PROBLEMS OF COVERAGE IN LABOR RELATIONS LAW*

PERFECTO V. FERNANDEZ**

I. GENERAL CONSIDERATIONS

1. *Frame of Interpretation*

The main concern of this dissertation is to identify significant issues and questions in the limited area of labor law coverage, and present some approaches which, hopefully, may prove helpful in dealing with these problems.

At the outset one point must be made clear. It is that the frame of evaluation or interpretation of labor law has radically changed. Before, when the interpretation of labor law was chiefly in the hands of the courts, the frame of interpretation was essentially the general law, especially the law of contracts. This frame was modified only slightly under Commonwealth Act No. 103 (1936) and Republic Act No. 875 (1953).

Today, this may no longer be the case. Increasingly, labor law is no longer an ordinary branch of law. It has become absorbed into the emerging body of law which is called developmental law. In other words, labor law has been transformed from mere regulation of an essentially contractual type of relationship into a major tool of national development. As a result of this new orientation, the dominant consideration and the basic guides in labor law today are not the language of the Labor Code,[1] are not the words used, but rather the furtherance of developmental objectives, hand in hand with the imperatives of social justice. We must not then make the mistake of understanding labor law purely in terms of the language used. Legal provisions, by themselves, seem to be clear. But such abstract clarity is only seeming. The true meaning of legal provisions is not to be found in mere words, but rather, in the social purpose that gave them birth. Always then must we look to the particular policy in which a particular legal provision is rooted, in order fully to grasp its true import. Like other major institutions of society, law is not

---

* Lecture delivered during the Twelfth Annual Institute on Labor Relations Law, on May 26, 1975.

** *Professor of Law*, College of Law, University of the Philippines.

[1] Pres. Decree No. 442 (1974) as amended, hereinafter referred to as the CODE.

a value in itself, it is only a means to an end. It is but an instrument of social purpose. It is a tool of national policy. To grasp and understand it, we must examine the end or purpose that it serves. Today, this is not only true of labor law; it is specially and particularly true of labor law. The significance of many of the changes introduced by the Labor Code shall be missed unless one basic fact is apprehended and accepted. Whatever it may have been in the past, labor law today is a major instrument of developmental policy. It has been, as it is, undergoing overhauling and remodeling, in order to integrate and harmonize it with developmental objectives. It is this new context that must now provide the background in the quest for understanding of the provisions of the Labor Code.

2. *Restrictions on Self-Organization*

With this frame in mind certain restrictions are necessary — restrictions that cannot otherwise be explained. Certain provisions in the Code appear to be aberrations of basic principles, especially those that are enshrined in the Constitution of 1973. Under the Constitution of 1973 there is a declaration of the fundamental rights of workers, particularly set forth in section 9 of Article II. Among these basic rights are collective bargaining, right of self-organization, just and humane conditions of work and security of tenure. But if the Labor Code is examined in relation to the basic right of self-organization, it will be found that with respect to certain categories of employees, there is outright denial of the right of self-organization. Such plain and obvious denial of constitutionally guaranteed rights can only be justified by certain urgent public policies. The justification is that we are embarked on the adventure of economic development. That is the rational underlying many of these provisions that will be examined today.

3. *Context of Analysis*

The problems of coverage may be dealt with in three differing contexts:

1. Coverage under the provisions of the Labor Code.
2. Coverage under the provisions of collective bargaining agreements.
3. Coverage under the provisions of union constitutions and by-laws.

These differing contexts raise varied and complex problems of coverage.

4. *Historical Aspect*

Up to 1972 when the Code was first promulgated the coverage of labor law was limited to industrial employment.

Since 1936, when labor relations came under regulation by special statutes, the established policy was to limit their coverage and operation only to industrial employment and to exclude therefrom entities or or-

ganizations of a non-profit character, particularly those devoted to lofty social purposes, such as religious, charitable and educational institutions. Under Commonwealth Act No. 103, the jurisdiction of the Court of Industrial Relations was construed to extend only to industrial employment, that is to enterprises or establishments operated for profit, and did not apply to organizations not for profit established for educational, religious or charitable purposes.

Under the Industrial Peace Act, coverage was originally limited to industrial employment, i.e., to enterprises or establishments created and operated for profit and engaged in a profitable trade, occupation or industry.[2] Industrial employment embraced two groups: (1) business or profit enterprises and (2) Government agencies, including government-owned or controlled corporations, performing proprietary functions. Subsequently, (3) agricultural employment came to be subject to the Act, by virtue of the provisions of the Bill of Rights of Agricultural Labor in Republic Act No. 3844 (1963), otherwise known as the Agricultural Land Reform Code and now known as the Code of Agrarian Reforms.

5. Coverage under the Code

Under the original Code, the coverage was total for private employment; it applied to the entire private sector, regardless of whether the enterprise was for profit or not. But under the amendatory decree,[3] there was a modification. We are back roughly to the situation that obtained during the period of the Industrial Peace Act, namely, that non-profit organizations in certain categories are excluded from the operations of labor relations law.

II. Employer-Employee Relationship

1. Jurisdictional Fact

We begin with the ultimate jurisdictional fact, which is the existence of the employer-employee relationship. Without this relationship, there would be no basis for applying labor law to the parties concerned. Hence, the correlative statuses of employer and employee provide the logical departure point for discussing problems of coverage. While conceding its importance, we shall not discuss this topic at length. We need only to notice a few major points.

2. Test of Employment Relationship

First is the problem of an adequate criterion or test of the employer-employee relationship. We are all familiar with the case law on the

[2] Boy Scouts of the Philippines v. Araos, G.R. No. L-10091, January 29, 1958, 102 Phil. 1082 (1958).

[3] Pres. Decree No. 570-A (1974).

matter. According to the cases, the employer-employee relationship exists if a person under hire of another is subject to the control of the latter as regards the details or manner of performance. Without such right of control over the details or manner of performance, the relationship is not that of employer and employee. It could be that of principal and independent contractor, or some other legal relationship.

It is well settled that an employer-employee relationship exists where the person for whom the service are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end.[4]

3. *Shortcomings of Test*

There is no doubt that the control test will continue to be the standard test. Its value will continue particularly in cases where liability for specific benefit is concerned, such as claims for wages, premium pay, bonuses, etc. On the other hand, it has its limitations. These limitations are emerging because of industrial complexity. Increasingly, service arrangements are being developed which are considered business or professional relationships, but which under the control test may constitute an employment relationship. Myriad types of small business serve one or two large firms, under terms virtually dictated by the latter. Thousands of highly skilled professionals work for business firms under minimal supervision. Service cooperatives may provide particular skills for just one employer. In such situations, the control test may not yield satisfactory results. Let us consider specific examples. Who is subject to greater control, a lawyer who works as an associate in a law firm or a lawyer who works as a house counsel? The engineer who works as an associate in an engineering firm, or the engineer who works as a project manager in a construction company? The accountant working as an associate in an accounting firm, or the company accountant for a particular enterprise? Similar comparisons can be made of other professionals rendering services as associates in professional practice, and their counterparts rendering professional services in business houses, such as doctors, architects, etc. In actual fact, the so-called practicing associate is subject to greater control than the professional employee who is mostly left to his own devices.

4. *Problem Areas*

Key problems remain in this area, specially in the light of emerging policies. There is a State policy in favor of certain forms of social ownership, particularly in the form of cooperatives. Where the members provide the labor principally, under the supervision of the officers, are such mem-

[4] Alabama Highway Express, Inc. v. Local 612, 108 S. 2d. 390 (1959), cited in LVN Pictures, Inc. v. Philippine Musicians Guild, G.R. No. L-12582, January 28, 1961, 1 SCRA 132 (1961).

bers to be considered employees? A literal application of the control test would give such result, with resultant burdens to the fledgeling enterprise.

Then, there are the problems posed by workers in areas where the nature or conditions of work render them "floating" personnel. A familiar example is the fisherman discussed in the *Pajarillo* case. Then, there are the service workers provided by the agencies — from janitors to stenographers. Their equivalent in the farm sector are the itinerant or migrant workers. These are really farmers, but during the off season or while their crops are growing, they let themselves out for all sorts of odd jobs, including harvesting of crops.

5. Floating Personnel

The *Pajarillo*[5] case involved the status of fishermen who jumped from one fishing company to another within the fishing industry. Their employment was short-term. They worked one week with one boat owner and then the following week they were with another boat owner. The problem was whether or not they should be treated as employees for purposes of SSS coverage. The Supreme Court ruled that there should be no coverage, partly on the technical ground that it would be too difficult for the employer to deduct and keep track of the earnings of these floating personnel.

This is a situation that faces many companies which make use of service agencies which provide floating janitors, week-end stenographers or two-day typists. By all standards of the common law, as far as the existence of the employment relationship is concerned, they are employees. But this is not the central question; it is whether they ought to be covered for purposes of labor relations law. For purposes of labor standards, say, the amount of wages there would be no question. If they are underpaid, they can sue. But for purposes of inclusion in a bargaining unit, which is after all the heart of labor law, it is a real problem. The approach of the Supreme Court in the *Pajarillo* case suggests their exclusion from the bargaining unit, which presupposes or assumes a relationship of substantial permanency. Certain developments, however, may dictate coverage. On one hand, the CBA can always cover such casual personnel, an approach that the unions may insist on, since such casuals can add to their revenue from agency fees. On the other hand, the restructuring of the labor movement may do away with difficulties inherent in the status of casuals. Through industry-wide CBA's, terms and conditions of short-term employment will be stabilized, such that movement from one firm to another will not necessarily create substantial fluctuation in the income of the worker. Thus, within the construction industry, for example, a carpenter

[5] Pajarillo v. Social Security System, G.R. No. L-21930, August 31, 1966, 17 SCRA 1014 (1966).

who is hired for short periods in different construction companies will be receiving substantially the same return from one company as from any other.

6. *Peddlers and Salesmen*

A second problem area is the status of peddlers utilized by producers as outlets for their products. Although such peddlers have color of title to the status of independent contractor, the trend is to consider them employees as long as the circumstances show economic dependency. This is the rationale underlying the *Snow White Ice Cream Factory*[6] and the *Philippine Herald*[7] cases. These cases of course merely apply the criteria developed in the *Dinglasan*[8] case, which denied the status of independent entrepreneur to jeepney drivers and in the *LVN*[9] case, which upheld the employee status of musicians hired by moving picture studios.

7. *Approach to Coverage*

From the cases primary consideration is whether the declared policy and purpose of labor law can be effectuated by securing for the individual worker the rights and protection guaranteed by law. The matter is not conclusively determined by a contract which purports to establish the status of the worker as independent contractor and not as an employee.[10]

Actually, in cases hinging on the existence of the employee-employer relationship, the Supreme Court increasingly uses the facade of the control test, while actually looking for economic criteria. In the borderline cases, economic criteria provide the decisive factor, so that a person will be treated as an employee if the facts show economic dependence upon somebody else.

In other words, if the main source of livelihood is a particular person and that the income is given in consideration for services, then he is more or less an employee regardless of the label that is put upon the relationship. Even with respect to those truly considered professsionals the Supreme Court has used this approach, illustrated by the oft-cited case of *LVN* involving musicians.

8. *Economic Facts of the Relation Test*

Under this test, an employment relation is found on the basis of circumstances showing that the workers in question are subject, as a matter of economic fact, to the evils the statute was designed to eradicate and that the remedies which the law affords are appropriate for preventing them

---

[6] Snow White Ice Cream & Ice-drop Factory v. Garcia, G.R. No. L-23727, November 29, 1971, 42 SCRA 295 (1971).

[7] Herald Delivery Carriers Union (PAFLU) v. Herald Publications, Inc., G.R. No. L-29966, February 28, 1974, 55 SCRA 713 (1974).

[8] NLU v. Dinglasan, G.R. No. L-7945, March 23, 1956, 52 O.G. 1933 (April, 1956), 98 Phil. 649 (1956).

[9] LVN Pictures, Inc. v. Philippine Musicians Guild, *supra*, note 4.

[10] LVN Pictures, Inc. v. Philippine Musicians Guild, *supra*, note 4.

or curing their harmful effect in the particular case. The indicia marking the workers in question as employees, rather than as independent contractors, include the likelihood of interruption of industrial peace through strikes and unrest, the inequality in bargaining power for each worker in relation to the user of his services, dependence upon a particular employer for his income, and the appropriateness of collective bargaining for the adjustment of disputes arising from the relationship.[11]

9. *True Contractor Status*

Where the facts show a true entrepreneurial status, an employment relationship will naturally not be found. This is exemplified in the case or the *Shriro (Philippines) Corporation*.[12] Here, sales representatives subject to control and supervision were deemed employees, while marketing agents in the position substantially of franchised dealers were denied such status. A contractor status was also found in the case of mutual fund representatives, whose circumstances showed a status analogous to that of a practicing professional.

In legal terms an independent contractor is one who, in rendering services, exercises an independent occupation and represents the will of his employer only as to the results of his work and not as to the means whereby it is accompanied; one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work; and who engaged to perform a certain service for another, according to his own manner and methods, free from the control and direction of his employer in all matters connected with the performance of the service except as to the result of the work.[13]

III. Employers Under the Code

1. *Concept of Employer*

The term "employer" includes any person acting in the interest of an employer, directly or indirectly.[14] This statutory definition enables the remedies provided in the Code to reach and apply to persons guilty of misconduct inimical to the policies of the law, even if technically they are not employers. Two categories are thus covered: (1) actual employers, and (2) persons who, though not actual employers, act in the

---

[11] *Cf.* NLRB v. Hearst Publications, 322 U.S. 111, 64 S.Ct. 851, 88 L.Ed. 1170 (1944); LVN Pictures v. Philippine Musicians Guild, *supra*, note 4.

[12] Social Security System v. Court of Appeals, G.R. No. L-23483, February 24, 1971, 37 SCRA 579 (1971).

[13] See 56 C.J.S. *Master & Servant*, sec. 3(1) (1948); Cruz v. Manila Hotel, G.R. No. L-9110, April 30, 1957, 53 O.G. 8540 (Dec., 1957), 101 Phil. 358 (1957); Allied Free Workers' Union v. Compaña Maritima, G.R. Nos. L-22951-52 & 22971, January 31, 1967, 19 SCRA 258, 270 (1967).

[14] Art. 211(c).

interest of an employer, directly or indirectly, such as supervisors, managers, foreman, superintendents, security or plant guards, plain employees, or even non-employees.[15]

2. *Statutory Provisions*

> ART. 290. Coverage and employees rights to self-organization. — All persons employed in commercial, industrial, agricultural, religious, charitable, educational institutions, or enterprises, whether engaged for profit or not, shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining.[16]

> ART. 243. Coverage and employee's right to self-organization. — All persons employed in commercial, industrial and agricultural enterprises, including religious, medical or educational institutions operating for profit, shall have the right to self-organization and to form, join or assist labor organization for purposes of collective bargaining.
>
> All religious, charitable medical or educational institutions not operating for profit are exempt from the coverage of this book. However, this exemption shall not apply to religious, charitable, medical or educational institutions which, on the date of effectivity of this Code, have existing collective bargaining agreements or duly recognized labor organizations of their employees. Moreover, nothing herein shall preclude any employer from voluntarily reorganizing any labor organization of its employees for the purpose of collective bargaining.[17]

From the provisions of the Amended Code, two general observations may be made.

1. Book V applies to the entire private sector, but not to the public sector.

2. In the private sector, certain exemptions are recognized: educational, religious, medical and charitable institutions not for profit.

3. *Test of Coverage*

The test of coverage is the nature and general purpose of the activity or operation carried on by the enterprise, entity or organization: (a) it is private, (b) and for profit. Once such criteria are satisfied, there is coverage, regardless of (1) the form of organization, whether corporate or otherwise, (2) the amount of capital, great or small (3) the scope of operations, (4) the size of the work force or number of personnel and (5) status of the workers, whether casual, emergency or seasonal.

---

[15] NLRB, 12 ANNUAL REPORT, p. 27.

[16] Pres. Decree No. 442 (1972), as amended.

[17] Pres. Decree No. 570-A (1974) This article has been subsequently renumbered 243 pursuant to Pres Decree No. 626 (1974).

4. *Industrial Employment*

This refers to organizations and entities created and operated for profits, engaged in a profitable trade, occupation or industry.[18]

The word "industry" within the State Labor Relations Act controlling labor relations in industry, covers labor conditions in any field of employment where the objective is earning a livelihood on the one side and gaining a profit on the other. The term "industry," for the purposes of the application of our labor laws should be given a broad meaning so as to cover all enterprises which are operated for profit and which engage the services of persons who work to earn a living. It is settled doctrine that the Act is applicable to any organization or entity — whatever may be its purpose when it was created — that is operated for profit or gain.[19]

A university which makes profits and distributes such profits or earnings to private persons as dividends is an entity for profit.[20] Where a university realizes profits and distributes dividends, it is an "industry." It cannot be denied that running a university engages time and attention; that it is an occupation or a business from which the one engaged in it may derive profit or gain. The university is not an industrial establishment in the sense that an industrial establishment is one that is engaged in manufacture or trade where raw materials are changed or fashioned into finished products for use. But for the purposes of the Industrial Peace Act, the university is an industrial establishment because it is operated for profit and it employs persons who work to earn a living.[21]

5. *Agricultural Employers*

In agriculture, the coverage appears to be without exception. All farm enterprises are covered as long they employ farm labor. This is true regardless of area, regardless of the kind of crop grown, regardless of the number of personnel, and regardless of the status of the operator as profit or non-profit.

There is coverage regardless of the nature or status of the operator. Examples are land grants of the University of the Philippines, Boys Scouts of the Philippines, Girl Scouts of the Philippines, and the farm enterprises owned by religious orders and the churches. Here the test of coverage is the nature of the activity or operation, not the status of the owner.

6. *Agricultural Employee*

This refers to any person employed in "agriculture" as defined in paragraph (d) of Article 95 of the Code. Operations or activities that come within this concept include the following:

---

[18] Boy Scouts of the Philippines v. Araos, *supra*, note 2.

[19] Feati University v. Bautista, G.R. No. L-21278, December 7, 1966, 18 SCRA 1191, 1210 (1966).

[20] FEU v. C.I.R., G.R. No. L-17620, August 31, 1962, 5 SCRA 1082 (1962).

[21] Feati University v. Bautista, *supra*, note 19 at 1214.

1. Preparation of the soil, planting of ramie stalks and transporting them to the stripping sheds, stripping the fibers with the use of decorticating machines by electricity, drying the wet fibers, passing them through the brusher to cleanse them of impurities, and baling the fibers for the market.[22]

2. Planting and harvesting sugar cane and other chores incidental to ordinary farming operations.[23]

Continuing problems will be faced by agro-industrial or agro-business concerns. These are firms which combine farming with industrial operations, principally the processing of their crops or harvests. Although they have distinct sets of agricultural and industrial workers, these will most likely form one unit represented by one union. The tendency will be for the farm workers to enjoy the benefits of the industrial workers.

Where the enterprise is highly mechanized and carries on processing activities not merely incidental to purely farming operations, employees employed in operations other than purely agricultural work are deemed industrial employees. Thus, on a hacienda where milling is carried out, the following are deemed industrial workers: mill laborers, chemists, fuelmen, oilers, tractor and truck drivers, etc.[24]

IV. EXEMPTED EMPLOYMENT

1. *Areas of Exemption*

These are:

1. Public employment, which is governed by the Civil Service Law.

2. Non-profit organizations or entities engaged in educational, religious, medical, and charitable operations.

2. *Non-profit Institutions*

In the case of non-profit institutions, the status as non-profit and the required nature of the activity should combine, otherwise the exemption will not lie.

The exemption will lie for as long as the two requirements obtain. Upon loss of one or the other the exemption is lost.

Where a profit institution becomes non-profit will it enjoy the exemption, especially if its has a CBA? It should, since State policy is in conversion. But this should be allowed only upon the expiration of the current CBA.

---

[22] Rileco, Inc. v. Mindanao Congress of Labor-Ramie United Farm Workers Association, G.R. No. L-22243, November 29, 1968, 26 SCRA 224, 226-7 (1968).

[23] Victorias Milling Co. v. C.I.R., G.R. No. L-17281, March 30, 1963, 7 SCRA 543, 545 (1963); Del Rosario v. C.I.R., G.R. No. L-23133, July 13, 1967, 20 SCRA 650, 652 (1967).

[24] Del Rosario v. C.I.R., *ibid.*, at 653.

Suppose there is waiver of exempt status. Is the waiver final, or can the waived status be regained? Surrender of the privilege of exemption should be final, in view of the primacy of labor's rights.

Examples of institutions performing exempt functions are:

1) Charitable institutions: Boy Scouts of the Philippines
2) Schools: San Agustin University, University of Sto. Tomas, La Consolacion College
3) Hospitals: Manila Sanitarium and Hospital, U.S.T. Hospital
4) Civic clubs: Elks Club, the Manila Club
5) Others: U.S.T. Press, La Loma Cemetery

3. *Operations Covered by Exemption*

Operations covered by the exemption are strictly those mentioned in the Code or which are necessary or germane thereto:

1) educational: book shop, school supplies, cafeteria
2) medical: nursing school, pharmacy, cafeteria, pay wards

Questions may thus be raised concerning foundations, museums, art galleries, and cultural centers.

4. *Operations excluded from Exemption*

Where the entity or institution does not engage in the exempt operations (namely, religious, educational, medical, charitable), then such entity or institution would be subject to labor law, even if it is not for profit.

Service clubs, even if non-protit, have the status of commercial enterprises. The *Casino Español*[25] ruling should control, rather than the case of the *Manila Yacht Club*.[26] The reasons are obvious. Service clubs even if non-profit do not meet the additional qualifying requirement of the activity required: religious, educational, medical or charitable.

Even where the entity is (a) religious, educational, medical, or charitable and (b) not for profit, it is not exempt with respect to operations additional to and distinct from the exempt functions. Illustrative of such covered operations are:

1. Operation of a stevedoring and arrastre business by a labor organization, as in the case of Allied Free Workers Union.
2. Operation of a duck farm by a church.
3. Operation of a hacienda by a religious order.
4. Operation of outside pharmaceutical stores by a hospital.

---

[25] Casino Español de Manila v. Court of Industrial Relation, G.R. No. L-18159, December 17, 1966, 18 SCRA 1110 (1966).

[26] Manila Yacht Club, Inc. v. Workmen's Compensation Commission, G.R. No. L-19258, May 31, 1963, 8 SCRA 274 (1963).

5. *Non-profit Status*

In determining the character of an entity as profit or non-profit, the the test is the purpose of the organization or entity. If it is created and operated for the purpose of profit or gain, as shown by its articles or other evidence, then it is an entity for profit. The fact that when profits or earnings are realized, these inure to the benefits of private persons through distributions by way of dividends or otherwise, is conclusive of the purpose of the entity as for profit or gain.[27]

Where there is no distribution of earnings or profits by way of dividends or otherwise, the organization or entity is non-profit and this character is not affected by the fact that income is derived from the operations of the entity, such as from the sale of burial purposes,[28] or from outside printing jobs received by a press operated by a non-profit university,[29] from the operation of a bar and a restaurant by a social club, which cater only to club members and are only incidental to the promotion of social relations among them,[30] or the charging of medical and hospital fees by a sanitarium and hospital from those who can afford to pay them.[31]

6. *Labor Organization*

The term "employer" does not include: (1) any labor organization, otherwise than when acting as an employer, (2) or anyone acting in the capacity of officer or agent of such labor organization.[32]

Exceptionally, a labor organization may be deemed an "employer" when it is acting as such in relation to persons rendering services under hire, whether or not in connection with its activities for profit or gain. A labor organization is a "charitable" entity under Article 290 of the Code; and even as a labor organization, it has been considered covered.[33]

An organization may be ostensibly a labor union, but it may attain the status of an ordinary business concern in the pursuit of a particular line of business. Thus a labor organization which operates a stevedoring and arrastre business under contracts with various shipping firms, with an organizational structure, operational systems and facilities similar to

---

[27] Manila Sanitarium & Hospital v. Gabuco, G.R. No. L-14311, January 31, 1963, 7 SCRA 14, 20 (1963); Superintendent of La Loma Cemetery v. C.I.R., G.R. No. L-13365, July 31, 1963, 8 SCRA 464, 470-471 (1963).

[28] Superintendent of La Loma Catholic Cemetery v. C.I.R., *ibid*.

[29] U.S.T. Press v. National Labor Union, G.R. Nos. L-17207 & L-17372, October 30, 1962, 6 SCRA 317, 321 (1962).

[30] Manila Club Employees Union v. Manila Club, G.R. No. L-21501, August 30, 1967, 20 SCRA 1167, 1171 (1967).

[31] Manila Sanitarium & Hospital v. Gabuco, *supra*, note 27 at 19.

[32] Art. 211(c).

[33] Office Employees International Union v. NLRB, 353 U.S. 313, 77 S.Ct. 799, 1 L.Ed. 2d 846 (1957); Blassie v. Kroger Co., 345 F. 2d 58 (1965); NLRB v. Service Chain Restaurant, 302 F 2d. 167 (1962).

those of independent contractors engaged in the same line of business, is already a business entity, hence, an "employer" of laborers under its hire.[34]

The facts very succinctly show that it was AFWU, through its officers, which (1) selected and hired the laborers, (2) paid their wages, (3) exercised control and supervision over them, and (4) had the power to discipline and dismiss them. These are the very elements constituting an employer-employee relationship.[35]

V. Covered Employees

1. *Concept of Employee*

The term "employee:" (1) shall include any employee (2) and shall not be limited to the employee of any particular employer, unless the Code explicitly states otherwise (3) and shall include any individual (a) whose work has ceased as a consequence of, or in connection with, any current labor dispute (b) and who has not obtained any substantially equivalent and regular employment.[36]

2. *Types of Employees Covered*

The category of "any employee" is so broad as to justify employee status for supervisors, regular workers, casual employees, emergency laborers, substitute workers, seasonal workers, part-time workers, and other special work groups.

In terms of proximate relationship, the employees of an employer include (1) those who are actually in his hire and on his payroll (2) those who have been separated in violation of law (3) those whose actual employment or service is suspended (4) those not actually working due to a labor dispute (5) and those not actually in his employ but with whom he has legal relations by reason of their participation in a "labor dispute."

3. *Concept of Regular Employee*

Under the Labor Code:

> "(c) Any employee whose length of service is more than six (6) months whether employed for a definite period or not, and regardless of whether their service is continuous or broken shall be considered as a regular employee for the purpose of membership in any legitimate labor organization."[37]

4. *Seasonal Employees*

In certain types of enterprise, where the level of operations is subject to seasonal fluctuations, or is dependent on external factors, a certain

---

[34] Allied Free Workers Union v. Cia Maritima, G.R. Nos. L-22951-52 & 22971, January 31, 1967, 19 SCRA 258, 271 (1967).

[35] Allied Free Workers Union (PLUM) v. Cia Maritima, *ibid.*

[36] Art. 211(d). Feati University v. Bautista, *supra*, note 19 at 1215.

[37] Art. 267.

proportion of the labor force may be regularly laid off whenever there is curtailment or cessation of some or all operations, but are again re-hired or re-employed as soon as the needs of the enterprise warrant the hiring of their services. With respect to employees who have been regularly engaged for many seasons, they are deemed old, and not "new" employees for purposes of labor laws. Moreover, during the lay-off period, their employment is considered merely suspended but not terminated.[88]

VI. EXCLUDED EMPLOYEES

1. *Statutory Provisions*

> ART. 244. Ineligibility of security personnel to join any labor organization. — Security guards and other personnel employed for the protection and security of the person, properties and premises of the employer shall not be eligible for membership in any labor organization.
>
> ART. 245. Ineligibility of managerial employees to join any labor organization. — Managerial employees are not eligible to join, assist or form any labor organization.
>
> ART. 266. Government employees. — The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.

2. *Excluded Groups*

The Code excludes the following groups of employees from coverage: (1) government employees or workers, regardless of their functions or those of the agencies they work for, whether these be governmental or proprietary, or constituent or ministrant; (2) security personnel, including security guards; and (3) managerial employees.

3. *Governmental Personnel*

This refers to elective and appointive officials, employees and workers or laborers in the Civil Service. The rationale for their exclusion is that the terms and conditions of employment in the Government are determined by law, including the Civil Service Law, hence, the same may not be

---

[88] Visayan Stevedore Trans. Co. v. C.I.R., G.R. No. L-21696, February 25, 1967, 19 SCRA 426 (1967); Manila Hotel v. C.I.R., G.R. No. L-18873, September 30, 1963, 9 SCRA 184 (1963); and Industrial-Commercial Agricultural Workers' Organization (ICAWO) v. C.I.R., G.R. No. L-21465, March 31, 1966, 16 SCRA 562 (1966).

resolved through the methods applicable to labor disputes, such as collective bargaining, conciliation, and arbitration, both compulsory and voluntary.

It is settled that to the extent that the terms and conditions of employment are governed by statute or charter, they are not subject to modification by contract, hence, collective bargaining and collective action directed to such modification are not sanctioned by law.[39]

4. *Security Personnel*

It is settled in Philippine law that security guards and other security personnel are employees.[40] This follows federal law on the subject.[41]

The employees status notwithstanding, the Code prohibits them from being a member of any labor organization.[42] This is subject to challenge, in the light of the constitutional mandate that the State shall assure to workers certain basic rights, including the right to self-organization.[43]

Various considerations justify construction of the exclusion *strictissimi juris*. First, it is in derogation of fundamental constitutional liberties, namely the right of self-organization under Section 9, Article II and the freedom of association under Section 7, Article IV of the Constitution. Second, it is in derogation of the policies stated in the Code itself.[44] Third, it is in derogation of rights common to employeees.[45] Fourth, it is a statutory mandate both of the general law and of the Code itself that all doubts are to be resolved in favor of labor.[46]

Federal rulings must be taken only as guides, in light of the fundamental differences in the thrust of federal law and the Labor Code in this area. Federal law recognizes fully the status of guards as employees and protect their rights to self-organization and collective bargaining. The only restriction is that they must have their own exclusive labor organiza-

---

[39] *Cf.* Newmaker v. Regents, 325 P. 2d 556, 562 (1958), citing City of Los Angeles v. Los Angeles Bldg. & Const. Trades Council, 210 P. 2d 306, 312 (1949). See Angat River Irrigation System v. Angat River Workers' Union, 102 Phil. 789 (1957).

[40] Koppel (Phils.), Inc. v. Darlucio, G.R. No. L-14903, August 29, 1960, 109 Phil. 191 (1960); Paulino v. Rosendo, G.R. No. L-20484, November 28, 1964, 12 SCRA 523 (1964); Hawaiian Phil. Co. v. WCC, 97 Phil. 87 (1955); SSS v. Court of Appeals, G.R. No. L-28134, June 30, 1971, 39 SCRA 629 (1971); Associated Watchmen & Security Union v. U.S. Lines, 101 Phil. 896 (1957); Maligaya Ship Watchmen Agency v. Assoc. Watchmen & Security Union, 103 Phil. 920 (1958).

[41] NLRB v. Atkins & Co., 331 U.S. 398, 67 S.Ct. 1265, 91 L.Ed. 1563 (1947).

[42] Art. 244.

[43] Art. II, sec. 9.

[44] Arts. 3 & 243.

[45] Confederated Sons of Labor v. Anakan Lumber Co., 107 Phil. 915 (1960); NARIC Employees Union v. Alvendia, G.R. No. L-14439, March 25, 1960, 57 O.G. 6249, (Aug., 1966), 107 Phil. 404 (1960).

[46] CIVIL CODE, art. 1703; LABOR CODE, art. 4.

tions and their own bargaining units. They cannot be mixed with the ordinary rank-and-file employees.

5. *Managerial Employees*

Under Republic Act No. 875, (1953), there were twelve authorities, each of which may provide a basis for status of supervisor;[47] under the Code, there are ten such authorities. Removed were the powers to: "promote," "reward" and to "responsibly direct them and adjust their grievances." In the case of the first two, they are absorbed in the general clause on managerial authority to "execute management policies." Removal of the third implies that lower-level supervisors exercising the power to "responsibility direct" employees and "adjust their grievances" are outside the "managerial employee" exemption, hence, entitled to the rights of employees in general.

With the above qualifications, the jurisprudence on "supervisors" may be relevant, specially in the application of criteria common to both statutory definitions.

6. *CBA Coverage and Exclusions*

For the protection of its interests, management generally will tend to insist on the exclusion from the bargaining unit of certain categories of employees. Such insistence certainly applies to confidential employees, and to supervisory personnel, and probably to temporary, emergency and casual workers.

On the other hand, such employees will resist and oppose any such exclusion, as this would mean being deprived of union-negotiated benefits and protection under the grievance machinery.

The union, as bargaining representative, will find its interests enmeshed in these two conflicting positions, such that whichever side it takes, some of its interests are sacrificed. Thus, if it sides with management and accepts the exclusion of specific groups of its members, such as the supervisors or confidential employees, it suffers detriment in the following ways:

a. It may lose top-quality members and their support, plus their dues and or coverage of such dues through check-off.
b. It may face unfair labor practice charges from the members thus sacrificed, in the form of unlawful discrimination, and interference, coercion and restraint of their right to self-organization.

On the other hand, if the union takes the side of its members and rejects the proposal for exclusion, it will find negotiations unduly delayed, together with litigation that the company may institute to settle the issue of exclusions.

---

[47] Sec. 2(k).

VII. Union Membership and Collective Bargaining Agreements

1. *Right of Self-Organization*

Under the 1973 Constitution[48] as well as under the Labor Code[49] employees are guaranteed the fundamental right, among others, of self-organization. This is the right to form, join and assist labor organizations of their own choosing. As matter of abstract right, every person who is an employee or a potential employee (even if currently unemployed) is entitled to become a union member.

On the other hand, such abstract right is balanced by an equally fundamental right of labor unions to determine their own membership. Under the Labor Code, each labor organization enjoys the right to describe the qualifications for acquisition and retention of its membership.[50]

2. *Membership and Union Requirements*

These two complementary, but potentially conflicting, rights or prerogatives may be reconciled as follows:

1. Every employee not excluded by the Labor Code is entitled to join a labor organization with appropriate jurisdiction under the restructuring program:
   a. As a matter of absolute right, if the employee is a regular employee in the concept stated in Article 267.
   b. Subject to reasonable union regulations on membership, if he does not qualify as a regular employee.
2. Every labor organization has the following privileges in regard to membership:
   a. To restrict its membership purely to regular employees in the concept stated in Article 267, and exclude temporary, emergency, substitute and casual employees.
   b. To admit all legally qualified employees to its membership, but with special regulations for particular groups, such as supervisory personnel, confidential personnel, temporary, casual, emergency and substitute employees.

3. *Supervisory Personnel*

Personnel with supervisory functions but who do not qualify as managerial employees, have the status of rank-and-file employees, and have all the rights of ordinary employees, including the right to union membership.

---

[48] Art. II, sec. 9
[49] Art. 3.
[50] Art. 248.

A labor organization with supervisory personnel as members may, in connection with collective bargaining negotiations, be faced with a management demand for their exclusion from the bargaining unit, specially those whose functions render them, from the viewpoint of management, virtually managerial employees.

In such a situation, the union would be faced with three alternatives:

a. To insist on the inclusion in the bargaining unit, and on the treatment of supervisory personnel like other rank-and-file employees. Such an approach could delay negotiations, and create legal issues that may have to be litigated.

b. To agree to the exclusion of those considered by the company to have the status of managerial employees. Such exclusion agreed by the union, adversely affects the rights of the employees concerned, who may charge their own union and the employer with joint discrimination against them, in violation of their fundamental rights.

c. To have them covered by the bargaining unit, but subject to certain special safeguards that the company deems necessary to safeguard their supervisory functions. This approach reconciles the interests of the employees and the union, in their coverage for collective bargaining purposes, with the interest of the company in preventing misuse of supervisory privileges to the detriment of company interests.

4. *Confidential Employees*

Some companies use this term to include everybody whose work requires trust and confidence. This is not correct. For purposes of labor relations law, the term "confidential employee" refers only to an employee whose regular work involves him in the labor relations problems of the company. We may give as examples the staff of the personnel manager or the staff of a general manager who is involved in collective bargaining, such as the secretary, the office clerks, filing clerks, messengers and so on. These are rank and file employees, but because they have access to information on the decisions that the company makes on labor relations matters, they must be insulated from control by the union; otherwise all the plans of management on labor-management problems will be known in advance by the union. There is then a clear need to insulate these confidential employees from control by the union.