# CONSTITUTIONAL OBJECTIONS TO THE INELIGIBILITY OF SECURITY GUARDS FOR MEMBERSHIP IN ANY LABOR ORGANIZATION UNDER PRESIDENTIAL DECREE NUMBER 442 AS AMENDED (LABOR CODE OF THE PHILIPPINES)

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*Introduction*

Under the common law, there was no duty on the part of employers to bargain collectively with employees. They might bargain collectively or individually, as they chose, or they might arbitrarily fix wages and working conditions on a "take-it-or-leave-it" basis.[1]

In the United States, prior to 1926, the fundamental right of workers to engage in labor organization activity without fear of employer retaliation and discrimination was unprotected. Illustrative of both employer and court resistance are the three Supreme Court pronouncements in *Adair v. U.S.*,[2] *Coppage v. Kansas*,[3] and *Hitchman Coal Company v. Mitchell*.[4] In the *Adair* decision, the Supreme Court invalidated, on constitutional grounds, the Erdman Act of 1898, which made it a criminal offense for an agent of an interstate carrier to discriminate against an employee for membership in a labor union. The *Coppage* and *Hitchman* cases are authorities for the proposition that an employer may legally require nonmembership in a labor union as a condition precedent to continuation of employment.

It was not until 1926, with the passage of the Railway Labor Act, followed by the National Industrial Recovery Act in 1933 (declared unconstitutional by the Supreme Court in 1935, *Schechter Corporation v. U.S.*[5]), the National Labor Relations (Wagner) Act in 1935, and the Labor Management Relations (Taft-Hartley) Act in 1947 amending the Wagner Act, that American workers were

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1 1967 GUIDEBOOK TO LABOR RELATIONS 70 (1967).
2 208 U.S. 161 (1908).
3 236 U.S. 1 (1915).
4 245 U.S. 229 (1917).
5 295 U.S. 495 (1935).

guaranteed the right to organize and bargain collectively with the employer.

In the Philippines, prior to 1953, the right of self-organization was recognized but did not receive special protection.[6] There was no duty to bargain collectively.[7] It was only upon the passage of the Industrial Peace Act in 1953, otherwise known as the Magna Carta of Labor, that the rights of Filipino workers to organize and bargain collectively were given statutory guarantee and protection. And still committed to the advancement of the lot of the working sector of the population, the Filipino people placed in the 1973 Constitution the most fundamental rights of the working group, namely: 1) right to self-organization, 2) right to collective bargaining, 3) right to security of tenure, and 4) right to just and humane conditions of work.[8]

To implement this constitutional mandate a comprehensive labor code—Presidential Decree 442—was enacted, which superseded the Industrial Peace Act and other related special labor relations statutes. From a cursory perusal of both constitutional and statutory provisions on labor, one could readily discover that a new concept has been introduced into the employer-employee relationship: that of compulsory collective bargaining between employers and representatives freely selected by a majority of their employees. Because employers have a legal duty, under the law, to bargain with the union which represents a majority of their employees in a unit appropriate for bargaining purposes, it is important to determine, in every case, just what grouping of employees makes an appropriate bargaining unit.

The Labor Code, in its declaration of basic policy, adopted in toto the constitutional provision relating to the fundamental rights of workers.[9] But this notwithstanding, the Labor Code's provision relating to the representation rights of a particular grouping of employees—the security guards—appears to be in conflict with the aforementioned constitutional provision. The Labor Code provision referred to here is Article 245 which provides that: "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." This particular provision has raised some doubts, at least on the rights of security guards to self-organization and collective bargaining, on constitutional

[6] See Com. Act No. 103, 213 (1936).
[7] See Com. Act No. 103, 213 (1936).
[8] CONST. (1973), art. II, sec. 9.
[9] Pres. Decree No. 442 (1974), art. 3.

grounds. This article then seeks to look into these constitutional objections to this questioned provision.

*Determination and Employee Status of Guards*

Under Article 245 of the Labor Code, security guards are those employed for the protection and security of the person, properties and premises of the employer. This follows the federal labor law which defines a guard as an individual who is employed to enforce against employees and other persons rules to protect the property of the employer or to protect the safety of persons on the employer's premises.[10] In deciding, therefore, whether or not an employee is a guard within the meaning of the law, the principal factor to be considered is the authority of the employee to enforce the employer's plant rules or to control the admissions of persons into or upon the employer's property. It is the nature of duties, rather than percentage of time spent on guard duties, which determines whether or not an employee is a guard.[11]

Such employees are guards even if they are unarmed, ununiformed[12] or militarized,[13] and even though they do not guard the property of their immediate employer[14] or they protect property belonging to their employer's customer for it is not controlling that the valuables which they protect belong not to their own employer but to a customer of their own employer.[15]

The Labor Code, in Article 245, by using the term "employed" formally conferred the status of 'employee' on security guards. Even before the passage of the Labor Code, it was already settled that guards are employees, as held in the cases of *Associated Watchmen & Security Union v. United States Lines,*[16] *Maligaya Ship Watchmen Agency v. Associated Watchmen & Security Union,*[17] *Paulino v. Rosendo,*[18] and *Social Security System v. Court of Appeals.*[19] As such employees, they are covered and protected by the law, as ruled in the cases of the *National Rice & Corn Administration v. Court of Industrial Relations,*[20] *Philippine Sugar Institute v. Court of Indus-*

[10] Sec. 9(b) (3), Labor Management Relations Act of 1947, 61 Stat. 136. (1947).
[11] Walterboro Mfg. Corp., 106 N.L.R.B. 1383 (1953).
[12] G.C. Murphy Co., 128 N.L.R.B. 908 (1960).
[13] N.L.R.B. v. Atkins & Co., 331 U.S. 398 (1947).
[14] Armored Motor Service Co., 106 N.L.R.B. 1139 (1953).
[15] N.L.R.B. v. Am Dist. Tel. Co. of Pa., 205 F. 2d 86 (1953).
[16] 101 Phil. 896 (1957).
[17] 103 Phil. 920 (1958).
[18] G.R. No. L-20484, November 28, 1964, 12 SCRA 523 (1964).
[19] G.R. No. L-28134, June 30, 1971, 39 SCRA 629 (1971).
[20] 109 Phil. 81 (1960).

*trial Relations,*[21] and *Prudential Bank & Trust Company & Orosa v. Court of Industrial Relations.*[22]

*Constitutional Questions*

Article 245 of the Labor Code provides: "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." A close analysis and any fair construction of this particular provision would lead to the ultimate conclusion that it is in derogation of the constitutional rights of security guards as individual citizens and as workers.

Firstly, as individual citizens, the statutory provision in question is in direct contravention to the constitutional mandate embodied in the Bill of Rights of the 1973 Constitution which provides: "The right to form associations or societies for purposes not contrary to law shall not be abridged."[23]

As a basic principle of a democratic society freedom of association is fundamental. Freedom of association has always been a vital feature of our society. In modern times it has assumed even greater importance. More and more, the individual, in order to realize his own capacities or to stand up to the institutionalized forces that surround him, has found it imperative to join with others of like mind in pursuit of common objectives. His freedom to do is essential to the democratic way of life.[24]

No one can doubt that freedom of association must receive constitutional protection, and that limitations on such fundamental freedom must be brought within the scope of constitutional safeguards. The courts have in the past recognized this need and have dealt with many aspects of association activity in terms of constitutional right and power.[25]

The most striking development of the past few years has been the enunciation by the United States Supreme Court of a new constitutional doctrine known as "the right of association". This came about in the 1958 decision of *NAACP v. Alabama ex. rel. Patterson.*[26] Mr. Justice Harlan, speaking for the Court, established "the right of association" in the following manner: "Effective advocacy of both public and private points of view, particularly controversial

[21] 109 Phil. 452 (1960).
[22] 110 Phil. 413 (1960).
[23] CONST. (1973), art. IV, sec. 7.
[24] Emerson, *Freedom of Association and Freedom of Expression,* 74 YALE L.J. 1 (1964).
[25] Douglas, *The Right of Association,* 63 COLUM. L. REV. 1361 (1963).
[26] 357 U.S. 449 (1958).

ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon them the close nexus between the freedoms of speech and assembly . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

Undoubtedly, the purpose of this constitutional guarantee is to encourage the formation of voluntary associations so that through the cooperative activities of individuals the welfare of the nation may be advanced and the government may thereby receive assistance in its ever-increasing public service activities.[27] The freedom of association guaranteed enables an individual to join others of a like persuasion to pursue common objectives and to engage in activities permissible under, if not encouraged by, the regime of liberty provided for in the fundamental law.[28]

As De Tocqueville once observed: "The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society."[29]

There can be no dispute as to the soundness of the above observations of De Tocqueville. Since man lives in society, it would be barren existence if he could not freely associate with others of kindred persuasion or of congenial frame of mind. As a matter of fact, the more common form of associations may be likely to be fraternal, social or religious. Thereby, for almost everybody, save for those exceptional few who glory in aloofness and isolation, life is enriched and becomes more meaningful.[30]

Our society is honey-combed with interest groups, each with its own ideology, its own need, its own evaluation of the immediate unsatisfactory state of affairs, and its own prescription for making the world a better place to live in the future. Some groups are more effective in making known the urgency of their needs or in gaining the ear of the policy maker. These groups are rewarded; others for lack of followers or resources, less successful in pressing their cases, are not. Thus democratic equality implies not a benign or indifferent government, but only the right of every individual to

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[27] GONZALES, PHILIPPINE CONSTITUTIONAL LAW 353 (4th ed., 1975).
[28] FERNANDO, THE CONSTITUTION OF THE PHILIPPINES 629 (1974).
[29] Cited in GONZALES, p. 352.
[30] *Id.*, at 352.

join and participate in group action for the purpose of influencing and, if possible, shaping national policy.[31]

This is a right intended to enhance the opportunity a human being possesses and to widen the sphere for the expression of his personality.[32] As aptly stated by Emerson: "In a society governed by democratic principles it is the individual who is the ultimate concern of the social order. His interest and his rights are paramount. Association is an extension of individual freedom. It is a method of making more effective, of giving greater depth and scope to, the individual's needs, aspirations and liberties. Hence, as a general principle, the right of individuals to associate or refrain from association ought to be protected to the same extent, and for the same reasons, as individual liberty is protected."[33]

The right of association serves an important national clause. As eloquently expressed by De Tocqueville: "An association for political, commercial, or manufacturing purposes, or even for those of science and literature, is a powerful and enlightened member of the community, which cannot be disposed of at pleasure or oppressed without remonstrance, and which, by defending its own rights against the encroachments of the government, saves the common liberties of the country."[34]

Whatever may be all the reasons, the desire to associate is deep in man. The right of association is part of the right of expression or of the right of belief. It is the equivalent of saying "This I believe", and the "This" may be racial equality, reduction of taxes, socialism, or any number of ideas or causes.[35]

The Constitution is clear that this right shall not be abridged in so far as associations or societies in question do not have purposes contrary to law. In other words, this right may be abridged or interferred with by the state only when the organization and existence of such association or society creates a clear and present danger of some substantive evils or dangers to public order, public peace, public morals or public safety.

A labor organization is an association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.[36] Labor unions may be organized for the purpose of

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[31] Douglas, *supra*, note 25.
[32] FERNANDO, *supra*, note 28.
[33] Emerson, *supra*, note 24.
[34] Cited in Douglas, *supra*, note 25.
[35] *Ibid.*
[36] Pres. Decree No. 442 (1974), art. 212(e)

selling the labor of members on stipulated terms, securing better working conditions, and improved relations with employers; for the purpose of advancing and maintaining their wages; for the purpose of arbitrating labor disputes. They may be formed for the purpose of obtaining employment for their members, or of securing control of the work connected with their trade, or favorable terms to their employers in the purchase of material, and contracts for such persons as employ members of their society. They may be organized for the purpose of protecting and conserving their rights and interests against possible agression by the employer, or of gaining collective bargaining power.[37]

A labor organization is an association certainly not contrary to law. Nobody can deny that its purposes are matters about which there cannot be the slightest doubt. They are clearly lawful to admit of argument. A labor organization being definitely not contrary to law, there can be no cogent reason why security guards' right to join it should be abridged.

In the words of Don Claro M. Recto:

> A man has the God-given right to join any organization of his choice, and that a man loses that right only when he joins an organization dedicated to the destruction and injury of society. The right to organize is not given a man through the operation of some law, or because of the existence of a democratic constitution, or because of the prevailing opinions among men in a certain place and during a particular period of time. A man is born with that right, it is his by the mere fact that he is a man. He is born with needs, and he must be given the freedom to satisfy those needs. He is born with the ability to choose, and he must be given the freedom to exercise choice.
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> If a man chooses to join a labor union to protect and fulfill some of his basic needs, no law on this earth can stop him. Men can never have the right to take away what God himself has given.[38]

Secondly, as workers, the statutory provision in question is directly contrary to the constitutional mandate of State protection to labor and the constitutional right of workers to self-organization as embodied in the Declaration of Principles and State Policies of the 1973 Constitution which provides: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, col-

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[37] Coeur D"Alene Consolidated & Mining Co. v. Miners' Union of Wardner, C.C. Idaho, 51 F. 260 (1892).

[38] *Labor and Government*, 23 LAW J. 5 (1958).

lective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."[39]

The right to labor is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected. The right of a person to his labor is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labor or work without due process of law.[40]

The constitutional policy on social justice has been made real when it imposes upon the State the obligation to give protection to labor. The human aspect of the labor problem has therefore received due regard. Labor is not merely an article of commerce or a factor of production to be similarly treated as land, tools, or machinery.[41] It is precisely upon this consideration that constitutional protection has been accorded to labor. Such an avowed constitutional policy is, therefore, an obligation which the State must live up to. As held in the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*:[42] "The plain and unqualified constitutional command of protection to labor should not be lost sight of. The State is thus under obligation to lend its aid and its succor to the efforts of its labor elements to improve their economic condition. It is now generally accepted that unionization is a means to such an end. It should be encouraged. Thereby, labor's strength, what there is of it, becomes solidified. It can bargain as a collectivity. Management will not always have the upperhand nor be in a position to ignore its just demands."

There can be no greater disservice to this constitutional mandate of affording protection to labor than to render security guards ineligible for membership in any labor organization, and thus deprive them of their equally important right to self-organization. Certainly, this is not a matter about which those under obligation to give such protection can afford to be recreant in the performance of the same. On the contrary, this is a matter which concerns the constitutional rights of a very important sector of the population. This being the case, every effort must be exerted to the limits of the law to uphold these rights, rather than to trample upon them by having a statutory provision such as the one in question.

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[39] CONST. (1973), art. II, sec. 9.
[40] Phil. Motion Pictures Workers' Assn. v. Premier Productions, Inc., 92 Phil. 843 (1953).
[41] GONZALES, *supra*, note 27.
[42] G.R. No. L-28607, May 31, 1971, 39 SCRA 276 (1971).

Why should security guards be deprived of the benefits of labor organizations? They to have the right to organize for the purpose of redressing their grievances and promoting agreements with employers relating to working conditions.

The existence of labor unions is a necessary development of the industrial revolution and is recognized as one of the effective means by which laborers may obtain protection to their rights and privileges, social justice within an economy dominated by capitalism, and vindicate the laborers' just claims to human dignity and their due share in the benefits accruing in the interplay of the modern social system of production, distribution and consumption.[43]

The welfare of the laborers depends directly upon the preservation and welfare of the union. It is the union which is the recognized instrumentality and mouthpiece of the laborers. Only through the union can the laborers exercise the right of collective bargaining and enjoy other privileges. Without the union, laborers are impotent to protect themselves against the reaction of conflicting economic changes and maintain and improve their lot.[44]

By the organization of labor, and by no other means, it is possible to introduce an element of democracy into the government of industry. By this means only can the workers effectively take part in determining the conditions under which they work. This becomes true in the fullest and best sense only when employers frankly meet the representatives of the workmen, and deal with them as parties equally interested in the conduct of affairs. It is only under such conditions that a real partnership of labor and capital exists.[45]

No justification then could be advanced why security guards should be ineligible for membership in any labor organization. Through labor organizations workers are able to possess a bargaining power approximating that of employer, and to exert thereby sufficient economic pressure for obtaining protection of their rights, recognition of their demands, and concessions for their economic betterment.[46] It is the instrumentality through which an individual laborer who is helpless as against a powerful employer may, through concrete effort and activity, achieve the goal of economic well-being.[47]

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[43] Gallego v. Kapisanan Timbulan Ng Mga Manggagawa, 83 Phil. 124 (1949).

[44] A.L. Ammen Trans. Co., Inc. v. Bicol Trans. Employees Mutual Association & CIR, 91 Phil. 649 (1952).

[45] Final Report of the US Industrial Commission of 1898, cited in FRANCISCO, LABOR LAWS OF THE PHILIPPINES (1967).

[46] Royal Interocean Lines v. CIR, 109 Phil. 900 (1960).

[47] Guijarno v. CIR, G.R. No. L-28791, August 27, 1973, 52 SCRA 307 (1973).

The right of laborers to organize in unions is an exercise of the right of every citizen to pursue his calling, whether of labor or business, as he in his judgment thinks fit, or of the right guaranteed by the Constitution of acquiring, possessing, and protecting property.[48]

It is universally recognized that working men or laborers have the right to organize into unions, provided it is for a lawful purpose. Labor has as much a right to organize as has capital, or as have the stockholders and officers of corporations. Not only trade unions today are lawful, but because their aim and purpose is to better the living conditions of a large part of the body politic, they are considered a necessary part of the social structure, and recognized as a legitimate and useful part of the industrial system.[49]

In *Meier v. Speer*, the Arkansas Supreme Court said: "The conservation of the chief asset of the laboring man namely, his labor, through combination with his fellows and by their organized efforts is to be commended rather than be condemned. For in that way his well being may be best protected and the interest of society thereby advanced."[50]

And as observed by Judge Taft in *Thomas v. Cincinnati, N.O. & T. Ry. Co.*: "It is of benefit to them and the public that laborers should unite. They have labor to sell. If they stand together they are often able, all of them, to command better prices of their labor, than when dealing singly with rich employers, because the necessities of the single employee may compel him to accept any terms offered."[51]

To further advance this basic right of self-organization, our Supreme Court has ruled that: "The formation of a union being a right protected by law, the same cannot be held to constitute an act of disloyalty to the employer and made the basis of discipline; such discipline constitutes unfair labor practice."[52]

Security guards bear essentially the same relationship to management as other employees do. The fact that guards represent management's legitimate interest in guarding plant and personnel against physical danger furnishes no basis for denying to them the

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[48] Pickett v. Walsh, 78 N.E. 753 (1906); Alabama State Federation of Labor v. McOdony, 18 So. 2d 810 (1944).

[49] McVey v. Brendel, 22 A. 912 (1891); Kirmse v. Adler, 166 A. 566 (1933).

[50] 132 S.W. 988 (1910).

[51] 62 F. 803 (1894).

[52] Lopez v. Chronicle Publications Employees Asso., G.R. No. L-20179, December 28, 1964, 12 SCRA 694 (1964).

benefits of the law when they take collective action in matters affecting their own wages, hours, and working conditions.

In disputes with the employers over those matters, they suffer from the same inequality of bargaining power as suffered by other unorganized employees. The appropriateness and need of collective bargaining on their part through freely chosen representatives are equally as great.

To deprive the security guards then of their constitutional right to self-organization, by rendering them ineligible for membership in any labor organization, is certainly an act which could not find any approval in a constitutional government granting such right, and in a society founded upon the regime of liberty. The statutory provision in question definitely could not stand against the constitutional mandate.

Besides, the said statutory provision in question is also in conflict with Article 1702 of the New Civil Code and Article 2 of the Labor Code itself, both of which provide that all doubts in the implementation and interpretation of all labor legislation and labor contracts shall be resolved in favor of the safety and decent living for the laborers.

*Conclusion*

From all of the foregoing, it is an inevitable conclusion that Article 245 of the Labor Code runs afoul the constitutional rights of security guards to freedom of association and self-organization. By such provision, security guards are deprived of their rights to form, join or assist labor unions. This could not be tolerated in a regime committed to the advancement of the lot of the workingmen.

It is submitted, therefore, that security guards should be given full freedom to join any labor organization as other laborers. It is only by such means that their constitutional rights are given full meaning and application.