdictional competence of the Court of Industrial Relations in **Associated Labor Union v. Borromeo.**[71] If this proposition is correct, then the process would have to involve a consideration not only of the averments made in the complaint but also the allegations made in the answer. I would like to call attention to the fact that the ruling in the 1968 **Associated Labor Union** case was made by the Supreme Court **obiter dictum** and was in fact rejected in **Progressive Labor Association v. Atlas Consolidated Mines and Development Corporation.**[72] In the 1970 **Progressive Labor Association** case, the

[69] No. L-30153. September 13, 1972; 47 SCRA 11.
[70] No. L-30827, August 18, 1972; 46 SCRA 621.
[71] G.R. No L-26461, November 27, 1968; 26 SCRA 88.
[72] G.R. No. L-27585, May 29, 1970; 33 SCRA 349.

Supreme Court once again reiterated the longstanding rule that the jurisdiction of the Court of Industrial Relations over a case is determined by the allegations made in the complaint or petition. But, as stated before, like other cases on this point, the test was again incompletely given.

The rule can be stated in full as follows: the jurisdiction of the Court of Industrial Relations over the subject-matter of a case is determined by the allegations in the complaint or petition, the logical implications of which must be considered theoretically admitted by the plaintiff or petitioner. Thus, under this test, the Court of Industrial Relations can validly proceed with a case until such time as the facts gathered in the hearing show that the case is beyond its competence.[73]

It is not amiss to refer to the warning given by the Supreme Court in **Veterans Security Free Workers Union v. Cloribel,**[74] **Federacion Obrera de la Industria Tabaquera v. Mojica,**[75] and **Mindanao Rapid Co., Inc. v. Omandam**[76] that courts should give a very careful and thoughtful reading of the allegations in the complaint or petition because it is not difficult at all for a plaintiff or petitioner to mask or hide the nature of a case by the "artful wording" of the complaint or petition. The adroit drafting of pleadings is accomplished by muting or avoiding the catch words or catch phrases peculiar to labor relations law or by suppressing the facts which would indicate the existence of a labor or industrial dispute or the presence of an employer-employee relationship. Thus, Mr. Justice Reyes expressed satisfaction with the lower court in the 1971 **Canada Dry Bottling Company Employees** case for piercing the adroitly drafted complaint and revealing the fact that the acts of the defendants sought to be prevented originated from or were the consequences of the strike against the Company. But the Supreme Court can also express its disappointment, as in the 1971 **Rustan Supervisory Union** case,[77] in the 1970 **Veterans Free Workers Union** case,[78] and in the 1968 **Federacion Obrera** case,[79] at the failure of the trial courts to see that the complaints filed in those cases "for all [their] artful wording" were sufficient to show that there existed an industrial dispute between the parties. The Courts of First Instance must be doubly alert, said the Supreme Court, especially when their attention is called to the true nature of a case by a recital of the related facts disclosed by the opposing party, whether by a motion to dismiss a complaint for lack of jurisdiction, a motion opposing issuance of an injunction, or a motion for dissolution of an injunction prohibiting union activities. The first means

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[73] *Manila Electric Company v. Ortañez*, G.R. No. L-19557, March 31 1964.
[74] G.R. No. L-26439, January 30, 1970; 31 SCRA 297.
[75] G.R. No. L-25059, August 31, 1968; 24 SCRA 936
[76] G.R. No. L-23058, November 27, 1971; 42 SCRA 250.
[77] G.R. No. L-32819, April 29, 1971; 38 SCRA 500.
[78] G.R. No. L-26439, January 30, 1970; 31 SCRA 297.
[79] G.R. No. L-25059, August 31, 1968; 24 SCRA 936.

was used by the Union and allowed by the Supreme Court in **Edward J. Nell Corporation v. Cubacub.**[80] The second means was availed of by the Union and approved by the Supreme Court in the 1972 case of *PAFLU v. Quicho,*[81] and also in **Leoquinco v. Canada Dry Bottling Company of the Philippines Employees Association.**[82] The third means was used by the Union and approved by the Supreme Court in **Rustan Supervisory Union v. Dalisay.**[83]

B. Pronouncement of Decisions or Rulings

Eastern Textile Mills, Inc. v. Court of Industrial Relations[84] reiterates the decision in **Embassy Motors Workers Union v. Court of Industrial Relations,**[85] that in case of diversity of individual opinions rendered by the judges of the Court of Industrial Relations it is enough that the judges of the court sit together and that the concurrence of at least three of the five judges be obtained in order that a decision, award or order may be reached. It is not necessary, said the Supreme Court, through Mr. Justice J. B. L. Reyes, that the requisite number of judges should agree on the issues raised by the parties or on the reasons that each of the judges may advance in support of their findings or conclusions. The issues may vary; the reasons may differ; but what is decisive is that at least three of the judges concur or agree on the same result, if all of them cannot arrive at the same conclusion.

C. Scope of Jurisdiction of the Court of Industrial Relations

In *Filipro, Inc. v. Court of Industrial Relations,*[86] the Supreme Court, through Mr. Justice Makasiar, reiterated the ruling in **PAFLU v. Tan,**[87] that pursuant to the policy expressed in Section 7 of Republic Act No. 875 the jurisdiction of the Court of Industrial Relations extends only to: 1) labor disputes in industries indispensable to the national interest certified as such by the President to the Court of Industrial Relations, 2) controversies concerning minimum wages under Republic Act No. 602, 3) disputes concerning hours of work under Commonwealth Act No. 444, and 4) cases involving unfair labor practices. In **PAFLU v. Tan,** the Supreme Court further stated that beyond these four types of cases, the Court of Industrial Relations has no jurisdiction even if they involve or grow out of a labor dispute.

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[80] G.R. No. L-20843, June 23, 1965; 14 SCRA 419.
[81] No. L-30153, September 13, 1972; 47 SCRA 11.
[82] G.R. No. L-28621, February 22, 1971; 37 SCRA 535.
[83] G.R. No. L-32891, April 29, 1971; 38 SCRA 500.
[84] Nos. L-30410 and L-30411, June 30, 1972; 45 SCRA 586.
[85] G.R. No. L-18685, September 13, 1963; 9 SCRA 1.
[86] No. L-30827, August 18, 1972; 46 SCRA 621.
[87] G.R. No. L-9115, August 31, 1956; 99 Phil. 854.

However, Mr. Justice Makalintal did not go along with this opinion, while Mr. Justice Barredo and Mr. Justice Castro expressed their hope that in an appropriate case, the question of the scope of the jurisdiction of the Court of Industrial Relations might be re-examined in order to avoid the confusion that has settled on this issue.

ANALYSIS

The stand taken by Messrs. Justices Makalintal, Barredo and Castro is very encouraging. I hope they gain more adherents in the Court in overruling the **PAFLU v. Tan** decision for good.

Since 1958 I have taken the view that the holding of the Supreme Court in **PAFLU v. Tan** is inconsistent with the policy expressed in Section 7 of Republic Act No. 875. This provision does not really support the view of the Supreme Court that the jurisdictional competence of the Court of Industrial Relations is limited only to the four types of cases mentioned in the said case. Section 7 provides:

> *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.)

Note that the crucial point in this section, as revealed by both the epigraph and the text of the provision is the general limitation on the power of the courts to **compulsorily arbitrate** questions which have to do with wages, rates of pay, hours of employment, and other terms and conditions of employment. This implements the philosophical concept underlying the Industrial Peace Act that matters having to do with working conditions and terms of employment should be the original concern of labor and management 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 Industrial Peace Act, the Court of Industrial Relations is still empowered to compulsorily arbitrate questions even as they involve bargainable matters provided that they refer to: 1) labor disputes in an industry indispensable to the national interest, present all conditions provided by Section 10 of the Industrial Peace Act, 2) claims for payment of minimum wages, present all conditions provided in

subsections (b) and (c) of Section 16 Republic Act No. 602, as amended by Republic Act No. 6129, or 3) disputes 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 too obvious to detail here.

Thus, the three exceptions mentioned in Section 7 of the Industrial Peace Act are not, as the Supreme Court would have it, the only types of cases falling within the jurisdiction of the Court of Industrial Relations. It is more accurate to say that Section 7 prescribes only the types of cases involving bargainable matters that are still within the jurisdiction of the Court of Industrial Relations to compulsory arbitrate. To be sure, 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 cases over which the Court of Industrial Relations has jurisdictional competence than the types of cases enumerated in **PAFLU v. Tan.**

The Supreme Court itself is aware of the problem that has arisen on this issue. In at least two cases, the Supreme Court 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,**[88] 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 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 **Centro Escolar University v. Wandaga,**[89] the Supreme Court acknowledged its awareness of the cases contradicting the decision rendered in **PAFLU v. Tan.**

As mentioned above, in the 1972 case of *Filipro, Inc. v. Court of Industrial Relations,*[90] Mr. Justice Barredo and Mr. Justice Castro expressed their hope that the question of the scope of the jurisdiction of the Court of Industrial Relations might be re-examined in an appropriate case so that this problem, which "continue[s] to baffle the members of the Bar,"might be clarified.

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[88] G.R. No. L-15279, June 30, 1961; 61 O.G. 1345 (March, 1965).
[89] G.R. No. L-25826, April 3, 1968; 23 SCRA 11.
[90] No. L-30827, August 18, 1972; 46 SCRA 621.

D. Conclusiveness of Findings of Fact

In *Bulakeña Restaurant and Caterer v. Court of Industrial Relations and United Employees Welfare Association*,[91] *Filipro, Inc. v. Court of Industrial Relations*,[92] and *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[93] the Supreme Court has continued to apply its new approach to the problem of judicial review of the findings of fact of the Court of Industrial Relations which was first articulated in 1970 in the case of **Lakas ng Manggagawang Makabayan v. Court of Industrial Relations.**[94] Theretofore, the Supreme Court had ruled that the findings of fact of the Court of Industrial Relations are conclusive on the Supreme Court, so long as there is some basis for such findings in the record of the case no matter how meager it may be. But in the 1970 **Lakas ng Manggagawang Makabayan** case, the Supreme Court, expressing itself through Mr. Justice Castro, ruled, for the first time, after so many reminders, that the findings of fact of the Court of Industrial Relations would not be substantial as required by Section 6 of the Industrial Peace Act "if it were based simply on the portion of the evidence that supports its findings. Justice and equity demand that the record of the case be considered **as a whole.**"[95]

COMMENTS

In the other cases decided by the Supreme Court on this problem in 1970, namely, **Free Telephone Workers Union v. Philippine Long Distance Telephone Company,**[96] and **LVN Pictures Checkers' Union v. LVN Pictures, Inc.,**[97] the Supreme Court made it very clear that in determining the conclusiveness of the findings of fact of the Court of Industrial Relations the Supreme Court would no longer disregard other evidence in the record of the case which fairly detracts from the evidence upon which the findings of fact of the Court of Industrial Relations are based. In the three 1970 cases mentioned above, the Supreme Court emphasized the two aspects of the substantial-evidence rule provided in Section 6 of the Industrial Peace Act, namely, the quantitative and the qualitative, both of which, the Supreme Court said, will be applied with more weight given to the quality of the facts.[98]

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[91] No. L-26796, May 25, 1972; 45 SCRA 87.
[92] No. L-30827, August 18, 1972; 46 SCRA 621.
[93] No. L-30632, September 28, 1972; 44 SCRA 350.
[94] G.R. No. L-32178, December 28, 1970; 36 SCRA 600.
[95] Emphasis by the Supreme Court.
[96] G.R. No. L-24593, July 31, 1970; 34 SCRA 44.
[97] G.R. No. L-23495 and G.R. No. L-26442, September 30, 1970; 35 SCRA 147.
[98] See also *Gonzales v. Victory Labor Union*, G.R. No. L-23256, October 31, 1961; 30 SCRA 47.

In the survey of the 1970 decisions of the Supreme Court on this question, I stated that the Supreme Court has finally recognized its responsibility for the credibility, reasonableness and sufficiency of the findings of fact of the Court of Industrial Relations. The position of the Supreme Court is now clear and firm. Even if the findings of fact of the Court of Industrial Relations may have some basis in the record of the case, the Supreme Court may and will disregard such findings when there are other reliable evidence on the record of the case.

In the 1971 cases, the Supreme Court held that, while the findings of fact of the Court of Industrial Relations are invariably accorded acceptance by the Supreme Court, nevertheless, it will not hesitate to make different findings of fact on the basis of the record of the case considered as a whole, if there is countervailing evidence which sufficiently detracts from the evidence upon which the Court of Industrial Relations has based its findings of fact.

During the year in review, the Supreme Court has continued this new approach on the question of the conclusiveness of the findings of fact of the Court of Industrial Relations. And rightly so because the Industrial Peace Act does not require preponderance of evidence as in ordinary civil cases.[99] Indeed, the Industrial Peace Act requires only substantial evidence on the record of the case "considered as a whole"[100] to support the findings of fact of the Court of Industrial Relations.

In the 1972 case of *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[101] the Supreme Court criticized the lower court for ignoring the strong evidence appearing on the record of the case which was damaging to the cause of the respondent employer. To the Supreme Court, speaking through Mr. Justice Fernando, this was a failure on the part of the Court of Industrial Relations to appreciate the intendment of Section 6 of the Industrial Peace Act. The Supreme Court stated that the Court of Industrial Relations committed grave abuse of its discretion in ignoring the substantial evidence on the record of the case. Thus, the Supreme Court interposed its corrective powers by making its own findings of fact based on the record of the case as a whole.

E. Jurisdiction

1. Over Cases Involving Determination or Re-Determination of Appropriate Bargaining Unit

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[99] *Philippine Engineering Corporation v. Court of Industrial Relations*, G.R. No. L-27880, September 30, 1971, 41 SCRA 89; *Industrial-Commercial-Agricultural Workers Association v. Bautista*, G.R. No. L-5639, April 30, 1963, 7 SCRA 907.

[100] *Lakas ng Manggagawang Makabayan v. Court of Industrial Relations*, G.R. No. L-32178, December 28, 1970; 36 SCRA 600.

[101] No. L-30632, September 28, 1972; 47 SCRA 112.

Once again, in *Compañia Maritima v. Compañia Maritima Labor Union*[102] and *General Maritime Stevedores Union v. Compañia Maritima Labor Union*,[103] the Supreme Court, in an opinion prepared by Mr. Justice Fernando, upheld the exclusive jurisdiction of the Court of Industrial Relations over cases involving the determination or re-determination of an appropriate collective-bargaining unit. In the exercise of this jurisdiction, the Supreme Court held that the Court of Industrial Relations is vested with ample discretion limited only by arbitrary or capricious action on its part.

These cases also adhered to the substantial-mutuality-of-interest rule in determining the appropriateness of a group of employees for purposes of collective bargaining: that a union to be appropriate for this purpose must involve a group of employees who have substantial mutual interests in terms of employment and working conditions as revealed by the type of work they perform.

COMMENTS

In any discussion of the substantial-mutuality-of-interest rule, it must be noted that the satisfaction of this basic test is not enough. There is need to further check other factors relevant to this issue. The reason for this is that there are varying types of units which may meet the basic test and yet may not be appropriate for purposes of collective bargaining. Generally speaking, employees who do the same type of work may be grouped together into an appropriate bargaining unit. But employees may be grouped together in the same bargaining unit even when they have dissimilar duties and skills when their wages, hours and other working conditions are similar. Similarly, employees may be placed in a plant- or industry-wide unit for bargaining purposes even though they may have different terms of employment and working conditions when the nature of the operation in a particular plant or industry is integrated. In some such cases, there is need to go beyond the basic test and consider and weigh other factors; among these are: 1) history of collective bargaining, 2) extent of union organization among the employees, 3) the desires of the employees in the proper cases, and 4) the agreement of all interested parties in a particular unit.

Of course, if the basic test is not met, then the search stops right then and there.

2. Over Cases Involving Labor Injunctions

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[102] No. L-29504, February 29, 1972; 43 SCRA 464.
[103] No. L-29548. February 29, 1972; 43 SCRA 464.

In *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*,[104] the Supreme Court, in a decision penned by Mr. Justice Villamor, upheld once again the jurisdiction of the Court of Industrial Relations to issue injunctive relief under Section 9(d) of the Industrial Peace Act.

In discussing the ban on governmental intervention in union-management affairs in the form of labor injunctions, the Supreme Court ruled that an injunction can be issued against a strike only in one instance, that is, when it is involved in a labor dispute occurring in an industry indispensable to the national interest and such dispute is certified by the President of the Philippines to the Court of Industrial Relations, pursuant to Section 10 of the Industrial Peace Act.

ANALYSIS

This pronouncement, of course, is not quite accurate. There is another instance when an injunction can be issued against a strike. I am referring to strikes involving or growing out of a labor dispute under Section 9(d) of the Industrial Peace Act, where unlawful acts have been threatened and will be committed unless restrained, or when unlawful acts have been committed and will be continued unless restrained. Since the basis of the strike in either of these situations is illegal, then the strike itself may be restrained and not just the unlawful acts. It is difficult to understand the position taken by the Supreme Court that under Section 9(d) only the unlawful acts can be enjoined but not the strike itself. The strike and the unlawful acts are inseparable. Furthermore, it is obvious that when the means used by the union in pursuing a strike is unlawful the strike itself becomes illegal, even though it may be for a valid purpose.

3. Over Claims for Damages Involved in Unfair Labor Practice Cases

Cebu Portland Cement Company v. Cement Workers Union[105] involves a civil action for damages filed by the Company for losses allegedly suffered on account of a strike called by the union. The Company alleged that the purpose of the strike was to force it to compel non-union employees to contribute to a fund which would pay for legal services rendered on behalf of the striking union. This was met by a motion for dismissal filed by the union on the ground that the strike was not precipitated by the wrongful act attributed to it by the Company but by the Company's refusal to bargain collectively with the union and on the further ground that there was already a pending unfair labor practice case in the Court of

[104] Nos. L-30632 and L-30633, April 11, 1972; 44 SCRA 350.
[105] No. L-30174, May 31, 1972; 45 SCRA 337.

Industrial Relations prior to the filing of the civil action. The Court of First Instance of Cebu sustained the motion for dismissal.

Assailing the validity of the dismissal of its complaint, the Company urged before the Supreme Court that the Court of Industrial Relations has not acquired jurisdiction over the subject-matter of the case because of the fact that what was pending in the Court of Industrial Relations when the civil action was commenced in the Court of First Instance of Cebu was only a charge filed by the union, and not a complaint for unfair labor practice filed by the Prosecution Division of the Court of Industrial Relations.

Expressing the view of the Supreme Court, Mr. Justice Reyes held that since jurisdiction over a case is conferred by law, then the jurisdiction of the Court of Industrial Relations is not dependent on the filing of a complaint for unfair labor practice in the Court of Industrial Relations. What is decisive, held the Supreme Court, is the subject-matter of the complaint and not the time of filing of the complaint. In different words, it is the existence of a controversy which properly falls within the exclusive jurisdiction of the Court of Industrial Relations, to which the civil action is connected, that removes the case from the competence of the regular court. On the basis of this principle, Mr. Justice Reyes noted that there have been cases pending in the Courts of First Instance arising out of industrial disputes exclusively cognizable by the Court of Industrial Relations which were ordered dismissed even if they were commenced ahead of the proceedings filed in the Court of Industrial Relations namely, **Veterans Security Free Workers Union v. Cloribel,**[106] **Citizens League of Free Workers v. Abbas,**[107] and **Associated Labor Union v. Gomez.**[108] Mr. Justice Reyes also noted that, on the basis of this principle, jurisdiction to restrain picketing was held to belong to the Court of Industrial Relations even though no unfair labor practice case has yet been instituted therein, as held in **Mindanao Rapid Co., Inc. v. Omandam**[109] and companion cases.

4. Over Cases Involving Interpretation or Enforcement of Collective-Bargaining Agreements

The cases of *Development Bank of the Philippines Employees Union v. Perez,*[110] *Mactan Workers Union v. Aboitiz,*[111] *Philippine American Management and Financing Co., Inc. v. Management and Supervisors Association of the Philippines American Management and Financing Co.,*[112] and *Philippine*

[106] G.R. No. L-26439, January 30, 1970; 31 SCRA 297.
[107] G.R. No. L-21212, September 23, 1966; 18 SCRA 71.
[108] G.R. No. L-25999, February 9, 1967; 19 SCRA 304.
[109] G.R. No. L-23058, November 27, 1971; 42 SCRA 250.
[110] No. L-22584, May 13, 1972; 45 SCRA 179.
[111] No. L-30241, June 30, 1972; 45 SCRA 577.
[112] No. L-29538, November 29, 1972; 48 SCRA 187.

Virginia Tobacco Administration Employees Association v. Judge Honorato B. Masakayan,[113] continue a long line of cases which is slowly securing the view that questions involving interpretation or enforcement of collective bargaining agreements fall within the jurisdiction of the Court of Industrial Relations.

COMMENTS

I have always thought that the Court of Industrial Relations is the proper forum for this type of cases. But the Supreme Court, over the last sixteen years, has alternately promulgated contrasting decisions on this question. I would like to refer to the review of these decisions in 46 Philippine Law Journal 46-48 (1971).

It was only in the 1970 case of **Manila Hotel Co. v. Pines Hotel Employees Association**[114] that the Supreme Court started firming up its view that cases involving the interpretation or enforcement of collective-bargaining agreements fall within the exclusive jurisdiction of the Court of Industrial Relations.

In the 1972 cases mentioned above, Mr. Justice Fernando, who spoke for the Supreme Court, is quite hopeful that this portion would be maintained for the reasons he essayed. In addition thereto, I should like to re-state the legal basis for the jurisdiction of the Court of Industrial Relations over cases involving interpretation or enforcement of collective-bargaining agreements.

Sections 13 and 16 of the Industrial Peace Act amply provide the basis for the jurisdiction of the Court of Industrial Relations in this type of cases, provided that the action for the interpretation of the collective-bargaining agreement is for the vindication of the rights of the parties contained in the collective-bargaining agreements and that the action is filed after the exhaustion of the remedies that may have been established therein. In this connection, the Supreme Court of the United States, in the case of **Smith v. Evening News Association,**[115] aptly stated that the rights and obligation of employers and employees concerning the matters contained in collective-bargaining agreements are a "major focus of the grievances and administration of collective bargaining and to a large degree inevitably intertwined with union interest and many times precipitate grave questions concerning the interpretation and enforcement of collective-bargaining contracts on which they are based."

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[113] No. L-29538, November 29, 1972; 48 SCRA 188.
[114] G.R. No. L-24314, September 28, 1970; 35 SCRA 96.
[115] 371 U.S. 195, 9 L.Ed. 2d 246, 83 S.Ct. 267 (1962).

Obviously, violations of the terms and conditions of collective-bargaining agreements and differing interpretations by the parties thereto involve administration and handling of grievances. I like to repeat Mr. Justice Castro's apt observation in the case of **Republic Savings Bank v. Court of Industrial Relations,**[116] shared by Mr. Justice Fernando in the **Security Bank Employees Union** case,[117] that collective bargaining does not end with the execution of a collective-bargaining agreement, but is a continuing economic process. Stated differently, collective bargaining is not only a procedure for the negotiation of terms of employment and working conditions but also a state of subsisting mutual or reciprocal interests.[118] As Mr. Justice Castro stated in the **Manila Hotel Company v. Pines Hotel Employees** case,[119] questions involving interpretation and enforcement of collective-bargaining contracts are generally related to refusals of either party to bargain collectively pursuant to Section 4(a)(6) or Section 4(b)(3), as the case may be. And under Section 13 of the Industrial Peace Act, the second aspect of the duty to bargain collectively consists of 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 collective-bargaining agreement which may arise as a result of differences in interpretation by the parties.

Under Section 16 of the Industrial Peace Act, the questions that may be adjusted by means of collective bargaining include issues arising from the application and interpretation of a collective-bargaining contract. Even Section 4(a)(6) and Section 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 plainly refusal to bargain collectively. Should there be an impasse, then the matter goes to the Court of Industrial Relations for decision.[120]

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[116] G.R. No. L-20303, September 27, 1967.
[117] G.R. No. L-28536, April 30, 1968.
[118] Pascual, *Labor and Tenancy Relations Law*, 47 (3rd. Ed.) 1966.
[119] G.R. No. L-24314, September 28, 1970.
[120] See 46 Phil. L.J. 48-50.