UNION SECURITY CLAUSES IN THE COLLECTIVE BARGAINING AGREEMENTS AND THE AGENCY PROVISION OF THE LABOR CODE: SOME PROBLEMS OF INTERPRETATION AND IMPLEMENTATION*

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I. *Introduction*

For a better perspective of the subject matter under consideration, certain preliminary and relevant considerations need to be discussed. First, an elucidation of the general thrust of the Labor Code towards the policy goal of strong trade unionism and of the various provisions which make up the overall strategy for the attainment of this goal is necessary. Then, a review of the legal status of the various forms of union security arrangements, comparing the situation before and after the effectivity of the Code, shall be made. Finally, certain vexing questions regarding the interpretation and implementation of the Labor Code provisions pertinent to union security shall be raised.

II. *Strong Trade Unionism: A Basic Policy Goal of the Labor Code*

The establishment of strong trade unionism in the Philippines is one of the fundamental policy objectives of the Labor Code.

Paragraphs (b) and (c) of Article 210 specifically declare that it is the policy of the State "to promote free trade unionism as an agent of democracy, social justice and development;" and "to rationalize and restructure the labor movement in order to eradicate inter-union and intra-union conflicts."

The soundness of this policy is, of course, self-evident: if labor unions are to serve and protect the interests of the workers, then the unions themselves must be sufficiently strong and stable to be able to fulfill effectively their assigned role in the society. It is also incontrovertible that in a regime of collective bargaining, it is essential that the negotiations be con-

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ducted between parties of relatively equal strength. Collective bargaining would be nothing but sham if the union were so weak that it would easily succumb to the hectoring of management; the Collective Bargaining Agreements resulting from such an unequal contest will be assailed sooner or later as invalidly forged, to the detriment of stability in labor-management relations. Or even if the Collective Bargaining Agreements were validly negotiated, of what real use would it be in maintaining harmonious relations if the union which negotiated it should later on be toppled by a rival union from its position as the exclusive bargaining agent? If the relations of labor and management are to be settled across the bargaining table, it would be better for labor and management, in the long term, if the union dealing with management is stable and strong.

The adoption of this policy goal implicitly recognizes that trade unionism in our country is still far from being strong, and that, consequently, the Government must lend statutory and institutional support to the labor union movement in order that it may garner the needed strength and stability. Some justify this deliberate governmental support of trade unionism by pointing out that the local trade unionism is still in its fledgling stage — it is still a toddler, unsteady on its feet, still trying to get its bearings, as compared to trade unionism elsewhere, say, in the United States, where it is regarded as a veritable giant with fully-developed muscles. Others assert that local trade unionism lacks strength because it lacks unity, a factor which not only prevents the movement from gaining real vigor but actually dissipates whatever little energy it might already have through incessant internecine strife.

Without going into any deep analysis of the underlying causes for the present lack of strength of the labor union movement in the Philippines, I believe we can all agree with the observation that unions in this country have encountered a major difficulty in maintaining and increasing their membership. Like the unions in other industrialized countries, they have been met with formidable and persistent opposition from employers. On top of this employer resistance, it is probably correct to say that employees in this country are generally less easy to organize than their counterparts abroad, given our essentially feudalistic social structure and the psychological bent of the ordinary Filipino worker. Finally, as earlier adverted to, the labor movement in the Philippines has been marked from its inception and throughout its checkered history by rivalries between individual unions and union leaders, which have frequently taken the form of spirited — to use a mild term — contests to enlist new members at the expense of one another. The inter-union rivalry is sometimes carried on in ludicrous forms, such as the traditional walk-outs in the periodic tripartite conferences called by the Department of Labor, and sometimes in more violent manifestations. There are times, too, when the union is under-

mined by the apathy, indifference, lack of cooperation, and even overt disloyalty of its own members.

Indeed, the labor union may be likened to a beleaguered society, beset by hostility and attack in many different forms, from many different quarters within and without.

The Labor Code recognizes this plight of labor unions, and thus throws various safeguards around it for its protection. Among the features of the Labor Code which are designed to protect and strengthen the labor union are:

1. The provisions on unfair labor practices, which protect the union from hostile acts of management.[1] The modification in the concept of Unfair Labor Practice such that it is now treated no longer as a criminal, but merely an administrative offense[2] is further designed to make this protective device more effective, in that Unfair Labor Practice complaints can be processed more expeditiously and thus the Unfair Labor Practice complained of can be stopped faster and more readily.

2. The recognition by the law of the inherent right of unions to discipline and expel its own members,[3] which can be resorted to by the Union as a measure against the disloyalty and recalcitrance of its own members.

3. The recognition of the validity of union security agreements, such as the closed shop and union shop arrangements, and variants thereof,[4] which are effective safeguards against the apathy, indifference and fickleness of the rank-and-file employees whose interests the Union serves.

4. The recognition of the validity and enforcement of check-off arrangements,[5] to insulate the Union from financial insecurity due to irregularity in the payment of dues, or even refusal of its members to pay them.

5. The provision allowing the imposition of an agency fee,[6] which was hitherto disallowed by our courts, upon non-union members who accept the benefits gained by the Union through collective bargaining.

6. The adoption of the one-union, one-industry concept[7] as a measure of "rationalization" of the labor union movement, which is ultimately designed to eliminate inter-union and intra-union conflict. Ironically, this

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[1] LABOR CODE, art. 247.
[2] *Ibid.*, art. 249.
[3] *Ibid.*, art. 248(a).
[4] *Ibid.*, art. 247(c).
[5] *Ibid.*, art. 112(b).
[6] *Ibid.*, art. 247(e).
[7] *Ibid.*, arts. 237 & 238.

measure will inevitably result in the elimination of some individual unions, but, in the long run, it is expected ultimately to lead to greater strength, unity and stability for the unions which survive.

7. The specific provision on non-abridgment of the right to self-organization on religious grounds[8] which appears to be designed expressly to repeal Republic Act No. 3350, which exempts from the coverage of any closed shop or union shop agreement any worker who belongs to a church or religious sect which prohibits membership in a union, a legislative exclusion which had been roundly criticized by trade unionists in the past. It may be observed at this juncture that if such were the intention, the wording of this provision could have been made clearer. As it now stands, with the present phraseology of Article 246, and in the light of the recent decision of Supreme Court in *Victoriano v. Elizalde Rope Workers Union,*[9] serious doubts may be raised as to whether "conscientious objectors" can now be compelled to join a union against their religious convictions. But more on this later. Be that as it may, the provision of Article 246 may be included as another statutory device designed to strengthen the union.

Having catalogued the provisions which appear to constitute the statutory mechanism for the achievement of the policy goal of a strong union, this paper will now narrow down the discussion to Union security arrangements, with emphasis on the agency fee provision.

III. *Status of the Closed Shop, Union Shop, Agency Fee Arrangements (and other Variants thereof)*

One of the means by which a union seeks and gains strength and stability is through contractual arrangements with employers whereby union membership is made a condition of employment for each worker included within the bargaining unit. These shop arrangement provisions, which are designed to establish union security *vis-a-vis* the employers, other labor unions, and the workers or laborers themselves, take many different forms, the most extreme of which is the so-called closed shop, and the variants being the union shop, maintenance of membership, agency shop, and check-off. Some of the modifications of the more common variants are the closed shop with a closed union, closed shop with an open union, percentage union shop, modified union shop, preferential hiring arrangement, closed shop or union shop, or maintenance of membership with an escape clause.

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[8] *Ibid.*, art. 246.

[9] G.R. No. L-25246, September 12, 1974, 59 SCRA 54 (1974).

These different forms of union security contractual arrangements shall not be dealt with in detail here. For a more comprehensive treatment of the matter, reference may be made to the dissertation of Atty. Benildo Hernandez on the subject which was published in Aspects of Labor Relations Law 1972 by the University of the Philippines Law Center or to any basic textbook on Labor Law.

It might also be interesting to note that an International Labor Organization survey has revealed that the national legislation on union security clauses varies a good deal from one country to another. Some states forbid the inclusion of union security clauses in collective agreements, while others allow it.

In the Netherlands, the pertinent statute declares that any clause in a collective agreement forbidding an employer to recruit workers of a particular religious denomination or political party or members of a particular association or requiring him to engage such workers only is null and void.

In Belgium, "any person who, with intent to attack freedom of association, makes the conclusion, the execution, or the continuance of a contract of work or service conditional upon the affiliation or non-affiliation of a person or persons to an association" is actually committing a punishable offense.

In France, collective agreements must contain clauses guaranteeing freedom of association.

In the United States, the Taft-Hartley Act[10] outlawed the closed-shop (in interstate commerce) but permitted the union shop with certain restrictions. The National Labor Relations Act[11] expressly leaves to the various states the power to enact laws limiting or prohibiting agreements which make membership in a labor organization a condition of employment. Some twenty states now have legislation which prohibits the union shop and related union security arrangements.

On the other hand, some of the countries which specifically encourage and allow union security clauses are Mexico, Australia, and New Zealand.

But, of course, the status of the union security arrangements in other jurisdictions is merely a matter of academic interest, and what really concerns us is the status of such arrangements in the Philippines. What then is the situation which obtains this jurisdiction? For a better understanding of what now prevails, it might be useful to discuss the matter within the context of the two time frames: before the Labor Code, and after its adoption.

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[10] 61 Stat. 136 (1947).
[11] 49 Stat. 449 (1935).

Before the Labor Code

The applicable law before the Labor Code, of course, was Republic Act No. 875, the erstwhile Magna Carta of Labor, which in Section 4(a)(4) thereof allowed as an exception to the right to self-organization, an agreement between a labor organization and an employer whereby membership in such labor organization shall be considered as a condition of employment, *i.e.,* a closed or union shop arrangement. It had been observed that were it not expressly excepted from the catalogue of unfair labor practices, the closed shop arrangement, by its very nature, would have been an Unfair Labor Practice itself. But the policy-makers provided for such an express exception in view of the perceived need to provide statutory support to the labor union movement in its quest for stability and strength.

In view of this clear statement of legislative policy, the Supreme Court consistently recognized the validity of closed shop and union shop provisions in a collective bargaining agreement, but apparently was bothered every now and then by the scope, effect and coverage of specific clauses. The Supreme Court view, as may be gleaned from its many decisions of the subject,[12] is that closed shop and union shop provisions are in principle valid and allowed by the law, but since their application necessarily involves the surrender of a portion of a worker's individual freedom, and could result in loss of his employment, the terms of specific union security clauses should be construed strictly, and doubts should be resolved against their existence.

This is particularly true when such arrangements are invoked to the detriment or disadvantage of employees who are already such at the time the agreement was concluded.

The Court has also consistently ruled[13] that in order for an employer to be bound, under a union security clause in a Collective Bargaining Agreement, to dismiss an employee for lack or loss of union membership, the stipulation to this effect must be so clear and unequivocal as to leave absolutely no room for doubt.

In view of this policy of restrictive interpretation, the clarity and specific wording of the provision purporting to establish the union security arrangement are crucial.

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[12] NLU v. Aguinaldo's Echague Inc., G.R. No. L-7358, May 31, 1955, 51 O.G. 6, 2899 (June, 1955), 97 Phil. 184 (1955); Bacolod-Murcia Milling Co. Inc. v. National Employees-Workers' Security Union, G.R. No. L-90003, December 21, 1956, 53 O.G. 615 (Feb., 1957), 100 Phil. 516 (1956); Ang Malayang Manggagawa ng Ang Tibay Enterprises v. Ang Tibay, G.R. No. L-8259, December 23, 1957, 54 O.G. 6, 3796 (June, 1958), 102 Phil. 669 (1957).

[13] Confederated Sons of Labor v. Anakan Lumber Co., G.R. No. L-12503, April 29, 1960, 107 Phil. 915 (1960); Rizal Labor Union v. Rizal Cement Co., Inc., G.R. No. L-19779, July 30, 1966, 17 SCRA 858 (1966).

The Court has also ruled that where a union security agreement is by its own terms applicable only to new employees, it may not be applied to the disadvantage of employees who were already such at the time the agreement was entered into. Likewise, old employees who are members of a minority union are not obliged to join the majority contracting union.[14] As regards old employees, however, who are not members of any labor organization at the time the Collective Bargaining Agreement takes effect, the Court ruled that this category of old employees may be obliged to join the union, if there is a valid closed shop arrangement, otherwise, their refusal would be justifiable basis for dismissal.[15]

Certain categories, too, of employees were statutorily excluded from the coverage of union security clauses, namely, (1) supervisory personnel, who cannot be compelled to join a union of rank-and-file employees under their supervision,[16] and (2) the so-called "conscientious objectors," *i.e.*, members of religious sects which prohibit their members from joining labor unions, who, under Republic Act No. 3350, may not be compelled to join a union even under a closed shop arrangement.[17]

It may also be logically inferred from decided cases that an employer, without serving advance notice or paying the required "mesada" and without any of the just causes under the Termination Pay Law, may validly terminate the employment of an employee if such termination is pursuant to a validly existing union security management.[18]

In regard to check-off, which is also a union security arrangement, the applicable rules were that it may be enforced, under the Minimum Wage Law,[19] with the consent of the employer or by authority in writing by the individual employees. Apropos of this, the Supreme Court said: "when the union and the employer agree, the consent of the employees is immaterial. When the Employees duly authorize the check-off, the employer's consent is unnecessary and his recognition of the right is obliga-

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[14] Confederated Sons of Labor v. Anakan Lumber Co., G.R. No. L-12503, April 29, 1960, 107 Phil. 915 (1960); Local 7, Press and Printing Free Workers (PFW) v. Judge Tabigne, G.R. No. L-16093, November 29, 1960, 110 Phil. 276 (1960); Freeman Shirt Mfg. Co., Inc. v. CIR, G.R. No. L-16561, January 28, 1961, 1 SCRA 353 (1961); San Carlos Milling Co., Inc. v. CIR, G.R. Nos. L-15463 and L-15723, March 17, 1961, 1 SCRA 734 (1961); Talim Quarry Co.. Inc. v. Bartola, G.R. No. L-15768, April 29, 1961, 1 SCRA 1301 (1961) among others.

[15] Juat v. CIR, Bulaklak Publications, G.R. No. L-20764, November 28, 1965, 15 SCRA 391 (1965).

[16] Rep. Act No. 875 (1953), sec. 3.

[17] Rep. Act No. 875 (1953), sec. 4(a).

[18] R. SANTOS, REVIEWER IN LABOR AND SOCIAL LEGISLATION, 183 (1964); see Victorias Milling Co. v. Victorias Manapla Workers Organization, G.R. No. L-18467 and Victorias Manapla Workers Organization-PAFLU v. Court of Industrial Relations, G.R. No. L-18470, both promulgated September 30, 1963, 9 SCRA 154 (1963).

[19] Rep. Act No. 602 (1951), sec. 10(b) (3).

tory."[20] On this subject, too, the Supreme Court has ruled that even if the check-off authority is irrevocable, its validity is coterminous only with the membership in the union; it is good only as long as the employees remain members of the union and are therefore required to pay dues. When the employee ceases to be a union member, his obligation to pay dues likewise ceases, hence, the check-off authorization likewise ends.[21]

The Agency Shop or Agency Fee clause was invalidated by the Supreme Court, under the old law. The validity of this arrangement whereby all the employees in the bargaining unit, whether union members or not, must pay the union a fixed fee to defray expenses incurred while acting as their bargaining agent, was not recognized by the Supreme Court. The Court said: "while it is true that whatever benefits the majority union obtains from the employer accrue to its members, as well as the non-members, this alone does not justify the collection of fees from non-members for the benefits of the Collective Bargaining Agreement are extended to all employees regardless of union membership, because to withhold the same from the non-members would be to discriminate against them." Further, the Supreme Court pointed out: "when a union bids to be the exclusive bargaining agent, it voluntarily assumes the responsibility of representing all the employees in the appropriate bargaining unit."[22]

This, then, was the state of law and jurisprudence on union security arrangements prior to the effectivity of the Labor Code. Let us now examine what changes had been wrought by the passage of the Code.

Under the aegis of the Labor Code

The specific provision of the Labor Code on union security arrangements reads: "Nothing in this code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement."[23]

Although there has been a slight change in actual phraseology, there is no conceptual alteration. It would appear then that the closed shop arrangement, and variations thereof, are, under the Labor Code as under

[20] Manila Trading & Suply Co. v. Manila Trading Labor Association, G.R No. L-5783, May 29, 1953, 93 Phil. 288 (1953).

[21] Pagkakaisa ng Samahang Manggagawa sa San Miguel Brewery v. Enriquez, 108 Phil. 1010 (1960); Philippine Federation of Petroleum Workers (PFPW) v. Court of Industrial Relations, G.R. Nos. L-26346 & L-26355, February 27, 1971, 37 SCRA 711 (1971).

[22] National Brewery & Allied Industries Labor Union of the Philippines v. San Miguel Brewery, Inc., G.R. No. L-18170, August 31, 1963, 8 SCRA 805 (1963).

[23] LABOR CODE, art. 247(e).

the former law, considered as a matter of legislative policy as statutory exceptions to the right of self-organization. No substantial changes have been effected in regard to closed shop or union shop arrangements. The Courts may be expected to adhere to their policy of restrictive interpretation, in the interest of protecting the rights of individual workers by limiting the application of union security clauses strictly within the compass of their specific wording.

There is, however, an important change in the statutory exclusions. The categories now excluded from coverage are (1) managerial employees,[24] (2) security guards,[25] and (3) employees who are already members of another union at the time of the signing of the Collective Bargaining Agreement.[26] The "conscientious objectors" who were excluded from compulsory union membership under Republic Act No. 3350 appear to have been dropped from the list, under the Labor Code.[27] But may conscientious objectors still be excepted from compulsory union membership under any other legal ground? We shall take this up later, when we raise other questions of interpretation and implementation.

There are some noteworthy changes in regard to check-off. The check-off system is still recognized under Book III of the Labor Code, Article III (b), where the right to check-off may be established through an agreement between the employer and the union, or by individual authorization of the union members. The Code, however, seems to make a distinction between ordinary union dues, on the one hand, and special assessments, attorney's fees, negotiation fees, and other extraordinary fees. In the case of the latter category of extraordinary fees, it would seem that a check-off can be made only when authorized by individual written authorizations, duly signed by each employee concerned.[28] With the exception of this change, the law and jurisprudence on check-off remain the same.

It is in regard to agency fees that a basic change has been effected by the Labor Code. The imposition of agency fees, which hitherto was invalid, is now specifically authorized by the Code, in these terms: "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 the members of the collective bargaining agent, if they accept the benefits under the collective bargaining agreement."[29]

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[24] *Ibid.*, art. 245.
[25] *Ibid.*, art. 244
[26] *Ibid.*, art. 247(e).
[27] *Ibid.*, art. 246.
[28] *Ibid.*, art. 241(o).
[29] *Ibid.*, art. 247(e).

Subsequently, Presidential Decree No. 570-A added, by way of amendment, the proviso: "provided, that the individual authorization required under Article 241 (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent."[30] This additional proviso is, of course, a practical necessity, for without it, it would have been extremely difficult to impose the agency fee, for the non-union member from whom it is being exacted is not likely to sign readily any individual authorization for check-off.

The policy-makers who formulated the Code obviously, in effect, reversed previous Supreme Court rulings on the matter, and in the exercise of legislative policy-making, deliberately declared as a valid arrangement what had been previously declared by the Court as invalid.

Apparently, the framers of the Code were persuaded by the oft-repeated argument that unions, unlike other voluntary associations, must represent members and non-members alike so that those who do not join are "free riders," accepting valuable benefits without cost, not to mention responsibility. Obviously, also, they have chosen to brush aside the counter-argument that there are some employees who may wish to refrain from joining a union — or supporting one through the payment of dues — for genuine and sincere reasons of conscience, and that the rights of these individual must be respected.

IV. *Some Policy Considerations and Problems of Interpretation and Implementation*

The Labor Code being quite new and avowedly designed to effect a re-structuring in one of the most critical areas of human interaction, it is to be expected that it will contain many provisions which will generate controversy and that there will be a number of points which will require clarification. At this juncture, attention shall be focused on some of these aspects, which are a little obscure and dim, so that some possible explanations which will afford some enlightenment can be explored.

As earlier adverted to, the issue of union security arrangements — specially in its extreme form, the closed shop — involves a serious conflict of basic rights. As a respected commentator puts it: "On the one hand, there is the fundamental right of the employee to earn a living as well as the fundamental right to decide whether or not he will join a union, and if so, which union he is to join. The effect of a closed shop agreement on these rights is quite clear: these rights are gravely restricted by its

[30] *Ibid.*

operation. A non-union member who is employed in a bargaining unit covered by a closed shop has to choose between his livelihood and his scruples. He may not believe in unions and so refrains from membership; under a closed shop agreement, this freedom is denied; either he signs up with the majority union, or he loses his job. Discrimination against non-members of the majority union, through dismissals following refusal or unjustified failure to join, is lawful."

"On the other hand," our commentator continues , "this sacrifice of individual freedom is deemed necessary, as the closed shop is essential to having the unions increase membership and consequently their bargaining strength as well as chances for survival."[31]

This is the reasoning that underlies all jurisprudence upholding the closed shop or the union shop in our jurisdiction. It might not be amiss to point out that since the time these rulings which make up the jurisprudence that I refer to were promulgated, there have been some subtle, although, in my opinion, quite significant, changes in pertinent Constitutional provisions. Our Constitution now specifically guarantees to the workers, not only the right to self-organization but also security of tenure.[32] Would it be farfetched to anticipate that there would be changes in jurisprudence in the light of this specific constitutional guarantee of the right of the worker to security of tenure?

On the status of "conscientious objectors", this question is posed: They have been eliminated from the statutory exclusions, but does that mean that they can now be compelled to join the majority union under a valid closed shop or union shop arrangement? Or can they find support for their refusal to join from the ruling in *Victoriano v. Elizalde Rope Workers,*[33] reaffirmed in *Basa v. Foitaf,*[34] where the Court said that in the scale of values, the individual's freedom of religion must be given more weight than the policy desideratum of promoting trade unionism.

Still in the realm of policy, it has been asserted that the agency fee provisions of the Labor Code have been designed to strengthen the union and to promote the growth of trade unionism. For one thing, it is argued the "unions will no longer be burdened with the weight of "free-riders" and will, as a matter of fact, be assured of financial support"; for another, it was speculated that the practical effect of the imposition of an agency fee upon non-union members within the bargaining unit would be to induce them to join the union, since they would have to pay dues anyway. That appears to be sound and it could happen that way. But could it

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[31] FERNANDEZ & QUIASON, THE LAW OF LABOR RELATIONS, 258-259 (1963).
[32] Art. II, se. 9.
[33] G.R. No. L-25246, September 12, 1974, 59 SCRA 54 (1974).
[34] G.R. No. L- 27113, November 19, 1974, 61 SCRA 93 (1974).

not also work out this way? Union membership, like any other membership, in any association entails more responsibilities and duties than mere payment of dues. Now that the non-union member is required by law to pay an agency fee, would this not have the effect of relieving him of the moral duty to join the union, because after all he is no longer a "free-rider". And if so, would this not deter, rather than promote, an increase in union membership? From the point of view of the union leadership itself, would the fact that it no longer has to worry about free riders not cause them to be complacent with their membership, considering that they are assured of financial resources anyway and any increase in membership would necessarily only impose added demands upon their time and personal involvement? Will they not consequently be less aggressive in their membership campaign? Would this not in the long run lead to stunting the growth of trade unionsim? Would it not also be conducive to the perpetuation of a situation of "taxation without representation?"

Would not the fact that the union can charge agency fees not be used by management to forestall the installation of a closed shop or a union shop? Could a persuasive management negotiator not succeed in convincing the labor panel that with the agency fee there is really no need for the union to take all the employees under its wing?

Let us now turn to questions of interpretation and implementation.

Is the agency fee provision merely permissive or mandatory? An examination of the wording would indicate that it merely authorizes the imposition of an agency fee, as witness the use of the permissive "may". In the recent Tripartite Conference, however, I understand that a ranking Department of Labor official opined that the provision is mandatory, for that is how they had intended it to be, and if the wording as it stands does not reflect that intention, then, they will change the wording. Now, which shall prevail, the final wording of the statutory provision, or the afterthought of one of its framers?

What constitutes "acceptance of benefits" which would be the basis for the collection of agency fee? Would a non-union member who continues to receive after November 1, 1974 benefits which are identical to those given under a Collective Bargaining Agreements negotiated before the effectivity of the Labor Code now be subject to the payment of an agency fee?

It stands to reason that the agency fee provision should apply only to new Collective Bargaining Agreements, that is to say, those that will be negotiated and concluded after the effectivity of the Labor Code. But suppose the new Collective Bargaining Agreement merely continues the same benefits under the old Collective Bargaining Agreement, may the non-union

member object legally to the collection of the agency fee on the ground that he has not accepted any "new" benefits and that he is merely enjoying old benefits to which he has already acquired some form of vested right?

Suppose the Management varies somewhat the form and nature of the benefits to be extended to the non-union members, will this be sufficient to exempt the non-union members from the agency fee on the allegation that the benefits that were extended to them are not the same benefits given under the Collective Bargaining Agreement?

To what rights are the non-union members from whom agency fees are collected entitled, *vis-a-vis* the Union? By paying the agency fee, do the non-union members become thereby "quasi-members"? If so, what are their rights as such?

These are some of the questions that need to be definitively answered. Unfortunately, constraints of time and space inhibit any attempt on this occasion to suggest even the most tentative answers. It is hoped, however, that in due course the National Labor Relations Commission and, if need be, the Supreme Court will unequivocably resolve the issues that have been raised.