DISTRIBUTION OF ADJUDICATORY POWERS UNDER THE LABOR CODE: A STUDY IN CONFUSION AND CONFLICT

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No other piece of legislation in recent memory has provoked more confusion and controversy than Presidential Decree No. 442, better known as the Labor Code of the Philippines. Not quite one year old, the Labor Code is being endlessly discussed, debated, debased and defended by those whose lives are touched by any one of its 292 articles, dispersed among seven books, in a crib-to-casket type of coverage. All responsible sectors of society, however, are agreed that the Labor Code had gestated in the womb of time far too long, and now that it is a living document of "seminal importance", to use the picturesque phrase of Secretary of Labor Blas Ople, the Labor Code must still learn to cope with the man-size job of adjusting, accommodating, and adapting to the diverse interests and conflicting claims which characterize labor-management relationships. But like any newborn offspring, the Labor Code still experiences difficulty in coordinating the movements of its limbs, and nowhere is this truer than in the distribution of adjudicatory powers.

In the course of the Labor Code's enforcement and implementation, a number of jurisdictional problems — not readily perceivable on the basis of the law's cold text — have surfaced to confound the labor law practitioner. The subsequent promulgation of the Rules and Regulations to Implement the Labor Code and the Rules of the National Labor Relations Commission has compounded the confusion, either because they have managed to enlarge the scope of the Labor Code, create overlaps in jurisdiction, or instigate conflicts in the exercise of adjudicatory powers by the different agencies involved. For example, provisions in the book on pre-employment which deal with the recruitment of workers fall within the concurrent jurisdiction of the regular courts and the military tribunals.[1] Note that the various violations stated in Book I, Title I of the Labor Code are cognizable by the military courts and the regular courts, with the court first assuming jurisdiction excluding the other. This throws wide open the door to forum shopping which, to say the least, is not exactly con-

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[1] LABOR CODE, art. 38(a).

ducive to industrial peace or labor justice. Also, there are matters which pertain to employer-employee relationship, such as money claims and unfair labor practices affecting seamen employed for international shipping, which are under the exclusive jurisdiction of the National Seamen Board whose decisions in such cases, moreover, are final and unappealable.[2] This could result in a compartmentalization of procedures and remedies insofar as they affect a specific class of citizens, *i.e.*, seamen and their employers.

The situation becomes more serious when jurisdictional areas either overlap or conflict. For instance, does the National Labor Relations Commission have the power to issue an injunction against the Bureau of Labor Relations on a case over which either entity can exercise jurisdiction, depending on which aspects of the case are referred to it? This is precisely the question which confronted the National Labor Relations Commission in the case of *Precision Electronics Corporation Workers Union-ALU v. Precision Electronics Corporation*.[3] The facts of this case are simple. The Bureau of Labor Relations orders a certification election to determine the rightful bargaining representative of the workers in the electronics firm. The petitioning union files for a writ of injunction to abort the certification ordered by the Bureau of Labor Relations, on the ground that one of the contending unions is a company union. The certification election is to be held shortly and, if the National Labor Relations Commission does not issue the injunction, the ULP case before it will be rendered moot and academic. What is the National Labor Relations Commission supposed to do in such a case considering that the matter of determining whether sufficient grounds exist for the calling of a certification election falls within the exclusive jurisdictional prerogatives of the Bureau of Labor Relations?

Pitfalls and Problems

The above is just one of the pitfalls and problems on jurisdiction concerning which the Labor Code does not offer too much help. Just as equally vexing are the following questions on the nature and scope of the adjudicatory powers of the labor arbiter, Bureau of Labor Relations, compulsory and voluntary arbitrators, the National Labor Relations Commission, the Secretary of Labor, the Supreme Court and the President:

1. What are the ways by which a labor arbiter can be deprived of jurisdiction by a regional director of the Department of Labor?

2. Is the Chairman of the National Labor Relations Commission no more than a figurehead, a fifth tire as it were, in the Commission?

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[2] LABOR CODE, art. 38(b).

[3] NLRC RO-4-3-1616-75, for a good discussion of this case, see Foz, *Procedural Issues at the National Labor Relations Commission*, 3 PHIL. L. GAZ. 53 (July, 1975). In this case, the NLRC skirted the problem and did not issue the injunction.

3. How can the National Labor Relations Commission assume original jurisdiction over a case which is otherwise cognizable in the first instance by the labor arbiter?

4. Is the listing of the National Labor Relations Commission's jurisdiction under Article 216 of the Labor Code exhaustive and complete?

5. May the parties on appeal to the National Labor Relations Commission divest it of its juridsiction?

6. Does a mere med-arbiter have more power than the entire National Labor Relations Commission in the matter of issuing injunctions?

7. What type of cases is effectively removed from the jurisdiction of the Department of Labor and the National Labor Relations Commission and, instead, lodged in the voluntary arbitrator?

8. Do voluntary arbitrators have more authority and jurisdiction than the National Labor Relations Commission, Bureau of Labor Relations, and labor arbiters put together?

9. May the aggrieved party in a case already decided by the Secretary of Labor ignore the President and elevate his appeal directly to the Supreme Court?

10. Is the President the "court of last resort" in labor cases?

Inasmuch as practically all of these questions are in relatively uncharted territory, it will do well for us to get our bearings straight by delineating the respective jurisdictional areas of the different adjudicatory entities involved in the adjustment of various conflicts which can and do arise under the Labor Code.[4]

Labor Arbiters

At present, there are 72 labor arbiters,[5] including executive labor arbiters,[6] on assignment in the Department of Labor's eleven regional offices around the country.

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[4] The writer is particularly grateful to the following labor lawyers and practitioners for generously sharing with him their thoughts and time in the development of this paper: Attys. Jose S. Armonio, Benildo G. Hernandez, Saklolo A. Leaño, Custodio O. Parlade, Ciriaco S. Cruz, Alberto Dalmacion, Jacinto de la Rosa, Jr., Pedro F. Perez, Cherry-Lynn S. Ricafrente, Francisco de los Reyes, and Jesus Sebastian.

[5] LABOR CODE, art. 213. The term "executive labor arbiter" is found in the NLRC RULES and not in the Labor Code.

[6] Prior to their official appointment by the President on May 30, 1975, there was a good deal of legal speculation concerning the validity of the decisions or awards of the 35 or so labor arbiters then since they did not have the authority of presidential appointments as required in the Labor Code.

Under Article 216 of the Labor Code, the labor arbiters have exclusive jurisdiction to hear and decide the following cases involving all workers, whether they are in the agricultural or non-agricultural sector:

> (a) unfair labor practice cases;
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> (b) unresolved issues in collective bargainng, including wages, hours of work, and other terms and conditions of employment which are usually settled through collective bargaining;
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> (c) all money claims of workers involving non-payment or underpayment of wages, overtime compensation, separation pay, maternity leave and other money claims arising from employer-employee relationships (except claims arising from workmen's compensation, social security and medicare benefits);
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> (d) violation of labor standards laws;
>
> (e) cases involving household services; and
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> (f) all other cases or matters arising from emloyer-employee relationships.

In addition, labor arbiters also have jurisdiction over violations of or non-compliance with any compromise settlement in a labor or industrial dispute, as well as of labor standards legislation, or when there is a *prima facie* evidence that such settlement has been vitiated by fraud, misrepresentation or coercion.

But before a labor arbiter can assert his jurisdictional prerogatives over any of the above cases, the same must first be certified to him by the regional director of the Department of Labor's regional office covering that particular area. It appears that without such certification, the labor arbiter cannot assume jurisdiction over any of those cases no matter that he is supposed to have exclusive jurisdiction to hear and decide them in the first instance. And in those cases certified to him, the labor arbiter cannot entertain any issue not discussed at the Regional Office.[7]

In effect, it is the regional director, or the med-arbiters or conciliators under his administrative control and supervision who must first assume jurisdiction but, ostensibly, only for the purpose of exhorting the parties to search for ways and means of settling the dispute amicably between or among themselves. In most cases, therefore, it is the med-arbiter or conciliator who first determines if there is a case certifiable to the labor arbiter. If settlement is reached at the conciliation stage, the matter is considered closed although the Implementing Rules do not say whether such settlement is with or without prejudice. It is logical to presume, however, that a settlement thus arrived at is *with* prejudice, and the regional office should no longer entertain the reopening of that case. Rule XII, Section 5 of Book V supports this view. It states that "the

[7] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule XIII, sec. 2.

regional office shall not entertain any issue which involves matters covered by compromise agreements except when the issues raised involve non-compliance, fraud and misrepresentation, or coercion in the execution of such compromise agreements." With greater reason does this prohibition apply if such compromise agreements were hammered out because of the good offices furnished by the regional office.

There is also another instance whereby the regional director can effectively deprive the labor arbiter of his jurisdiction over a case which is otherwise within the latter's competence to hear and decide. This involves a claim or complaint which the regional director decides does not state a cause of action, or that the cause of action has already prescribed, or that the complaint partakes of harassment of the other party, or that the complaint is already barred by prior judgment. In such a case, the labor arbiter loses his chance to evaluate the law or assess the facts as they bear on that particular problem since it no longer will be certified to him.[8] An appeal from the decision or order of the regional director merely goes up to the Bureau of Labor Relations which has administrative and functional supervision over the labor relations division in each regional office and over the regional director himself. The decision of the Bureau of Labor Relations on such matters is final and binding. It is no longer appealable even, it seems, to the Secretary of Labor. Note that during all the time that the issues in this particular complaint are being threshed out, the labor arbiter cannot *de motu proprio* intrude into the case and assert his jurisdiction. In practice, however, it does not work out this way. Virtually all cases being conciliated or med-arbitered end up with the labor arbiter regardless of whether or not the claim or complaint has any basis in fact or law so long as no agreement is reached at this stage by the parties.

Compulsory Arbitrators

Compulsory arbitrators have the same jurisdictional areas as labor arbiters, and all their orders, awards or decisions are likewise appealable to the National Labor Relations Commission.

As a general proposition, however, a compulsory arbitrator is called upon to resolve a case when the issues involved require the compulsory arbitrator's particular expertise or technical competence, or where the geographical location from which a complaint originates is beyond the convenient accessibility of the labor arbiter. In any of these cases, the services of a compulsory arbitrator may be availed of.[9]

Awards or decisions of the labor arbiter or compulsory arbitrator may be appealed to the Commission where one can show *prima facie* evidence

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[8] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule XII, sec. 7.

[9] NLRC RULES, Rule XV, sec. 1.

of abuse of discretion and also where the decision, award or order was secured through fraud or coercion, including graft and corruption. Appeals may also be brought on questions of law and when serious errors in findings of facts have been perpetrated. In the latter case, it must also be shown that if those serious errors were not corrected, they would result in irreparable damage or injury to the appellant.[10]

Super Arbiters

The voluntary arbitrator is very much different from the compulsory arbitrator. While the jurisdiction of the compulsory arbitrator covers the very same area over which the labor arbiter treads, the jurisdiction of voluntary arbitrators encompasses virtually all labor-management squabbles and disputes. In fact, one might even go so far as to say that the voluntary arbitrator has vastly more authority and jurisdiction than the National Labor Relations Commission, Bureau of Labor Relations, and labor arbiters put together. Not only can voluntary arbitrators assume jurisdiction over all cases referred to them by the parties even if such cases are originally cognizable by the labor arbiter, National Labor Relations Commission, or Bureau of Labor Relations, but they can also formulate and follow their own rules of procedure. Once a voluntary arbitrator properly assumes jurisdiction over a case, he effectively excludes any or all of these other adjudicatory bodies. Moreover, the voluntary arbitrator can be called upon to assume jurisdiction at any stage of the proceedings. Thus, even in respect of cases which are already being heard by the Bureau of Labor Relations, or by a labor arbiter, the parties concerned may lawfully divest these authorities of jurisdiction before the submission of the case for decision by merely opting to refer the entire problem to a voluntary arbitrator or panel of voluntary arbitrators.

What does not appear too clearly from the Labor Code or its Implementing Rules is whether or not a case *already* decided by a labor arbiter or compulsory arbitrator and which, therefore, is appealable to the National Labor Relations Commission may still be referred to voluntary arbitration. I believe that this can still be done even after the case has already been appealed to the National Labor Relations Commission by the losing party should the parties agree to refer the matter to voluntary arbitration before the case is submitted for decision by the National Labor Relations Commission. This belief is strengthened by the Rules of the National Labor Relations Commission itself, specifically, Section 9 of Rule I which provides:

> "*Duty to Conciliate and Mediate.* At any time before a decision or resolution by the Commission of any appeal, it shall be its duty,

[10] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule XIII, sec. 7.

> upon request of the parties, to continue exhausting all efforts towards conciliation or mediation for the purpose of settling the dispute on appeal to the satisfaction of the parties."

This is in keeping with the state policy of encouraging the parties to exhaust all means by which they can expeditiously settle their disputes among themselves. Note that a voluntary arbitrator's decision, as a rule, is final and binding while the National Labor Relations Commission's decision is subject to further appeal. But whether this is a practical measure or not is, of course, an altogether different question.

On the other hand, what cases fall under the original and exclusive jurisdiction of voluntary arbitrators?

These cases involve all disputes, grievances or matters arising from the implementation, administration or interpretation of collective bargaining agreements.[11] This type of cases is thereby removed from the jurisdiction of the Department of Labor and the National Labor Relations Commission. Thus, in a unionized company where there is an existing collective bargaining agreement, the first recourse for any interpretation or administration problem is to the voluntary arbitrator or panel of voluntary arbitrators named in the CBA, after the grievance procedure outlined in the CBA has run its full course.[12] This will always be the case under the system introduced by the Labor Code since it is a requirement that every CBA must include a provision on voluntary arbitration whereby an arbitrator or a panel of arbitrators is designated or appointed in the CBA itself and such person or persons must be readily identifiable with certainty and available to assume their functions under the voluntary arbitration clause.[13]

Bureau of Labor Relations

Unlike its predecessor under the Industrial Peace Act, the new and improved Bureau of Labor Relations has a more aggressive and dynamic role to perform under the Labor Code. The quasi-judicial nature of its functions is more pronounced and just as pervasive in the tasks envisioned for it by the Code's framers. It is, for instance, the sole agency in the government which has the final and absolute authority to adjudicate all disputes involving inter-union and intra-union matters. But its most important task, at least for the present, is the unification and restructuring of the labor movement on a one-union-one-industry basis.[14]

Many of the conflicts within the purview of the Bureau of Labor Relations' activities do not concern employers in a direct way, and employers — as a general rule — have nothing to do with the origination

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[11] LABOR CODE, art. 262.
[12] *Ibid.*
[13] *Ibid.*
[14] KHAN, LIM & SEBASTIAN, INTRODUCTION TO THE LABOR CODE, 102 (1975)

of these conflicts. Originally under the jurisdiction of the defunct Court of Industrial Relations, the following cases now fall within the exclusive domain of the Bureau of Labor Relations: (a) inter-union and intra-union conflicts; (b) representation or certification cases; (c) union registration cases; (d) cancellation of union registrations; and (e) violations of rights and conditions of union memberships.[15] The complaint or petition concerning any of these cases must be initially lodged with the labor relations division in the appropriate regional office of the Department of Labor. It is in this area of labor relations where med-arbiters have the authority to hear and *decide,* and not merely to conciliate. Decisions or orders of the med-arbiters may then be appealed to the Bureau of Labor Relations which, at present, is under the stewardship of Director Carmelo Noriel.

Apart from appeals in the above cases, the Bureau of Labor Relations exercises original jurisdiction in certification cases involving an industry group or sub-group, and disputes which may arise from the interpretation or implementation of the rules on the unification and restructuring of the labor movement.

The Bureau of Labor Relations' decisions or orders in any of these cases are final, conclusive and binding on the parties.

Seven Wise Men

The tripartite composition of the National Labor Relations Commission established under the Labor Code makes it unique among adjudicatory agencies. With the chairman and two members representing the public, the four remaining members are equally divided in representation of the workers and the employers.[16] The rationale is that decisions by the National Labor Relations Commission by virtue of its tripartite character, will make for a balanced blend of the interests of both labor and management to reconcile them with the greater national interest normally associated with industrial disputes and controversies.

The National Labor Relations Commission sits in two divisions consisting of one member from each sector, with the public representative as chairman of each division. The first division is at present composed of Commissioner Diego Atienza as chairman, Commissioner Geronimo Quadra as the representative of Labor, and Commissioner Cleto Villatuya as the representative of management. The second division is chaired by Commissioner Ricardo Castro, with Commissioners Cecilio Seno and Federico Borromeo representing the labor and management sectors, respectively.

The decision of a division in appropriate cases has the force and effect of a decision of the entire Commission. But this is permissible only

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[15] LABOR CODE, arts. 225, 234, 238 and 256.
[16] LABOR CODE, art. 212

in the exercise of its appellate jurisdiction over all cases decided by the labor arbiters, compulsory arbitrators, and voluntary arbitrators on the grounds and under the conditions set forth in Article 262 of the Labor Code.[17]

The following matters, for example, must be decided by the Commission *en banc* in the exercise of its *original* jurisdiction: (a) injunction proceedings, and (b) direct contempt committed against the Commission, any of its divisions, or any one of its members. Moreover, policies or regulations promulgated by the Commission must also have been arrived at *en banc*.

On the other hand, the following cases must also be heard and decided by the Commission *en banc* in the exercise of its *appellate* jurisdiction:

> (a) cases where the national security or social and economic stability of the country is threatened;
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> (b) cases on appeal from decisions, orders, or awards of the labor arbiters, compulsory or voluntary arbitrators concerning unresolved issues in collective bargaining which involve demanded or expected economic benefits of ₱5 million or more, or 40% of the paid-up capital of the employer, whichever is lesser;
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> (c) contempt cases on appeal;
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> (d) intricate questions of law on appeal, coupled with a money claim or claims arising from employer-employee relations amounting to not less than ₱1 million or 40% of the paid-up capital of the employer, whichever is lower;
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> (e) cases where the amount claimed by the petitioner or awarded by the labor arbiter or compulsory arbitrator is not at once susceptible of pecuniary estimation; and
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> (f) appealed cases assigned to one of the divisions of such complicated nature which, upon the vote of two of its members, are referred to the Commission *en banc* for appropriate action or resolution.

All other appealed cases not included above may be decided by either of the two divisions through raffle, assignment or as directed by the Chairman of the Commission who, at present, is former Court of Industrial Relations Presiding Judge Alberto Veloso.

A Fifth Tire?

It is interesting to point out that in the great majority of the cases appealed to the Commission, it is entirely possible that the Chairman will not be required to perform any adjudicatory role at all. In these cases, his only participation is limited to raffling off the cases to one or the other division. He is not legally called upon to sit in on the deliberations of either division. Note, for example, that the presence of two out of

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[17] NLRC RULES, Rule X.

the three members of a division constitutes a quorum in order to hear and decide any case or matter which is properly brought before the division. The vote or concurrence of these same two members has as much force and effect as a resolution or decision of the whole Commission itself. At any time when the concurrence of two members can be secured, the third being absent, the presence of the Chairman is not really necessary. In other words, if there are always two commissioners present in the division, the chairman's participation may be completely dispensed with. This observation is supported by the Rules of the National Labor Relations Commission in its provision that the Chairman can only sit in on the deliberations of a division if a majority of the division cannot be had. Put another way, this means that the only time the chairman can sit in and participate in the deliberations is when there is only one commissioner present and the chairman is therefore needed to complete a majority of the division. The Chairman, of course may instead assign another commissioner to sit in as the second member. Their concurrence would dispose of the case. It is not inconceivable that such concurrence cannot be obtained and the participation of a third member becomes indispensable to break the tie. In actual practice, however, whenever a member of a division is absent, the Chairman makes it a point to sit in and participate in the deliberations of the division in order to insure that the case is expeditiously decided and settled.

At this point, it should be noted that the recital of the National Labor Relations Commission's jurisdiction in Article 216 of the Labor Code is not complete. The first paragraph of Article 216 should be read in relation to Article 262. Thus, the National Labor Relations Commission also has exclusive appellate jurisdiction over cases decided by voluntary arbitrators whose awards or decision on money claims exceed ₱100,000 or 40% of the paid-up capital of the respondent employer, whichever is lower.[18] However, such appeals may be brought up only on the following grounds, namely: (a) abuse of discretion and (b) gross incompetence. But these are precisely the things of which voluntary arbitrators are least likely to be guilty. Right from the very outset, the parties themselves were free to choose or agree on who the voluntary arbitrator or panel of arbitrators should be. It is to be logically presumed that the person or persons the parties will agree on are persons who are least likely to be incompetent and, certainly, least likely to be abusive in the exercise of their discretion. Nevertheless, such persons, no matter how upright or learned, can make errors interpreting the law, or mistakes in assessing or appreciating the facts. These are grounds on which appeal

[18] As amended by Sec. 58, Pres. Decree No. 570-A (1974); See also NLRC RULES, Rule XVI, sec. 5, and sec. 5, Rule XI, Book V of the RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE.

may be taken from the decisions of the labor arbiter or compulsory arbitrator. They should likewise be considered as possible grounds for appeal from decisions of the voluntary arbitrator in proper cases.

It is important to bear in mind, however, that even in these appealable cases, the finality and unappealability of the voluntary arbitrator's award or decision may be agreed upon beforehand. Thus, if the parties agree that no appeal will be taken from the voluntary arbitrator's decision, the National Labor Relations Commission will then no longer entertain the appeal and the voluntary arbitrator's decision will be considered final and executory.[19]

It is also to be noted that in the matter of injunctions, the National Labor Relations Commission appears to have lesser authority in issuing them than a mere med-arbiter. The *entire* membership of the Commission must deliberate on the issuance of an injunction. Yet a med-arbiter or labor arbiter — all by himself — has the authority to issue an injunction in a case which properly comes before him.[20] This authority is found in the general provisions of the Rules and Regulations Implementing the Labor Code, but not in the Labor Code itself. In effect, the Rules have expanded the scope of the Labor Code.

How Labor Arbiter is By-passed

The Rules of the National Labor Relations Commission also provide for one significant instance whereby the Commission in effect assumes original and exclusive jurisdiction over a case which is otherwise initially cognizable by the labor arbiter. It may therefore happen that the labor arbiter's primary jurisdiction may be by-passed should the Bureau of Labor Relations or a regional office of the Department of Labor determine that adequate grounds exist for the issuance of a writ of injunction in a case which is under mediation or conciliation. In these circumstances, the Bureau of Labor Relations or the regional office acquires the authority to certify the said case directly to the Commission. Note that the determination or resolution made by the Commission may not necessarily be limited to the injunctive aspects of the case but may extend to a hearing on the merits.[21] This is one example where the labor arbiter, aside from his susceptibility to being deprived of jurisdiction by the regional director, may also be deprived of jurisdiction by the Commission itself. The question may be asked: If the regional director has the authority to promulgate injunctions, why does he have to certify a case directly to the Commission instead of issuing the injunction

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[19] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule XI, sec. 5.

[20] RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE, Book V, Rule XV, sec. 5.

[21] NLRC RULES, Rule XI, sec. 8.

himself? The answer is that the injunction which the regional director or the med-arbiter can properly issue refers only to those cases which are properly cognizable by him. The case mentioned here falls under the original jurisdiction of the labor arbiters.

Appeal to the Secretary of Labor

Decisions of the National Labor Relations Commission are appealable to the Secretary of Labor on any of the following grounds: (a) if there is *prima facie* evidence of abuse of discretion; (b) if made purely on questions of law; and (c) if there is a showing that the national security or social and economic stability of the country is threatened.[22] Essentially the same situation existed under Presidential Decree No. 21 which provided that the decision of the National Labor Relations Commission then was appealable to the Secretary of Labor and, from him, direct to the President.[23]

But when the Labor Code took effect on November 1, 1974, it originally provided that the decision of the National Labor Relations Commission would be final and unappealable, except that questions of law could be brought up by *certiorari* to the Supreme Court, or when the case involved the national interest, the National Labor Relations Commission's decision could be elevated to the President upon the recommendation of the Secretary of Labor, for final resolution.[24]

The reason for this change is that labor-management disputes are so impressed with the public interest that it becomes imperative that their settlement must be speedy and not subject to the laborious machinery of the judicial process.

It is to be noted that other than the quite limited grounds stated above, majority of the decisions of the National Labor Relations Commission prior to the amendment would have been final and unappealable since there never were that many cases which involved questions of law or the national interest. But under the present provision, it is not inconceivable for practically all of the National Labor Relations Commission's decisions to be appealed to the Secretary of Labor on the ground of abuse of discretion which is easy enough to allege. And as a result of the addition of this ground of abuse of discretion, virtually all cases decided by the National Labor Relations Commission wherein the sums involved are quite substantial are being appealed to the Secretary of Labor.

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[22] LABOR CODE, art. 222, as amended by Pres. Decree No. 643 which took effect on January 21, 1975.

[23] Sec. 5 of Pres. Decree No. 21 which took effect on October 14, 1972.

[24] Old Art. 302 of the Labor Code, prior to its amendment by Pres. Decree No. 626 which took effect on January 1, 1975.

Appeal to the President

The decision of the Secretary of Labor, in turn, may be appealed to the President, as was the case with the first National Labor Relations Commission under Presidential Decree No. 21, within 10 working days subject to such conditions or limitations as the President may direct.[25]

The Labor Code, the Rules of the National Labor Relations Commission, and the Implementing Rules at the time of its promulgation, were all silent with respect to what these conditions or limitations might be. This qualification had to be prescribed because the experience during the past two years of the old National Labor Relations Commission indicate that numerous cases that should otherwise have been disposed of at the level of the Commission and the Secretary of Labor were still appealed to the President for review, usually to gain bargaining leverage at the expense of the workingman. In his Letter of Instruction No. 245, the President directed the Secretary of Labor to devise a system for limiting appeals to the President.

Accordingly, the Secretary of Labor issued his Department Order No. 4 which amended Section 13, Rule XIII of Book V of the Implementing Rules, providing as follows:

> "Section 13. Appeals to the President of the Philippines. 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;
>
> (c) If there is a showing that the national security or social and economic stability is threatened.
>
> "The appeal must be filed with the Secretary of Labor within ten (10) working days from receipt of the decision, copy furnished the appellee, who shall in turn file his answer within ten (10) days from receipt of the appeal. The Secretary of Labor shall immediately elevate the entire records of the case to the President of the Philippines."

Note that these are exactly the same grounds for appealing decisions to the Secretary of Labor. It would seem, therefore, that the directives of Letter of Instructions 245 may not be effectively fulfilled in that all cases appealed to the Secretary of Labor are similarly appealable to the President. In other words, the Secretary of Labor has not provided a workable screening process, similar in effect to what the National Labor Relations Commission has provided for appealed cases which it must hear and decide *en banc*. By citing the very same grounds as basis for appeal

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[25] NLRC RULES, Rule XII, sec. 1, in relation to Art. 222 of the LABOR CODE.

[26] This took effect on February 3, 1975.

to the President, all cases which are elevated to the Secretary of Labor may likewise be elevated to the President, rendering nugatory the objectives of Letter of Instructions 245.

It is important to mention in this connection also that decisions of the National Labor Relations Commission and the Secretary of Labor are immediately executory, even pending appeal, unless stayed by an order of the Secretary of Labor for special reasons in the case of National Labor Relations Commission decisions; and by an order of the President in the case of decisions by the Secretary of Labor,[27] apparently for whatever reasons. What are the special reasons which will impel the Secretary of Labor to stay the execution of a National Labor Relations Commission decision? Although the guidelines have not yet been formalized to this end, knowledgeable sources at the Department of Labor consider the following grounds as "special reasons": (a) the decision or order sought to be appealed is against the provisions of the Labor Code or the Implementing Rules; (b) the order or decision is a departure from a previously enunciated principle by the Secretary of Labor; (c) blatant or grave abuse of discretion. It is interesting to point out in the light of (b) above that the doctrine of *stare decisis* seems to be applicable only in connection with decisions of the Secretary of Labor, and not in connection with decisions of the National Labor Relations Commission.

Now for the big question. Once the President has decided a case appealed to him from the Secretary of Labor, is the President's decision finally *final,* or is there further appeal — and to whom?

Court of Last Resort: Two Schools of Thought

There are two principal schools of thought on this rather delicate jurisdictional problem.

The first school takes the position that the decisions rendered by the President on cases appealed to him are not necessarily final and unappealable, and may be brought up to the Supreme Court by *certiorari* on questions of law, in keeping with its historic and traditional role in our legal and political system. The reasoning behind this view is that the Supreme Court may not be deprived of its inherent jurisdiction to interpret the law.

The second school of thought posits the view that the President's decision is final, binding, conclusive and unappealable. The authority cited for this opinion is taken from the Labor Code itself, specifically Article 222, since the provisions on appeal are silent on what happens after the decision of the Secretary of Labor is appealed to the President and the President proceeds to review the case and renders his decision. By in-

[27] NLRC RULES, Rule XIII, sec. 2, in relation to Art. 222, LABOR CODE.

ference, the school's proponents point out, the "buck stops there" and no further appeal may be taken by the aggrieved party.

It is, perhaps significant that Letter of Instructions 245, discussed elsewhere, begins with the following statement: "In accordance with the Labor Code of the Philippines, the decisions of the National Labor Relations Commission are appealable to the Secretary of Labor and in the *last* resort, to the President of the Philippines." (Underscoring ours). That certainly has the ring of absolute finality to it and makes clear the Presidential thoughts on the matter.

The reasoning of this school of thought is both circuitous and laborious. One must fall back to the new Constitution of the Philippines and General Order No. 3, promulgated by the President on September 22, 1972. It must be recalled that General Order No. 3 provides, among others, that the judiciary is not to take cognizance of cases involving the validity, legality, or constitutionality of Proclamation No. 1081, or of any decree, order, or acts issued, promulgated or performed by the President pursuant thereto. In the case of *Javellana v. Executive Secretary*,[28] the Supreme Court has upheld the constitutionality of the declaration of martial law and of the various processes which culminated in the ratification of the new Constitution. When the new Constitution was thus upheld, its transitory provisions were also upheld, one of which states that "all proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President shall be part of the law of the land and shall remain valid, legal, binding, and effective even after the lifting of martial law or the ratification of this Constitution unless modified, revoked or superseded by subsequent proclamations, orders, decrees, instructions or other acts of the incumbent President or unless expressly or explicitly modified or repealed by the regular National Assembly."[29] The term "incumbent President" is very significant here because any action or order of the incumbent President thereby becomes constitutional *per se*. Conversely, any judicial pronouncement which questions any order of the incumbent President is unconstitutional *per se*.

Thus, when the President promulgated Presidential Decree No. 643 which, in effect, divested the Supreme Court of its jurisdiction to pass upon questions of law involving decisions of the NLRC, the President's affirmation or reversal of the decision of the Secretary of Labor in this new situation is therefore inherently and intrinsically valid. Any court that calls this into question will be committing an unconstitutional act.

But what about a situation where an appeal from a decision of the Secretary of Labor is elevated — not to the President — but to the Su-

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[28] G.R. No. L-361635, March 21, 1973, 50 SCRA 30 (1973).
[29] CONST., art. XVIII, sec. 3(2).

preme Court on a petition for *certiorari* on the ground that the Secretary of Labor has abused his discretion and there is no other plain, adequate or speedy remedy? Will the Supreme Court assume jurisdiction? The Supreme Court answered this question in the affirmative in the very recent case of *San Miguel Corporation v. The Secretary of Labor.*[80] The case concerns the dismissal of Yanglay from the San Miguel Corporation as a result of his having been apprehended while trafficking in company medicines. Yanglay filed a complaint with the National Labor Relations Commission for illegal dismissal, contending that his discharge from the Company was really due to his union activities. The National Labor Relations Commission ordered his reinstatement with back wages from the time of his dismissal on July 19, 1972. San Miguel moved for a reconsideration of the decision, and that motion was treated as an appeal by the Secretary of Labor. The Secretary of Labor denied the appeal in his resolution of July 9, 1974 whereupon San Miguel instituted the *certiorari* proceeding in the Supreme Court.

It must be borne in mind that the antecedents of this case all arose under the regime of Presidential Decree No. 21. At that time, decisions of the Secretary of Labor could only be appealable to the President, a situation which is analogous to the present system of appeals. Yet the Supreme Court assumed jurisdiction over the case and modified the decision of the Secretary of Labor by ordering only reinstatement without backwages since there was no showing that San Miguel committed an unfair labor practice. But what is really significant is that while Yanglay questioned the jurisdiction of the Supreme Court, the respondent public officials did not. Not that it would have made any difference. The Supreme Court seized on that case to reiterate:

> "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.
>
> "The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions. It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications."

It is, of course, fortunate that Secretary of Labor Blas Ople himself adheres to this belief. He had assured the Judicial Code Committee of the Integrated Bar of the Philippines that "Our presumption is that under existing laws and practice, questions of law — especially those with consti-

[80] G.R. No. L-39195, May 19, 1975, 64 SCRA 56 (1975).

tutional aspects — may be elevated to the Supreme Court directly without the need for specifying explicit alternative channels of action."[31]

Of course, this case does not involve a decision rendered by the President himself. San Miguel, by its act of elevating the problem to the Supreme Court instead of to the President, possibly aborted a serious constitutional crisis. More significantly — and more usefully from the labor lawyer's viewpoint — the Supreme Court has shown us how we can "short circuit" the system of appeals and avoid pitting two supposedly co-equal bodies of government against one another on labor issues.

The manifold jurisdictional problems and pitfalls presented here are encountered by the labor lawyer daily in his practice. The confusion and conflict which characterize the distribution of adjudicatory powers under the Labor Code must be replaced with clarity and collaboration. Fortunately, our people in the government who are concerned with these problems are not bereft of those human qualities essential to a more effective allocation of labor and social justice.

[31] LABOR RELATIONS UNDER MARTIAL LAW: DIALOGUE WITH THE BENCH AND BAR ON THE DRAFT LABOR CODE, 27 (October, 1973).