

ney, if the terms offered by Labor are unfair, and Labor will be free to refuse to furnish another essential element of production, namely work, if the terms offered by Capital are unfair.)

The State then, will be seeking legislation which will help make Capital and Labor free and equal negotiators in entering into a freeman's contract covering terms and conditions of employment. Those interested in legislation on the matter will properly ask: What deprives the worker of his freedom and equality at present? Many things, among them the fact that, for the most part, labor is unorganized. Furthermore, labor's effort to organize are seriously hampered by the presence of Company Unions (the essence of the Company Union as understood in this discussion is control of the union by Capital in one way or another). The present system of registering unions amounts almost to putting labor's right of association in the hands of one government official. Even if the worker is properly organized his bargaining power is made almost ineffective by a legal system of "Back-to-work" or "Anti-strike" injunctions and a system of compulsory arbitration.

It is hoped that the Law Journal will present a detailed discussion of pending labor legislation in the light of these facts and principles. Certain features of the desired legislation can easily be arrived at and, in the hope of inviting more detailed discussion, it is suggested that legislation which would meet the needs of the day would necessarily:

1. Outlaw the Company Union.
2. Deprive the courts of the power to issue injunctions against strikes.
3. Leave the setting of wages to the free negotiation between Capital and Labor rather than to compulsory arbitration—and
4. Recognize the worker's right to organize as a right equal in all respects to the right of other citizens to do the same. This necessitates the removal of all arbitrary governmental power over the exercise of that right.

COMMENTS ON LEGISLATION

ACT NO. 3428

(As amended by Act 3812, Com. Act 210 & Rep. Act 772)

By PASCUAL R. BELTRAN, JR.

INTRODUCTION

Labor is on the march! One of the greatest boons to Filipino labor is the Workmen's Compensation Act, otherwise known as Act No. 3428. This law, patterned after the compensation laws of Minnesota and Hawaii, has been thrice amended since its enactment in 1927. The first two amendments, Act 3812 and Com. Act 210, did not affect the substance of the law as they were merely made for clarification purposes. The third amendment was approved by Congress during this year's session. This bill, known as Rep. Act 772 and which took effect on June 20, 1952, is a total revamp of the Workmen's Compensation Act in line with modern trends of labor.

Labor movement in the Philippines had its beginning in 1902 when workers started to unionize and agitate for increased wages and for the improvement of their working conditions. In this its half-century struggle in the country, labor finds tangible proof of well-marked progress in the recent enactment of the new Workmen's Compensation Law, considered to be the most complicated and difficult labor law to enforce. In foreign coun-

tries, the administration of the compensation law is entrusted to a quasi-judicial body either in the form of bureaus, boards or commissions. This form of administration has a two-fold purpose: to administer speedy and effective justice to industrial accident victims who are in need of immediate relief because of enforced idleness of the family's breadwinner, and, to do away with cumbersome, expensive court litigations. In the Philippines, with the enactment of Rep. Act 772, there was created in the Department of Labor the Office of the Workmen's Compensation Commissioner which shall have exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court.

One of the most glaring deficiencies of the old law which made its revamp imperative is the fact that because of the present high cost of living, most of the laborers who originally fell within the purview of the Act were excluded therefrom in view of a technical provision that laborers and employees receiving over P42 a week were not entitled to compensation. Thus, thousands of experienced laborers and employees performing hazardous jobs were placed outside its purview. Rep. Act 772 will enable all employees and laborers in both private and public concerns to receive compensation benefits, subject to certain limitations.

It is not here intended to comment on all the provisions embodied in the Workmen's Compensation Act as amended by Act 3812, Com. Act 210 and Rep. Act 772. This commentary shall be limited to the more important provisions of said Act, with emphasis on the changes brought about by and the new provisions of Rep. Act 772.

COMMENTS

A) APPLICABILITY OF THE ACT—

The Act is applicable to all industrial employees specified therein.¹

It is also applicable to mounted messengers in the

¹ Sec. 1, Act 3428.

service of the National Government and all its political subdivisions and to all employees and laborers employed in public works and in the industrial concerns of the Government and to all other persons performing manual labor in the service of the National Government and its political subdivisions and instrumentalities.²

While the old law limits its benefits to government employees working in its public works and industrial concerns, Rep. Act 772 will include all manual workers in the Government and its entities, except those earning over P400 a month. Moreover, the new law provides that laborers and employees insured with the Government Service Insurance System shall, in addition to the same, be entitled to the benefits granted by the Act.

When a laborer in the Philippines receives a personal injury through accident occurring in and during his employment, he shall be entitled to compensation under the law of the islands although the injury was received outside the same. Similarly, when a laborer contracted outside the Philippines, is injured while engaged in the business of his employer and is entitled to compensation for such injury under the law of the territory where he was contracted, he may recover from his employer in these Islands if his rights under the law of such territory are such that they can be reasonably determined and granted by the courts.³

Under Sec. 5 of Act 3428, employers contracting laborers in the Philippines for works outside the same are required to stipulate with such laborers that the remedies prescribed by the Act shall apply to injuries received outside the Islands through accidents happening in and during the performance of the duties of the employment. Rep. Act 772 introduces a new provision to the effect that such stipulation shall not prejudice the right of the laborers to the benefits of the Workmen's Compensation Law of the place where the accident occurs, should such law be more favorable to them.

The Act also covers the liability of employers towards

² Sec. 3, Act 3428 as amended by Act 3812, Com. Act 210 and Rep. Act 772.

³ Sec. 33, Act 3428.

employees engaged in coastwise and interisland trade, and also in foreign trade when such is permissible under the laws of the Philippines.⁴

B) PURPOSE—

The intention of the Legislature (Congress) in enacting the Workmen's Compensation Act was to secure workmen and their dependents against becoming objects of charity, by making a reasonable compensation for such accidental calamities as are incidental to the employment.⁵

C) CONSTRUCTION—

A spirit of liberality characterizes the construction of the Workmen's Compensation Act. We have endeavored to interpret the Act to promote its purposes. We have even gone so far as to interpret it fairly in favor of the employee.⁶

If an accident is compensable under the Workmen's Compensation Act, it must be compensated even when the workman's right is not recognized by or is in conflict with other provisions of the Civil Code or of the Code of Commerce.⁷

D) DEFINITIONS OF TERMS—

Employer—includes every person or association of persons, incorporated or not, public or private, and the legal representative of the deceased employer. It includes the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work.⁸

Laborer—is used as synonym of 'employee' and means every person who has entered the employment of, or works under a service or apprenticeship contract for an employer. It does not include a person whose employment is casual and is not for the purposes of the occupation or business of the employer.⁹

An employment is not casual simply because it is of

⁴ Sec. 38, Act 3428 as amended by Act 3812.

⁵ Murillo v. Mendoza, 37 Off. Gaz. 403.

⁶ Vergara v. Pampanga Bus Co., 62 Phil. 820.

⁷ Murillo v. Mendoza, 37 Off. Gaz. 403.

⁸ Sec. 39-a, Act 3428 as amended by Com. Act 210 and Rep. Act 772.

⁹ Sec. 39-b, Act 3428.

short duration. Whether the employment is casual or not is a question that must be determined 'with principal reference to the scope and purpose of the hiring rather than with sole regard to the duration and regularity of the service'.¹⁰ Verbal contract of employment is sufficient as held in the case of Rolan v. Perez, 63 Phil. 80.

It is to be noted that under the old law, if the remuneration of an employee or laborer, exclusive of overtime pay, is in excess of P42 a week, such employee or laborer is not deemed 'employee' or 'laborer' under the Act. Rep. Act 772 removes this disqualification.

Injury—includes death produced by injury or sickness.¹¹

Industrial employment—in case of private employers includes all employment or work at a trade, occupation or profession exercised by an employer for the purpose of gain, except domestic service.¹²

The compensation law is so amended as to give protection to agricultural employees and to extend to them its benefits. Under the old law, these benefits are available only, with respect to agricultural employees, to those employed in the operation of machinery or mechanical implements.

Public employment—does not include employment where the remuneration is over P4,000 per annum.¹³

Partial disability—the diminished capacity for securing employment due to disfigurement produced by an injury.¹⁴

Wages—includes the commercial value of the board and lodging, subsistence, fuel and other amounts which the employee receives from the employer as part of his compensation.¹⁵

E) GROUNDS FOR COMPENSATION—

The Act provides that when an employee suffers a personal injury from any accident arising out of and in the course of his employment, or contracts tuberculosis or other illness directly caused by such employment or either

¹⁰ Calupitan v. Vda. y Hijos de Angel José, 40 Off. Gaz. 11th S, 31 (quoting 17 C.J. 436).

¹¹ Sec. 39-c, Act 3428 as amended by Rep. Act 772.

¹² Sec. 39-d, Act 3428 as amended by Rep. Act 772.

¹³ Sec. 39-e, Act 3428 as amended by Rep. Act 772.

¹⁴ Sec. 39-f, Act 3428.

¹⁵ Sec. 39-g, Act 3428 as amended by Rep. Act 772.

aggravated by or is the result of the nature of such employment, his employer shall pay compensation in the sums and to the person specified. The right to compensation as provided in this Act shall not be defeated or impaired on the ground that the death, injury or disease was due to the negligence of a fellow servant or employee without prejudice to the right of the employer to proceed against the negligent party.¹⁶

The last sentence of the above-quoted provision is a new provision introduced by Rep. Act 772. The new law moreover, adds aggravation by the employment of an illness of an employee as a further ground for compensation.

The words 'arising out of' refer to the origin or cause of the accident, and are descriptive of its character, while the words 'in the course of' refer to the time, place, and circumstances under which the accident takes place.¹⁷

To be thus compensable the disease must come from, or be, an accident or injury arising from and in the course of employment. A general idiopathic disease in the sense in which the term is used in the discussion of the cases is one which develops gradually or at least imperceptibly and, while it may be attributable to external conditions, is also dependent in part on conditions inherent in the individual. Disability resulting from preexisting disease and not from an accident or injury and having only a casual connection between exposure and illness is not compensable.¹⁸

F) INJURIES NOT COVERED—

Compensation shall not be allowed for injuries caused: (1) by the voluntary intent of the employee to inflict such injury upon himself or another person; (2) drunkenness on the part of the laborer who had the accident; and (3) by the notorious negligence of the same.¹⁹

Notorious negligence is more than mere carelessness or lack of foresight.²⁰ The performance of an act which is prohibited does not necessarily constitute notorious negligence.²¹

¹⁶ Sec. 2, Act 3428 as amended by Act 3812 and Rep. Act 772.

¹⁷ *Afable v. Singer Sewing Machine Co.*, 58 Phil. 39 (quoting *Diotzen Co. v. Industrial Board*, 279 Ill. 11).

¹⁸ *Vergara v. Pampanga Bus Co.*, 62 Phil. 820.

¹⁹ Sec. 4, Act 3428.

²⁰ *Caunan v. Compania General de Tabacos*, 56 Phil. 542.

²¹ *Lauraya Viuda de Rigote v. Phil. Lumber Mfg. Co.*, 38 Off. Gaz. 431.

G) DEATH BENEFITS—

In case of death benefits, the old law gives the dependents of the deceased employee compensation ranging from P208 up to a maximum of P3,000 plus burial expenses not exceeding P100. The amount of burial expenses has been increased to P200 and the compensation benefits to from P520 to P4,000.

Compensation rates, which are considered quite inadequate due to rapidly changing economic conditions of the country have been increased to enable victims of industrial accidents to lead as normal a life as possible during the difficult period of sudden loss of wages due to physical disabilities or death.

Moreover, under the old law, the disease contracted or injury received by the employee as provided in Sec. 2 of the Act must cause his death within one year from the date of such injury or sickness to be able to derive benefits therefrom. The new law increases the one-year period to two years.

H) TOTAL OR PARTIAL DISABILITY—

In case the injury or sickness causes total disability for labor, the employer, during such disability but exclusive of the first three days shall pay to the injured employee a weekly compensation equivalent to sixty per centum of his average weekly wages, but not more than P35 nor less than P10 per week. Such weekly payments shall in no case continue after the disability has ceased, nor shall they extend over more than two hundred and eight weeks, nor shall the aggregate sum paid as compensation exceed in any case P4,000. But no award of permanent disability shall take effect until after two weeks have elapsed from the date of injury.²²

The aggregate sum of compensation to be paid in case of total disability for labor has been increased to and not exceeding P4,000. The old law only allows a maximum of P3,000.

In case of partial disability for labor, Section 16 of

²² Sec. 14, 1st par., Act 3428 as amended by Rep. Act 772.

Act 3428 as amended by Rep. Act 772 provides that the employer shall pay to the injured or sick employee for a period not exceeding two hundred and eight days a weekly compensation equal to fifty per centum of the difference between his average weekly wages before the accident and the weekly wages which he could probably earn thereafter, but not more than ₱18 per week.

As in total disability, the amount of compensation to be paid for partial disability shall not in any case be in excess of the total sum of ₱4,000.

Immediately after an employee has suffered an injury or contracted sickness and during the subsequent period of disability, the employer shall provide the employee with such medical, surgical, and hospital services and supplies as the nature of the injury or sickness may require.²³

I) RIGHT TO ADDITIONAL COMPENSATION—

Sec. 4-A (new provision) of Act 3428 gives an additional compensation equal to fifty per centum of the compensation fixed in the Act in case the employee's death, injury or sickness is due to the failure of the employer to comply with any law, or with any order, rule or regulation of the Workmen's Compensation Commissioner or the Industrial Safety Bureau, or failure to install and maintain safety appliances or failure to take other precautions for the prevention of accident or occupational disease.

J) COMPENSATION, HOW PAYABLE—

Sec. 44 (new provision) provides that the compensation provided in the Act shall be paid periodically and promptly in like manner as wages, and as it accrues, and directly to the person or persons entitled thereto. The first payment shall start either on or before the fourteenth day after disability or within five days after the employer first has knowledge of the accident. Subsequent payments shall be made weekly thereafter or, as the Workmen's Compensation Commissioner may deem advisable, monthly or at any other period.

Under Sec. 53 (new provision) laborers in public works

²³ Sec. 13, 1st par., Act 3428.

industrial concerns and entities of the Government are assured of immediate payment of compensation without going through much red-tape by requiring such offices to make deposits in order to insure prompt payments.

The priority of all actions for compensation, as provided under Sec. 32 of the old law, over all other cases, except 'habeas corpus' proceedings, election contests and criminal cases in which the accused are not at liberty on bail, is repealed by Rep. Act 772.

Payments of compensation may, whenever the Commissioner considers it most advantageous, be discharged totally or in part by payment in a lump sum or sums as the case may be, under the condition that if the sum or sums to be paid are less than that fixed by law, the reduction shall not be more than eight per centum. The old law allows a cut or reduction of twenty per centum if the compensation due an employee is paid by the employer in a lump sum. The new law allows a maximum reduction of just eight per centum in such a case. Moreover, any failure on the part of the employer to comply with his obligation to pay any sums due to the injured employee or his dependents in accordance with the Act will entitle the beneficiary to claim the entire balance of the compensation at one time.

K) LIABILITY OF THIRD PARTIES—

In case an employee suffers an injury for which compensation is due under the Act by another person besides his employer, it shall be optional with such injured employee either to claim compensation under the Act or sue such other person for damages in accordance with law. In case compensation is claimed and allowed in accordance with the Workmen's Compensation Act, the employer who paid such compensation or was found liable to pay the same shall succeed the employee to the right of recovering from such other person what he has paid. x x x²⁴

L) LAW APPLICABLE TO SMALL INDUSTRIES—

All claims for compensation by reason of an accident in an enterprise, industry, or business carried on or in a trade, occupation or profession exercised by an employer for the purpose of gain, whose capital amounts to less than ₱10,000 and is not hazardous or deleterious to employees, shall be governed by the provisions of Act 1874²⁵

²⁴ Sec. 6, Act 3428 as amended by Act 3812.

²⁵ Employer's Liability Act.

and its amendments. x x x²⁶

Employers with a capital of not less than P10,000 cannot now escape liability under the new law as it will be easy to prove that they have a capital stock of not less than the above-named amount as against the old provision requiring a gross income of not less than P20,000 before an employer could be made to answer the responsibilities under the Workmen's Compensation Act. Small industries will remain under the old Employer's Liability Act except those firms or corporations where the nature of the work is considered hazardous or deleterious to employees. In the present status of the law, therefore, even industries whose capital is less than P10,000, but where the nature of the work therein is hazardous or deleterious, will be within the purview of the Act.

M) JURISDICTION—

The Workmen's Compensation Commissioner shall have exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court.²⁷

In case of appeal from any decision of the Workmen's Compensation Commissioner to the Supreme Court, the same procedure as provided by law and by the Rules of Court for appeal from the Court of Industrial Relations to the Supreme Court shall be followed.

The old law gives the exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act to the Director of the Bureau of Labor. The new law elevates the Workmen's Compensation division of the Bureau of Labor to the category of a commission and to which is transferred that jurisdiction.

N) GENERAL POWERS AND DUTIES OF THE COMMISSIONER—

Sec. 47 (new provision) of Act 3428 gives to the Workmen's Compensation Commissioner full power and authority:

- (a) To take charge of the administration of the Workmen's Compensation Act;
- (b) To hear and determine all claims for compensation

²⁶ Sec. 42, Act 3428 as amended by Act 3812 and Rep. Act 772.
²⁷ Sec. 46, Act 3428 (new provision).

under the Act and such incidental matters as to approve agreements, make, modify or rescind awards, and make findings of fact and rulings of law, to require and order medical service for injured employees and to exercise other powers as may be necessary to carry out the purposes of this act;

(c) To make, modify and rescind, subject to the approval of the Secretary of Labor, such rules and regulations as may be necessary to carry out the purposes of this Act; and

(d) To appoint, employ and maintain such technicians and clerical personnel as may be necessary to carry out the purposes of the Act.

Under the old law, the Director of Labor may, in connection with his duties, require the cooperation of the provincial fiscal of any province in order to secure the proper compliance with the Act or any part thereof (Sec. 36, Act 3428). The new law authorizes the Workmen's Compensation Commissioner to require, if he deems it necessary, the cooperation not only of provincial fiscals but also of other officials of the government, to wit: city fiscals, city or provincial health officers, justices of the peace or other national, provincial, or municipal officials, for the same purpose.

Moreover, the new law creates the office of referees to which the Commissioner may delegate the power to hear and determine claims for workmen's compensation, to conduct such hearings and investigations and to make such orders, decisions and rules, subject of course to revision, modification or rescission by the Commissioner.

O) NOTICE AND CLAIM—

It is a condition precedent to any action or proceeding to recover compensation under this Act that the employer be given notice of the injury or sickness as soon as possible after the same has been received or contracted. Similarly, the claim for compensation must be made not later than two months after the date of the injury or sickness. In case of death, the claim must be filed not later than three months after the death, regardless of whether or not the compensation had been claimed by the employee himself. x x x²⁸

²⁸ Sec. 24, Act 3428 as amended by Com. Act 210.

The filing of claim is not necessary where the compensation is voluntarily paid by the employer.²⁹ Again, the delay in the presentation of the claim is justified under certain circumstances.³⁰

P) PRESUMPTIONS—

In any proceeding for the enforcement of a claim under this Act, it shall be presumed in the absence of substantial evidence to the contrary that—

- (1) The claim comes within the provisions of this Act;
- (2) That sufficient notice thereof was given;
- (3) The injury was not occasioned by the wilful intention of the injured employee to bring it about on himself or another;
- (4) The injury was not the result of intoxication while on duty; and
- (5) The contents of verified medical and surgical reports introduced in evidence by claimants for compensation are correct.³¹

These presumptions, introduced by the new law, Rep. Act 772, evidently are to fairly favor and protect the employees because of their disadvantageous position with relation to their employers.

Q) PROCEDURE—

Sec. 49 (new provision) lays down the procedure to be taken concerning claims for compensation under the Act. The steps, in outline form—

- (1) Submission of claim to the Commissioner.
- (2) Notice of hearing to each party interested.
- (3) Hearing.
- (4) Testimony of parties in interest—Subpoenas.

²⁹ Alcereza v. Johnston, 64 Phil. 846.

³⁰ Gagni v. Luzon Brokerage Co., 40 Off. Gaz. 4020.

³¹ Sec. 43, Act 3428 (new provision).

(5) Reception of various reports—

- a) Reports of attending physician.
- b) Reports of investigators.
- c) Reports of employer.
- d) Hospital reports of the case.

(6) Entry of award on findings of fact.

(7) Petition for review—in writing, filed within fifteen days after the entry of the award.

(8) Decision³²—final on the 15th day after promulgation of same unless previously appealed from.

The rules of procedure for the hearing of claims under the old law are scattered in many sections. The new law embodies all the steps which should be taken in the hearings of claims under the Act in this single section and thus easily enable prospective claimants under the Act to prosecute their claims.

R) ENFORCEMENT OF AWARD—

The award of the Commissioner shall be enforced by a petition which any party in interest must file in any court of record in the jurisdiction in which the accident occurred.³³

S) EXPENSES OF ADMINISTRATION OF THE ACT—

(1) Annual Appropriation.³⁴

(2) There is created a special fund to be known as the Workmen's Compensation Fund which shall be used exclusively for the payment of the expenses of the Administration of this Act.³⁵ The Commissioner shall be authorized to collect from insurance carriers one per centum of their gross receipts on premiums collected from insurance of workmen's compensation liabilities to cover administration costs.³⁶

³² Sec. 50, Act 3428 (new provision).

³³ Sec. 51, Act 3428 (new provision by Rep. Act 772).

³⁴ Sec. 52, Act 3428 (new provision by Rep. Act 772).

³⁵ Sec. 55, Act 3428 (new provision by Rep. Act 772).

³⁶ Sec. 54, Act 3428 (new provision by Rep. Act 772).

CONCLUSION

An over-all study of the new provisions and amendments introduced by Rep. Act 772 to the Workmen's Compensation Act would show that such provisions and amendments are not so sweeping as to create a maladjustment in our economic set-up. Great care has been taken in the drafting of these modifications so as not to hamper the industrialization program of this country. If difficulties are to be met by the employers because of the passage of the new law, only those who would try to evade their responsibilities to industrial victims would suffer. At any rate, compensation benefits should be made a part of the costs of production and in the final analysis it would be the consuming public which would have to shoulder it.

It is feared that due to the lack of necessary facilities and adequate personnel of the Workmen's Compensation Commission the purposes for which the Act has been enacted may not be satisfactorily accomplished. Much, then, will depend on the cooperation and good faith of the employer to give the relief justly due to his employee who has been a victim of an accident in the pursuit of his employment. The courts, too, must, as they have always done in the past, interpret the provisions of the Act fairly in favor of the employee. Humanity and civilization demand protection for the workman.

REP. ACT No. 679

By JOSE C. REYES

If perchance someday you walk by a large factory or industrial establishment and you hear the babble and prattle of infants mingled with the din and noise of the factory, pause for a little while . . . then walk towards the source of the babble and prattle . . . there you will find a nursery filled with the frolic and fun of happy children unmindful of the people around them . . . unmindful of you. But what is the big idea of all these, you ask yourself. Perplexed you decide to investigate. You drop by the office of the big boss and ask. The big boss simply answers you: "Well, it all

happened so fast. Congress finally decided in Sec. 9 of Rep. Act 679 that I could be the most perfect baby sitter for the children of my working women. And so here I am, a baby sitter 'al por mayor' minus several bank rolls as a consequence. Whoever concocted this idea certainly pulled a fast one on me. I am beginning to fear that someday I might be designated adopting father of these children by viva-voce vote."

This is one of the new features of Rep. Act 679 which we shall presently comment on.

REPUBLIC ACT 679

AN ACT TO REGULATE THE EMPLOYMENT OF WOMEN AND CHILDREN.

Sec. 1 *Employment of children below fourteen years of age.*

a. May only be employed to perform light work

(1) which is not harmful to their health or normal development, and

(2) which will not prejudice their attendance in school.

b. May not be employed or permitted or suffered to work on school days in any shop, factory, commercial, industrial or agricultural establishment or any place of labor.

Exception:

(1) the child knows how to read and write which shall be evidenced by:

(a) an educational certificate issued by the principal of the public or private elementary school of the locality where the child resides.

(b) in the absence of said certificate, the employer shall conduct an intelligence test to determine whether the child can read and write.

Notes:

Sec. 4 of Act 3071 provides that no person, firm or corporation shall employ nor permit the employment of any boy or girl below the age of fourteen years in its factory, shop, commercial or industrial establishment or other place of labor on school days, unless such child knows how to read and write.