THE LABOR CODE AND RULES THROUGH A MAGNIFYING GLASS

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The Labor Code has been described by the President of the Philippines as a charter of human rights as well as a bill of obligations of every working man in the Philippines.[1]

The Secretary of Labor has called the Labor Code a "document of seminal importance."[2] He likewise expressed the hope that the Labor Code "will help energize a new climate of development based on justice — a climate in which both the enterpriser and the worker share pride of place, an honored place, and where the Government is seen in its true light as merely an expediter of social and economic progress."[3]

Undoubtedly the Labor Code is all these. It has been acclaimed by various sectors as a forward-looking document. But it has been fashioned, and is being implemented, by human minds and efforts. Hence, it should not come as a surprise to anyone if it should suffer from some flaws. Secretary Ople himself said that the Code is "designed to be a dynamic and growing body of laws which will reflect continually the lessons of practical application and experience.[4]

It is in this light therefore that this study was undertaken. It is not intended in any way to disparage, or detract from, the wisdom of the framers and the promulgators of the Code itself and its implementing rules and regulations. Rather, it is hoped that the study will lend to a better understanding of why some provisions exist and why some apparent contradictions are not what they seem. This study also addresses itself to the policy-makers for possible restudy, or even amendments, of certain provisions of the Code or the Rules.

The article will look at the codal provisions from three angles: from the points of view of some constitutional guarantees and fundamental principles of law, the Code itself, and the Rules and Regulations implementing the Code.

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[1] "Labor-Our Greatest Weapon", Labor Day Address to the Nation of the President Ferdinand E. Marcos, May 1, 1974.

[2] Preface, LABOR CODE OF THE PHILIPPINES, by Secretary of Labor Blas F. Ople, May 2, 1974.

[3] "Freedom of Initiative, dignity of Labor" speech delivered by Secretary of Labor Blas F. Ople before the Manila Rotary on May 2, 1974.

[4] Preface, LABOR CODE OF THE PHILIPPINES, *supra.*

THE CODE AND SOME FUNDAMENTAL GUARANTEES AND PRINCIPLES

Religious Freedom

Article 246 of the Labor Code provides:

> *"Non-abridgment of right to self-organization on religious grounds.* — Notwithstanding any provision of law to the contrary, the right to self-organization shall not be abridged on religious or any other similar grounds."

This provision supersedes Republic Act No. 3350 which amended Section 4(a) (4) of the Industrial Peace Act (Republic Act No. 875) and which exempted from a valid closed-shop agreement members of any religious sect which prohibits affiliation of its members in any labor organization.

Republic Act No. 3350 was enacted because:

> "It would be unthinkable indeed to refuse employing a person who, on account of his religious beliefs and convictions, cannot accept membership in a labor organization although he possesses all the qualifications for the job. This is tantamount to punishing such person for believing in a doctrine he has a right under the law to believe in. The law would not allow discrimination to flourish to the detriment of those whose religion discards membership in any labor organization. Likewise, the law would not commend the deprivation of their right to work and pursue a modest means of livelihood, without in any manner violating their religious faith and/or belief x x x." (Explanatory note of House Bill No. 5859 which later became Republic Act No. 3350).[5]

The constitutionality of Republic Act No. 3350 was questioned in the case of *Victoriano v. Elizalde Rope Workers' Union & Elizalde Rope Factory, Inc.*[6] on the ground that it infringed the constitutional freedom of association. The Supreme Court ruled that:

> "x x x the assailed Act, far from infringing the constitutional provision on freedom of association, upholds and reinforces it. It does not prohibit the members of said religious sects from affiliating with labor unions. It still leaves to said members the liberty and power to affiliate, or not to affiliate, with labor unions. x x x"

Then it went on to state:

> "x x x the purpose sought to be achieved by Rep. Act No. 3350 was to insure freedom of belief and religion, and to promote the

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[5] HOUSE CONG. REC., Part II, 3300, 3301 (April — May 18, 1961).
[6] G.R. No. L-25246, September 12, 1974, 59 SCRA 54 (1974).

> general welfare by preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural, statutory and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life of their dependents. x x x"
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> "x x x the free exercise or religious profession or belief is superior to contract right. In case of conflict, the latter must, therefore, yield to the former. The Supreme Court of the United States has also declared on several occasions that the rights in the First Amendment, which includes freedom of religion, enjoy a preferred position in the constitutional system. Religious freedom, although not unlimited, is a fundamental personal right and liberty, and has a preferred position in the hierarchy of values. Contractual rights, therefore, must yield to freedom of religion. It is only where unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid the danger."

The doctrine laid down in the *Victoriano* case was reiterated by the Court in the case of *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas (FOITAF)*.[7]

Religious freedom is guaranteed by Section 8, Article IV of the New Constitution which provides:

> "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without descrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

Section 9, Article II of the New Constitution likewise mandates the State to "ensure equal work opportunities regardless of sex, race or *creed.*" Article 3 of the Labor itself echoes this provision.

In view of the Supreme Court ruling that religious freedom has a preferred position in the hierarchy of values, Article 246 may find itself constitutionally vulnerable.

Freedom of Association and Right to Self Organization

The New Constitution guarantees that "the right to form associations or societies for purposes not contrary to law shall not be abridged."[8] It likewise mandates the State to "assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work"[9]

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[7] G.R. No. L-27113, November 19, 1974, 61 SCRA 93 (1974).
[8] Art. IV, sec. 7.
[9] Art. II, sec. 9.

Under the Labor Code there are two classes of employees who are deemed ineligible to join any labor organization: security guards and managerial employees.

Article 244 of the Code provides:

> *"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."

Article 245 of the Code states:

> *"Ineligibility of managerial employees to join any labor organization.* — Managerial employees are not eligible to join, assist, or form any labor organization."

Under the Industrial Peace Act, there was no prohibition against security guards forming labor organizations for the purpose of collective bargaining unit. Security guards fell under the general classification of employees and enjoyed the same rights as the latter.

The employment of security guards and other personnel employed for the protection and security of the person, properties, and premises of the employer is dual in nature. Knowledge of the two concepts is necessary: the first, in connection with the determination of his right to self-organization and the second, in connection with the determination of his employer's liability for ULP. In one concept he is an employee and in the other he is identified with the employer acting as he does in the interest of the latter when he performs that which is incumbent upon him on account of his employment. But no matter to what extent plant guards act in the interest of the employer, they are themselves employees both in the technical and common meaning of the term.[10]

In the United States, guards have the right to self-organize, subject to the limitations imposed by Section 9(b) (3) of the National Labor Relations Act, as amended. Said section provides:

> "No labor organization shall be certified as the representative of employees in any bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, other than guards."

With respect to managerial employees, the rationale for the prohibition for them to join, assist or form any labor organization is that their primary function is essentially to work for the interest of management and since in many cases their acts are but the translation or implementation of the

[10] Young, Spring & Wire Corporation v. NLRB, 163 F. 2d 905 (1947).

decision or policy of management, they are more often seen on the side of management than of labor.

Be that as it may, the managerial employee's employment is also of a dual nature. On the one hand, he is an employee and while not all his interests are necessarily adverse to management, they are different in nature. On the other hand, he is a representative of management as he deals with the rank and file. In the latter role, he is an ally of management.

The Industrial Peace Act allowed supervisors (which is encompassed in the term "managerial employees" which has a broader meaning) to form and join labor organizations as long as these are separate and distinct from the organizations of employees under their supervision.[11]

The deprivation of the right to self-organization may not be keenly felt by managerial employees as unionization and collective bargaining are not very necessary for their personal advancement or protection. Their value to management in terms of scarce and vital skills is their assurance of adequate rewards, fair treatment and job security.[12] However, the same may not be said for security personnel. They have economic interests to protect which are not far different from those of other rank and file employees. On the other hand, to allow them to form organizations of their own would contemplate an exclusive union of guards or a federation of guards. This would not be in harmony with the policy of the Code of restructuring the labor movement on an industry-wide basis.

The matter of prohibition from joining labor organizations is further complicated by the Rules & Regulations Implementing the Labor Code when in Section 1, Rule II, Book V thereof, it provides:

> "*Who may join unions; exception.* — 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 organizations for purposes of collective bargaining.
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> The following are exempted from the foregoing provisions:
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> a) security guards;
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> b) government employees, including employees of government-owned and/or controlled corporations;
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> c) managerial employees; and
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> d) employees of religious, charitable, medical and educational institutions not operating for profit, provided the latter do not have existing collective agreements or recognized union at the time of the effectivity of the Code or have voluntarily waived their exemption.

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[11] Rep. Act 875 (1953), sec. 3.

[12] Maryland Drydock Co. v. NLRB, 49 NLRB 733, 740 (1943).

Article 243 of the Code merely provides that "all religious, charitable, medical or educational institutions not operating for profit *are exempt from the coverage of this Book*" with some exceptions specified in the same article. Moreover, Article 266 only states that "the terms and conditions of employment of all government employees, including employees of government-owned and controlled corporation shall be governed by the Civil Service Law rules and regulations." The former Civil Service Law and Rules allowed government officers and employees to organize or join an association or union provided it shall not advocate activities and beliefs which are contrary to law, rules and regulations nor impose the obligation to strike or join strikes.[13] The new Civil Service Decree[13a] is now silent on the matter.

It is not clearly stated by the Code therefore that employees of non-profit religious, charitable, medical or educational institutions which do not fall under the exceptions mentioned in Article 243 and government employees are ineligible to join labor organizations as is the case for security personnel and managerial employees. We should therefore proceed with caution in lumping these types of employees together, especially when we consider the fact that an exemption can be waived whereas a prohibition cannot be waived.

It should be recalled that the original Labor Code (Presidential Decree No. 442) provided in Article 290 thereof that:

> "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."

This was subsequently amended by Presidential Decree No. 570-A to assume the phraseology that now exists in Article 243.

It has been argued by some quarters that the phrase "are exempt from the coverage of this Book" found in Article 243 can be construed to mean that employees of such non-profit institutions may form labor organizations but may not compel the management of said institutions to bargain collectively with them nor charge said management with unfair labor practice in case of refusal to do so.

Regarding government employees, particularly those in government-owned or controlled corporations, it has been suggested by some labor lawyers that they may still form associations or unions but they can no

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[13] Sec. 28, Rep. Act 2260 as amended; Sec. 6, Rule XII, Civil Service Rules.

[13a] Pres. Decree No. 807 (October 6, 1975). This has the effect of repealing the Civil Service Law (Rep. Act 2260 (1959) as amended by Rep. Act 6040 (1969) and Rep. Act 6446) and the Civil Service Rules.

longer negotiate over terms and conditions of employment as these are now determined by law.

An attempt has been made to show why some classes of employees are prohibited from joining or forming labor organizations. Whether these reasons will be considered valid when viewed against the constitutional rights of freedom of association and self-organization and collective bargaining will be for the Supreme Court to decide in appropriate cases.

Judicial Review

The original Labor Code expressly provided for appeal by certiorari from the decision of the NLRC to the Supreme Court on questions of law.[14] This was amended by Presidential Decree No. 643 which instituted a system of appeals whereby decisions of the NLRC are appealable to the Secretary of Labor and the latter's decisions are appealable to the President of the Philippines. This is in effect a return to the system of appeals provided for in Presidential Decree No. 21.[15]

Section 1, Rule 67 of the Rules of Court provides:

> *Petition for certiorari.* — When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board, or officer as the law requires, with costs.

Certiorari is a writ issued from a superior court to any inferior court, board or officer exercising judicial functions, whereby the record of a particular case is ordered to be sent up for purposes of review.[16]

An officer or a body may be said to be exercising judicial functions when such officer or body is clothed with authority and undertakes to determine what the law is and what the legal rights of the parties are with respect to a matter in controversy.[17]

The Supreme Court had occasion to apply this provision of the Rules of Court to a decision of the Secretary of Labor in the recent case of *San Miguel Corporation & Francisco Andres v. the Secretary of Labor, NLRC & Gregorio Yanglay, Jr.*[18]

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[14] Pres. Decree No. 442, Art. 302.

[15] Pres. Decree No. 21, sec. 5.

[16] 14 C.J.S., p. 121.

[17] State v. Dunn, 86 Minn. 301, 304, 90 N.W. 772 (1902); Southeastern Greyhound Lines v. Georgia Pub. Serv. Com'n., 9814, 181 G.A. 75, 181 S.E. 834 (1935).

[18] G.R. No. L-39195, May 16, 1975, 64 SCRA 56 (1975).

In this case, San Miguel Corporation brought a special civil action for *certiorari* seeking to annul a decision of the old NLRC which was affirmed by the Secretary of Labor. The respondent public officials did not raise the question of jurisdiction but their co-respondent, Gregorio Yanglay, Jr., did. He contended that the Supreme Court had no jurisdiction to review the decisions of the NLRC and the Secretary of Labor "under the principle of separation of powers" and that judicial review is not provided for in Presidential Decree No. 21.

The Supreme Court, through Justice Ramon C. Aquino, stated:

> "That contention is a flagrant error. It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute" (73 C.J.S. 506, note 56).
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> "The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions" (73 C.J.S. 507, Sec. 165). It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications.
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> "Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion (Timbancaya vs. Vicente, 62 O.G. 9442; Macatangay vs. Secretary of Public Works and Communications, 63 O.G. 11236; Ortua vs. Singson Encarnacion, 59 Phil. 440).
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> "The courts may declare an action or resolution of an administrative authority to be illegal (1) because it violates or fails to comply with some mandatory provisions of the law or (2) because it is corrupt, arbitrary or capricious" (Borromeo vs. City of Manila and Rodriguez Lanuza, 62 Phil. 512, 516; Villegas vs. Auditor General, L-21352, November 29, 1966, 18 SCRA 877, 891)."

The Supreme Court then went on to consider whether the old NLRC gravely abused its discretion and denied the employer due process of law. Thereafter, it decided to modify the resolution of the Secretary of Labor and the defunct NLRC.

While this case occurred while Presidential Decree No. 21 was still enforced, it is relevant to cite it even now because, as earlier stated, the procedure on appeal is the same under both the Labor Code and Presidential Decree No. 21 although the grounds for appeal may differ. In both laws, there was the absence of an express provision authorizing appeals to the Supreme Court on certiorari.

It should be noted though that the case in question concerned a decision on the Secretary of Labor which was still appealable to the President under Presidential Decree No. 21.[19] Even under the present law, the same

[19] Pres. Decree No. 21, sec. 5.

holds true. Presidential Decree No. 643[20] provides in part:

> "Decisions of the Secretary of Labor may be appealed to the President of the Philippines subject to such conditions or limitations as the President may direct."

Section 13, Rule XIII, Book V, Implementing Rules provide *inter alia:*

> "Any party aggrieved by the decision of the Secretary of Labor may appeal such decision to the President of the Philippines within ten (10) working days from receipt thereof, on any of the following grounds:
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> (a) if there is prima facie evidence of abuse of discretion;
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> (b) if made purely on questions of law;
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> (c) if there is a showing that the national security or social and economic stability is threatened."

The questions that could be raised are: Had the respondent resorted to the defense of non-exhaustion of administrative remedies, would the decision have been the same? Would the Supreme Court have taken cognizance of the case if it concerned a decision of the President and not of the Secretary of Labor? The answers to these questions are better left to the Supreme Court to answer in appropriate cases.

Presumption of Validity

The Supreme Court, through Justice Laurel, in the case of *Angara v. Electoral Commission*[21] stated that the "judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government." It adheres therefore to the well-settled principle that "all reasonable doubts should be resolved in favor of the constitutionality of a statute" for which reason it will not set aside a law as violative of the constitution "except in a clear case."[22]

The presumption is always in favor of constitutionality. To doubt is to sustain. So that if a statute be susceptible of two constructions one of which will maintain and the other destroy it the court will adopt the former [23]

On the other hand, judicial vigilance should not be lulled by reliance on the presumption of validity.[24]

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[20] This is now incorporated in Sec. 222, Labor Code.
[21] 63 Phil. 139 (1936).
[22] People v. Vera, 65 Phil. 56 (1937).
[23] Yu Cong Eng. v. Trinidad, 47 Phil. 385 (1925).
[24] FERNANDO, THE POWER OF JUDICIAL REVIEW, 111-112 (1967).

THE CODE AGAINST ITSELF

There appear to be certain inconsistencies between some provisions of the Labor Code itself. A further scrutiny, however, shows that they are capable of being reconciled or at least, clarified. Nevertheless, to avoid any confusion, it would be better if said provisions are expressed in clearer terms.

State Insurance Fund

What does the State Insurance Fund consist of? Does it refer to "all revenues collected by the System" under Title II, Book IV of the Code[25] or only to "all revenue as are needed to meet current operational expenses under (said) Title"?[26]

Article 178 of the Code provides:

> "Investment of funds. — All revenues as are not needed to meet current operational expenses under this Title shall be accumulated in a fund to be known as the State Insurance Fund, which shall be used exclusively for the payment of the benefits under this Title, and no amount thereof shall be used for any other purpose. All amounts accruing to the State Insurance Fund, which is hereby established in the SSS and GSIS, respectively, shall be deposited with any authorized depository banks approved by the Commission, or invested with due and prudent regard for the liquidity needs of the System."

It would appear therefore that the State Insurance Fund refers to the amount left after deducting operational expenses of the Commission, SSS and GSIS which shall not exceed twelve percent of the contributions and investment earnings collected.[27]

If this interpretation were followed, Article 176(g) which provides among the powers and duties of the Commission the power "to adopt annually a budget of expenditures of the Commission and the staff chargeable against *the State Insurance Fund*" tends to cause some confusion.

Another aspect that deserves clarification is the matter of the *use* of the State Insurance Fund. Article 178 provides that it "shall be used *exclusively* for the payment of benefits under this Title and no amount thereof shall be used for any other purpose." Yet in the same breath, it states: "All amounts accruing to the State Insurance Fund, which is hereby established in the SSS and GSIS respectively, shall be deposited with any authorized depository banks approved by the Commission, *or invested with due and prudent regard for the liquidity needs of the System.*"

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[25] LABOR CODE, art. 177
[26] Art. 178, *Ibid.*
[27] Art. 177, *Ibid.*

One can readily see the rationale for investing the State Insurance Fund. For such a big amount to lie idle is not conducive to good fiscal management. It can also be argued that investing the Fund does not actually constitute diverting it from its exclusive purpose of payment of benefits under Title II because it does not go out of the System permanently but can readily be retrieved. However, this latter argument will hold if the investment does not result in a loss.

Going back to Article 176(g), it cannot refer to the State Insurance Fund as it is defined in Article 178 but rather to the total revenues collected by the System under Article 177. Otherwise, Article 176(g) would have the effect of applying the State Insurance Fund to the expenditures of the Commission and would constitute diversion from the exclusive purpose of the fund, which is to pay the benefits under Title II. Moreover, expenses of the Commission already form part of the twelve per cent which is supposed to be deducted from the total contributions and investment earnings of the System. Hence, when we speak of State Insurance Fund under Article 178, it is the amount left after deducting the expenses of the ECC, GSIS and SSS.

All this confusion can be avoided by giving a name to the total revenues collected and to use the term State Insurance Fund only to the amount left after deduction of operational expenses. Also, investment of the Fund should be made an exception to the absolute prohibition to use the Fund for any purpose other than payment of benefits under Title II.

Exclusive Representative of Employees

Under Article 289 of Presidential Decree No. 442, a legitimate labor organization was given the right to act or be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining. This was subsequently amended by Presidential Decree No. 570-A and split into two separate rights, to wit:

> "(a) to act as the representative of its members for the purpose of collective bargaining;
>
> (b) to be certified as the exclusive representative of all employees in an appropriate collective bargaining unit for purposes of collective bargaining."[28]

This amendment constitutes a return to the phraseology of Section 24, Republic Act No. 875. It must be noted though that Section 24(a) had the additional phrase "pursuant to section three of this Act." Section 3, Republic Act No. 875 provides that "employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing

[28] These now appear as Art. 242(a) and (b) of the Labor Code.

for the purpose of collective bargaining *through representatives of their own choosing x x x*". The counterpart of this particular provision is Article 243 of the Code which extends the right to self-organization and to form, join, or assist labor organizations for purposes of collective bargaining to workers subject to certain exceptions found in the same article or elsewhere in the Code. Article 243 does not however carry the phrase "through representatives of their own choosing."

On the other hand, Section 24(b) of Republic Act No. 875 states: "To be certified as the exclusive representative of the employees in a collective bargaining unit, as provided in Section 12(a). Section 12(a) of Republic Act No. 875 provides as follows: "The labor organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment x x x". A similar provision is found in Article 255 of the Code except that this article dropped the phrase "in respect to rates of pay, wages, hours of employment or other conditions of employment".

It appears then that only the majority union can represent employees, whether they are its members or not, for purposes of collective bargaining. A minority union can act for its members but not for purposes of collective bargaining. A reconciliation of Articles 242(a) and 255 seems to be in order.

Prescription of Claims

There is an apparent inconsistency between Article 281, paragraph 2 of the Labor Code and Section 4, Rule II, Book VII of the Rules and Regulations Implementing the Labor Code, on one hand, and Article 283 of the Code, on the other.

Article 281 and the Rule cited above deal with money claims and workmen's compensation claims accruing prior to the effectivity of the Code while Article 283 speaks of all claims which accrued prior to the Code's effectivity. If Article 281 and the Rule will be followed, the prescriptive period for money claims shall be one year from the effectivity of the Code and the venue is the appropriate entity established under the Code (meaning the Labor Relations Division of the Regional Office nearest the place where the cause of action accrued pursuant to Section 1, Rule I, Book VII of the Implementing Rules) and they shall be processed or determined in accordance with the Implementing Rules and Regulations of the Code. For workmen's compensation claims, the prescriptive period is March 31, 1975, the venues of action are the appropriate regional offices of the Department of Labor and they shall be processed and adjudicated in accordance with the laws and rules at the time of their causes of action accrued.

Should Article 283 be applied, the following shall be the prescriptive periods, venues of actions and applicable laws in the cases indicated:

1. Violations of the Minimum Wage Law must be brought within three years after the cause of action accrued to the ordinary civil court (CFI, per Sec. 16 (a) Rep. Act No. 602) or to the Court of Industrial Relations in either of two cases: (1) when the dispute before the CIR involves as a sole issue or as one of the issues a dispute as to minimum wage above the applicable statutory minimum and the Secretary of Labor has not issued any wage order application to the enterprise or (2) where the demands of minimum wages involve an actual strike and the Secretary of Labor has failed to effect a settlement through conciliation within 15 days from submission to him. (Sec. 16(b) and (c), Rep. Act No. 602) The law applicable shall be Rep. Act No. 602 as amended by Rep. Act No. 4180.
2. Violations of the Eight-Hour Labor Law shall be filed within three years after the cause of action accrued. Neither Com. Act No. 444 nor Rep. Act No. 1993 and Rep. Act No. 2377 which amended it mention where the action may be filed. The law applicable shall be Com. Act No. 444 as amended by Rep. Act No. 1993 and Rep. Act No. 2377.
3. Violations of the Separation Pay Law shall be brought within five years from the time the right of action accrues (applying Art. 1149 of the Civil Code inasmuch as Rep. Act No. 1052 and Rep. Act No. 1787 which amended it did not provide any prescriptive period). All provisions cited do not specifically provide for the venue of such actions. The law applicable shall be Rep. Act No. 1052 as amended by Rep. Act No. 1787.
4. Workmen's compensation caims shall be filed not later than two months after the date of injury or sickness or, in case of death, not later than three months after the date of the injury or illness.[29] They shall be filed in the Workmen's Compensation Unit of the Regional Office where injury or illness was received or contracted, or where the claimants reside or where the respondents or any of the respondents reside or has his place of business, at the option of the claimant.[30] The applicable law is Act 3428 as amended by Act 3812, Com. Act No. 210, Rep. Act No. 772, Rep. Act No. 889 Rep. Act No. 3844, Rep. Act No. 4119, and Rep. Act No. 4596.

As may be seen from the foregoing discussions, the apparent inconsistency between Articles 281 and 283 relates to the prescriptive periods, venue of action and law to be applied in different cases.

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[29] The failure to file a claim within the statutory period is a non-jurisdictional defect and does not affect the jurisdiction of the Workmen's Compensation Commission. (Operators, Inc, v. Cacatian, G.R. No. L-26173, October 31, 1969, 30 SCRA 218 (1969); Pioneer Ceramics, Inc. v. Samia, G.R. No. L-28819, June 23, 1970. 33 SCRA 487 (1970).

[30] WORKMEN'S COMPENSATION COMMISSION RULES, Rule 6, sec. 2.

To resolve these seeming inconsistencies it can be argued that Article 281 speaks of money claims and workmen's compensation claims in particular while Article 283 speaks of all claims in general. It is a well-known rule of statutory construction that where a statute contains both a general enactment and also a specific or particular provision, the effort must be, in the first instance, to harmonize all the provisions of the statute by construing all the parts together. But, if after such construction, there is an irreconcilable conflict between the two, the specific or special provision shall control, and this is irrespective of their relative dates or relative position in the statute. This principle is expressed in the maxim *generalia specialibus non derogant* — a general provision does not annul a more specific provision.[31] The same rule is observed in the interpretation of private instruments, as is provided in Section 60, Rule 123 of the Rules of Court:

> **"Sec. 60. Interpretation according to intention: general and particular provisions. — In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a particular provisions are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."**

The rule is based upon the fact that the specific or particular provision more clearly evidences the legislative intention than the general or broader provision does.[32] And it is also in accord with our habits of speech and experience in the use of the language.[33]

The logical conclusion from this line of argument is that Article 283 is applicable to *all* claims accruing prior to the Code's effectivity, *except* money claims and workmen's compensation claims which are covered by Article 281.

THE CODE AND ITS IMPLEMENTING RULES

The Implementing Rules are supposed to explain, clarify or interpret the Codal provisions for better implementation of the same. However, when the rules grant more rights or power than what the Code provides or lessens such rights or power, then grey areas appear which could give rise to certain questions.

Permissive and Mandatory Language

There are certain provisions of the Code which are coached in permissive language but which are expressed in mandatory or directory terms in the Implementing Rules, and vice versa.

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[31] BLACK, HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS, 328 (1911).

[32] 1 CRAWFORD, STATUTORY CONSTRUCTION, sec. 230 (1940).

[33] GONZAGA, STATUTES AND THEIR CONSTRUCTION, 212-213 (1969).

An example of the former is Article 247(e) of the Code which provides that "employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent *may* be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement . . ." and Section 13, Rule XVI, Book V, of the Implementing Rules which state: "Pursuant to Article 247(e) of the Code, the employer *shall* check-off from the non-union members within a collective bargaining unit the same reasonable fee equivalent to the dues and other fees usually paid by union members. . ."

It may be argued that the assessment of non-union members is permissive in nature but once established, the obligation to check-off on the part of the employer is directory. This explanation, however, undermines the agency fee provision which is precisely given reinforcement by Article 247(e) which provides that "the individual authorizations required under Article 241, par. (o) of this Code shall not apply to non-members of the recognized collective bargaining agent."

An example of the latter is the prohibition against security personnel and managerial employees from becoming members of a labor organization. The Code provides in Articles 244 and 245 thereof that security personnel "*shall not* be eligible for membership in any labor organization" while "managerial employees *are not* eligible to join, assist or form any labor organization." Section 1, Rule II, Book V of the Implementing Rules, on the other hand, mentions who may join unions, then proceeds to state that "the following *are exempted* from the foregoing provisions: a) security guards, x x x c) managerial employees." *Exemption* carries a different connotation from *ineligibility.*

The following principles of statutory construction are useful in dealing with matters like these.

> The determination of the character of a statute as mandatory or directory is useful in analyzing and solving the problem of what effect should be given to its mandate. For under Article 5 of the Civil Code, "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."
>
> There is no absolute formal test for determining whether a statutory direction is to be considered mandatory or directory. As with any question of statutory construction the decisive factor is the meaning and intention of the legislature, to be ascertained from a consideration of the entire act, its nature, its object and the consequences that would follow from construing it one way or the other.[34]

[34] 3 SUTHERLAND, STATUTORY CONSTRUCTION, sec. 5803 (1943).

> Generally, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while those provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory. Where the provisions direct the doing of an act and substantial compliance therewith is enough to validate the proceedings, or if the doing enjoined by some other mode or form or at some other time will satisfy the requirements of justice and not impair any public or private rights, such provisions are permissive.[35]
>
> Mandatory terms will be construed as merely directory in order to carry out the legislative intention, effect justice, or save the validity of proceedings, or sustain the constitutionality of the statue, where no right or benefit depends on their being taken in imperative sense and where no public or private right is impaired. According to Black, "the occasions when it is proper for the courts to soften the imperative force of such words as "shall" and "must", and read them as merely directory are chiefly of three sorts: First, where a consideration of the entire statute and of its objects and purposes shows that the legislature cannot reasonably be supposed to have intended a strict and positive command; second, where the precept is addressed to the courts and purports to control and command them in respect to some matter which is properly the subject of judicial discretion; and, third, where action taken, rights acquired, or proceedings had under the statute must be adjudged void for want of compliance with its terms if these words are to be read in their strict sense but may be sustained if they are construed as directory only. In all of these cases, if no public or private advantage is lost, right destroyed, or benefit sacrificed by the interpretation of these words in a merely permissive or directory sense but, on the contrary, the cause of justice is promoted thereby, it is proper for the courts so to construe them.[36]
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> Finally, negative, prohibitionary and exclusive words or terms are indicative of the legislative intent that the statute is to be mandatory. And where an affirmative direction is followed by a negative or limiting provision, the negative or limiting clause renders the statute mandatory.[37]

Discrepancies in Periods or Amounts Prescribed

1. Article 241(c) of the Code provides that the members of a labor organization shall elect their officers by secret ballot at intervals of not more than three years. Hence, elections may be held yearly or once every two years, so long as the interval between elections is not more than three years. On the other hand, Section 5(d), Rule II, Book V of the Implementing Rules require unions to provide for a three (3) year term of office

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[35] BLACK, *supra*, note 31 at 534-540.
[36] *Ibid.*, pp. 543-544.
[37] Higgins v. Gray, 223 N.W. 711 (1929).

for the officers in their constitution and by laws and that "the election of union officers shall be held once every three (3) years." This would seem to imply that a one-year or two-year term for union officers may not be provided for in the union's constitution and by-laws and that election of union officers may not be held oftener than once every three years. This view is reinforced by Section 1 (cc), Rule I, Book V which defines "term of office" as the tenure of office of elected officials of a labor organization which is for a *fixed* period of three (3) years.

The rationale for having elections at least once every three years is to do away with the old practice of union officials getting themselves so entrenched in their positions that they virtually become "officers for life." On the other hand, the Rules may wish to avoid too much "politicking" which is usually disruptive of unity and which would result if elections are held too often.

2. Article 31 of the Code provides that any private fee-charging employment agency shall post a cash bond in the amount of ₱10,000 and a surety bond in the amount of ₱50,000 if engaged in the recruitment for overseas employment. Section 10, Rule VI, Book I, of the Implementing Rules prescribe a cash bond in the amount of *at least* ₱10,000 and a surety bond of *at least* ₱50,000 before a license to recruit for overseas employment is released by the Bureau of Employment Services.

The codal provision indicates a fixed or flat rate, the Rules provide a minimum rate. It should be noted that the Rules do not provide criteria or standards for fixing rates higher than the minimum prescribed, leading one to believe that the use of phrase "at least" before the amounts was unintentional.

Cases of Omissions

1. Article 82 of the Code enumerates the classes of persons who are not covered by Chapter I, Title I, Book III thereof. Among these listed are "members of the family of the employer who are dependent on him for support." Section 2, Rule I, Book III of the Implementing Rules likewise enumerates those who are exempted from coverage of Rule I on Hours of Work which listing is a mere reiteration, with some clarification, of what is found in Article 82 except "members of the family of the employer who are dependent on him for support."

2. Article 34 of the Code lists the practices considered unlawful for recruiters of workers to engaged in. Section 19, Rule VI, Book I of the Implementing Rules enumerates said prohibited practices. However, it omitted letters (d) and (e) of Article 34 in its list.

Section 34 provides:

> "It shall be unlawful for any individual, entity, licensee or holder of authority:

x x x

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency.

x x x

Inconsistencies

1. Article 18 of the Code authorizes the Overseas Employment Development Board to impose and collect fees from *workers* and employers concerned or both. This is reiterated in Article 23 of the Code which likewise empowers the National Seamen Board to do the same. Section 6, Rule IV, Book I of the Implementing Rules provides that *no fee* shall be charged from the *worker* for services in connection with his recruitment and placement. And in Section 17, Rule V, Book I, it is stated that *no fees* shall be charged from the *seamen* for services in connection with their recruitment and placement.

2. Article 62 of the Code provides that an apprenticeship agreement with a minor shall be signed in his behalf by his parent or *guardian* and the same shall be binding up to the stipulated termination of the contract. Section 22, Rule VI, Book II of the Implementing Rules states that an apprenticeship agreement with a minor shall be signed by his natural parent or if the latter is not available by *an authorized representative of the Department of Labor*. Since the codal provision did not qualify the word "parent", presumably an adopted parent may sign an apprenticeship agreement for a minor. Under the Rules, only a natural parent can do so. Moreover, the code speaks of a guardian in lieu of a parent. The Rules would be content with an authorized representative of the Department of Labor who is not necessarily the guardian of the minor.

3. Article 255 of the Code provides that the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. Section 9, Rule III, Book V of the Implementing Rules states that the industry union duly registered by the Bureau in every industry group or sub-group shall be deemed as the sole and exclusive collective bargaining agent of all workers in the organized establishments in such industry group or sub-group therein. The Codal provisions make the local union the exclusive representative of the employees while the Rules would designate the industry union encompassing the local union as the sole representative of the workers in that particular establishment.

It may be argued that the Rules will take effect only when restructuring of the labor movement has taken place. In the meantime, the codal provisions will be followed. The flaw in this argument, however, is that the codal provisions are not limited to any period of time or that they will be applicable only to the pre-restructuring stage.

Expansions or Restrictions of Codal Provisions

There are a number of codal provisions which were either expanded or restricted by the Rules.

1. Article 34 of the Code enumerates the practices which recruiters of workers are prohibited from engaging. Section 20, Rule VI, Book I reiterates this listing except for letters (d) and (e) of Article 34. However, it adds a new item in the enumeration which is not found in Section 34 of the Code and that is to "compel or coerce applicants or recruits to avail themselves of particular airline, mode or manner of travel."

2. Article 39 of the Code punishes *persons who are licensees or holders of authority* under the provisions of Title I, Book I of the Code who are found violating or causing another to violate any provision of said Title or of the rules and regulations issued thereunder. Section 4, Rule IX, Book I of the Implementing Rules provide that "any violation of this Rule shall be punishable under Article 39 of the Code. *Employers who hire workers through such unlicensed recruiters* referred to in Section 2 hereof shall be equally liable under Article 39." Moreover, Section 10, Rule X, Book I states that "violation of this Rule is subject to Articles 38 and 39 of this Code" Rule X is on Foreign Exchange Remittance and it applies to any worker or employee defined in Article 13(d) and seamen defined in Article 13(h) of the Code and to licensed or authorized recruiters and/or their foreign principals or employers.

The drafters of the Rules may have looked upon Article 37(a) of the Code for support when it formulated the Rules in question. Said Article vests in the Secretary of Labor the power to restrict and regulate the recruitment activities of all agencies within the coverage of Title I, Book I and the authority to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions thereof.

3. Article 52 of the Code provides for additional deduction from taxable income of one-half of the value of labor training expenses incurred by any person or enterprise upgrading the productivity and efficiency of unskilled labor or for management development programs provided such training program is approved by the National Manpower and Youth Council and the deduction shall not exceed 10% of direct labor wage. Section 12, Rule III, Book II of the Implementing Rules adds this proviso: "Training pro-

grams undertaken by training institutions and/or associations *operating for profit* shall not qualify under this incentive scheme."

4. Article 58(d) of the Code defines an "apprenticeship agreement as an employment contract wherein the employer binds himself to train the apprentice and the apprentice in turn accepts the terms of training. Section 2(c), Rule VI, Book II of the Implementing Rules requires that the apprenticeship agreement be *written.*

5. Article 59(a) of the Code provides that for a person to qualify as an apprentice, he must be at least fourteen years of age. Section 11, Rule VI, Book II provides that those who are at least fourteen years of age but less than eighteen may be eligible for apprenticeship only in non-hazardous occupations. The Rule was perhaps incorporating by inference Article 138 of the Code which provides that any person between fourteen and eighteen years of age may be employed in any non-hazardous undertaking for such number of hours and during certain periods of the day as determined by the Secretary of Labor in appropriate regulations. If employment of persons within that age bracket in non-hazardous undertaking is regulated, with more reason should employment in hazardous occupations be subject to restrictions.

6. Article 82 of the Code excludes *field personnel* from the coverage of Chapter I, Title I, Book III thereof. Section 2(f), Rule I, Book III of the Implementing Rules qualifies this category with the phrase *"non- agricultural"* which has the effect of putting agricultural field personnel within the scope of the provisions on Hours of Work.

7. Article 97 of the Code exempts from the coverage of Title II, Book III of the Code tenancy or leasehold, domestic service and persons working in their respective homes in needlework or in any cottage industry duly registered in accordance with law. Section 3, Rule III, Book III of the Implementing Rules enumerates the same exemptions with the addition of "workers in any duly registered cooperative when so recommended by the Bureau of Cooperative Development and upon approval of the Secretary of Labor. . ."

8. Article 132(c) of the Code states that "the maternity leave provided in this Article shall be paid by the employer only for the first four *deliveries* by a woman employee *after the effectivity of this Code.* Section 10, Rule VII, Book III of the Implementing Rules provides that "the maternity benefits provided herein shall be paid by an employer only for the first four *deliveries, miscarriages, and/or complete abortions* of the employee *from 13 March 1973,* regardless of the number of employers and deliveries, complete abortions or miscarriages the woman employee had before said date."

March 13, 1973 is the date of effectivity of Presidential Decree No. 148 which amended Republic Act No. 679, commonly known as the Woman

and Child Labor Law. Section 5 of said Decree which amended Section 8 of Republic Act No. 679 reads as follows:

> "(c) The maternity leave provided in the preceding paragraph shall be paid by the employer only for the first four deliveries by a woman employee after the effectivity of this Decree."

9. Article 254 prohibits any court or other entity to issue temporary injunctions or restraining orders in any case involving or growing out of labor disputes. Article 217(e) gave the *NLRC* the power and authority to enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic stability. This article then provides an exemption from the total ban on injunctions found in Article 254, although it may be viewed as merely an ancillary power of the NLRC as it can exercise this authority only in cases pending before it.

Section 4, Rule XVI, Book V of the Implementing Rules gave the *Office of the President, the Secretary of Labor, the Labor Arbiter and Medarbiter* the same authority which was granted to the NLRC by the Code.

Section 8, Rule XI, Rules of the NLRC provides:

> "Should the Regional office of the Department of Labor, or the Bureau of Labor Relations in proper cases, in addition to the duty of certifying any case or dispute before it to the Labor Arbiter, find it necessary to recommend the immediate issuance of a *writ of injunction, preliminary or otherwise*, such certification and recommendation should be filed directly with the Commission through its Executive Director.
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> Upon receipt of such certification, the Commission, sitting en banc, shall immediately determine whether there is an urgent necessity for the issuance of a preliminary writ of injunction pending hearing of the case on its merits, and shall act accordingly.
>
> The determination or resolution made by the Commission on this matter *shall not be limited only to the injunctive aspect but may likewise extend to the merits of the case* certified by the Regional Office of the Department of Labor or by the Bureau of Labor Relations." (Italics supplied)

10. Article 269 of the Code provides that in cases of employment without a definite period, the employer shall not terminate the services of an employee except for a just cause *or when authorized by this Title*" referring to Title I, Book VI. Section 2, Rule I, Book VI of the Implementing Rules substitutes "or when authorized by this Title" with "*or when authorized by existing* laws," which has a broader coverage.

11. Article 278 of the Code provides that "except as otherwise provided in this Code, any violation of the provisions of this Code declared to be unlawful or penal in nature or of the rules and regulations issued thereunder *shall be punished with a fine of not less than ₱1,000 nor more than ₱10,000 and/or imprisonment* for the duration of the violation or non-compliance or until such time that rectification of the violation has been made, at the direction of the appropriate authority." Section 15, Rule XII, Book I of the Implementing Rules provides that "any non-resident alien who shall take up employment in violation of the provisions of this Rule any employer who knowingly employs such alien shall be punished in accordance with the provisions of Articles 278 and 279 of this Code. In addition, the alien worker shall be subject to *deportation* after service of his sentence.

The addition of the penalty of deportation may be based on Section 46, Commonwealth Act No. 613 which provides for the deportation of any alien who obtains entry into the Philippines by wilful, false or misleading representation or wilful concealment of a material fact, in addition to fine and imprisonment. But then, it must be proven that there was premeditation on the part of the alien to take up an employment in violation of the Code and Rules and that he entered the Philippines under false pretenses.

12. Article 281 provides that workmen's compensation claims accruing prior to the effectivity of this Code shall be filed not later than March 31, 1975, otherwise they shall be forever barred. Section 3, Rule II, Book VI of the Implementing Rules provide that "subject to the exceptions provided under the Code, all claims for workmen's compensations shall be filed within one year from the occurrence of injury or death; otherwise, they shall be forever barred."

Rule-Making Power of Department Heads and Other Officials

The General authority for rule-making by Department heads is contained in Section 79(B) of the Revised Administrative Code which provides:

> "The Department Head shall have power to promulgate, whenever he may see fit to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said department, but none of said rules or orders shall prescribe penalties for the violation thereof, except as otherwise expressly authorized by law. All rules, regulations, orders, or instructions of a general and permanent character promulgated in conformity with this section shall be numbered by each Deparment consecutively each year, and shall be duly published.
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> x x x

The Labor Code, in Article 5 thereof, expressly grants the authority to promulgate the necessary implementing rules and regulations to the Secretary of Labor and other government agencies charged with the administration and enforcement of the Code or any of its parts. Thus, the Department of Agrarian Reform shall promulgate the necessary rules and regulations to implement the provisions of Chapter II (Emancipation of Tenants) of the Preliminary Title,[38] the Overseas Employment Development Board and the National Seamen Board on the provisions relative to their respective functions under Book I (Pre-Employment),[39] the National Manpower and Youth Council on the provisions of Title I (National Manpower Development Program), Book II,[40] and the National Labor Relations Commission on the provisions of Book V (Labor Relations) and other pertinent portions of the Code.[41]

There are two general classes of administrative ordinances and regulations which executive or administrative officers may promulgate for the proper and efficient enforcement of the law which they are supposed to execute. They are:

1. Those administrative orders and regulations consisting of commands from a superior to his subordinates.

2. Those which are issued by the superiors not only to the subordinate officials, but likewise to private individuals, for the faithful compliance of the statute.[42]

The rules and regulations which are issued by the Department heads or other officials vested with the power to promulgate rules and regulations pursuant to prescribed standards are sometimes called legislative interpretative rules and have the force and effect of law when they are within the limits of such prescribed standards.[43]

To have a binding effect, therefore, the authority of the administrative officer to make such rules and regulations must be based upon some legislative act. Those which are not within the scope of the act are null and void.[44]

A case in point is *Young v. Rafferty*.[45] The Commissioner of Internal Revenue required merchants and manufacturers to keep records of their daily sales either in English or Spanish. Section 6(j) of Act No. 2339 authorizes revenue officers to specify the manner in which the proper books,

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[38] LABOR CODE, art. 11.
[39] Arts. 19 and 24, *Ibid.*
[40] Art. 56, *Ibid.*
[41] Art. 217(a), *Ibid.*
[42] 1 MARTIN, THE REVISED ADMINISTRATIVE CODE, WITH ANNOTATIONS, 379 (1961).
[43] 1 GONZAGA, *supra*, note 33 at 190.
[44] 1 MARTIN, *supra*, note 42 at 379.
[45] 33 Phil. 556 (1916).

etc. shall be kept. But it did not require that any particular language shall be used. The court ruled that the sales record may be recorded in Chinese.

The rules and regulations must always be in harmony with the provisions of the law authorizing them for the sole purpose of carrying into effect the general provisions of the law. The law itself cannot be extended by such regulations. If, however, the regulations relate solely to the carrying into effect the provision of the law, they are valid and have the force of law. A violation of such regulations constitute an offense and renders the offender liable for the punishment in accordance with the provisions of law.[46]

Regarding the matter of penalties, Section 79(b) of the Revised Administrative Code provides in part: "x x x none of said rules or orders shall prescribe penalties for the violation thereof, except as otherwise expressly authorized by law."

There are three requisites for the validity of the penalty for violations of administrative regulations:[47]

1. The law authorizing the officers to promulgate the regulations should itself authorize the imposition of a penalty for their violation.

2. The law should make an express and specific provision in the law as to the penalty. A mere general statement that violation of any of the rules shall be punishable is not enough. Neither can the imposition of the punishment, its extent and degree be left to the discretion of the officer.

3. The rules and regulations prescribing penalty for its violation must be published before becoming effective.[48]

It is a settled rule of law that administrative authorities may be empowered to enact rules and regulations having the force and effect of law, but any criminal or penal sanction for the violation of such rules and regulations must come from the legislature itself.[49] Prescribing of penalties is a legislative function,[50] and a Commission may not be empowered to impose penalties for violations of duties which it creates under a statute permitting it to make rules.[51] Accordingly, it has been held that the legislature cannot delegate to an administrative board the authority to fix the penalty for a violation of orders or regulations which the legislature au-

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[46] U.S. v. Tupasi Molina, 29 Phil. 119 (1914).

[47] 1 MARTIN, *supra*, note 42 at 381; 385.

[48] People v. Que Po Lay, G.R. No. L-6791, March 29, 1954, 50 O.G. 4850 Oct., 1954), 94 Phil. 640 (1954).

[49] 42 AM. JUR. *Public Administrdtive Law*, sec. 50 (1942).

[50] State v. Atlantic Coast Line R. Co., 56 Fla., 47 So. 969, 32 L.R.A. (N.S.) 639 (1908).

[51] Board of Harbor Commissioners v. Excelsior Redwood Co., 88 Cal. 491, 26 P. 375 (1891); *Ex Parte* Leslie, 87 Tex. Crim. Rep. 476, 223 S.W. 227 (1920).

thorized the Board to make. The penalty must be fixed by the Legislature itself.[52] If the power to provide penalties for violation of rules and regulations may not be validly delegated to an administrative body, much less can such body by itself initiate penal sanctions.[53]

Insofar as some disparity exists between the Code and the Rules, the foregoing principles will be very useful.

CONCLUSION

This study does not pretend to encompass all possible flaws in the Code and the Rules. However, the ones cited are quite representative. As labor and management interrelate daily and make the provisions come to life, some other grey areas may be brought to light. The Department of Labor itself may, in its tasks of implementing the Code, find that some provisions are not as it envisioned them to be and hence initiate amendment to the same to "reflect the lessons of practical application and experience", as Secretary of Labor Blas F. Ople put it. Already, a working group in the Department is looking more closely at the provisions of the Code and the Rules. This speaks well of the responsiveness of the Labor Department's officials to change.

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[52] Howard v. State, 154 Ark. 430, 242 S.W. 818 (1922); State v. Atlantic Coast Line R. Co., *supra*, note 50.

[53] U.S. v. Grimaud, 220 U.S. 506,31 S.Ct. 480, 55 L.Ed. 563 (1911); *Re* Kollock, U.S. 526, 17 S.Ct. 444, 41 L.Ed. 813 (1897); U.S. v. Baton, 144 U.S. 677, 12 S.Ct. 374, 42 L.Ed. 767 (1898); Standard Oil Co. v. Limestone County, 220 Ala. 231, 124 So. 523 (1929).