JUSTICE SARMIENTO AND STATE PROTECTION TO LABOR: THE RULE OF COMPASSIONATE LAW

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INTRODUCTION

Retired Justice Abraham F. Sarmiento was who he was not.

He was unlike George Malcolm, cast in the classical mold of a Holmes or Cardozo.[1] He was not a "just and steady-purposed" J.B.L. Reyes, known for his sharp judicial intuition and "undisputed mastery of civil law." [2] And he was definitely no Claudio Teehankee, who "wield(ed) (his) trenchant pen to resist the abuses of dictatorship" and is "best remembered for his salient defense of democracy during the period of (despotism)."[3]

Neither was he a kangaroo court justice, legitimizing the pursuits of a predator of constitutional democracy, not to mention holding the ubiquitous umbrella over the First Lady's head.[4]

Quite simply, Abraham F. Sarmiento was, in his four-year stint with the Supreme Court, his own man. When the American civil rights titan, Justice Thurgood Marshall, retired from the United States Supreme Court in 1991, he was asked how he would want to be remembered. He replied: "That he did what he could with what he had."[5] So, too, with Justice Sarmiento.

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1 *See* Carag, *Malcolm and the Rule of Law: A Structured Recollection*, 56 PHIL. L.J. (2nd Quarter) 169 (1981).

2 *See* Balane, *A Harvest of 18 Years: A Survey of Jose B.L. Reyes' Leading Supreme Court Decisions on Civil Law*, 56 PHIL. L.J. (1st Quarter) 35 (1981). Prof. Balane was true to his eloquent form, quoting a passage from Horace's Third Book of Odes to describe Justice Reyes.

3 Inscription in the *Associate Justices' Plaque of Appreciation* on occasion of then Chief Justice Teehankee's retirement in 1988.

4 *See* J. BERNAS, *Judicial Gentlemanly Language*, in DISMANTLING DICTATORSHIP 121 (1990).

5 *Excerpts from Marshall News Conference*, L.A. TIMES, June 29, 1991, at A23.

What *he* had was a post-EDSA reality, the calm after the politically and economically beleaguering storm. Constitutional democracy was restored and poised to allow social justice to proliferate. But the Constitution is what the judges say it is, and justices may find themselves pressured by the left or the right "who measure the success of the Supreme Court by whether it reads into the Constitution the political programs they prefer."[6] It took Justice Sarmiento the requisite compassion to perceive the potentially negligible humanitarian provisions of the Constitution.[7] His sensitivity to the "little man's cause" had previously manifested itself. He was already within reach of the languishing masses, having worked closely with and for them.[8] Of course, the single most significant event that could have amplified this divine virtue was the death of his son Abraham "Ditto" Sarmiento, Jr., a Philippine Collegian editor who died after tormenting incarceration during the Martial Law era. Said the elder Sarmiento, "[H]is death encouraged me to strengthen my resolve and multiply my activities for the restoration of justice, freedom, and democracy in our land."[9]

This note pays homage to the legacy of Abraham F. Sarmiento as Supreme Court Associate Justice. His was an adherence to the rule of compassionate law, best exemplified by his consistent law-abiding interpretation of Philippine labor laws. Perhaps his dissents in landmark constitutional law decisions[10] are, from a keen observer's standpoint, the most obvious point of discussion. But there is no dearth of talk on the matter. In fact the good Justice has himself spoken of his (occasionally dissenting) role in the spate of conservative pronouncements in constitutional law by the Fernan Supreme Court.[11] So perhaps his contributions to labor law jurisprudence deserve some attention. At any rate, his sensitivity to the cause of the workingman

6 Carter, *Living Without the Judge*, 101 YALE L.J. 1, at 2 (1991).

7 PHIL. CONST. art.II, sec.10: "The State shall promote social justice in all phases of national development."

8 He was a Director and Co-Founder of the Philippine Organization For Human Rights (POHR), Director for the Protection of Workers' Rights, Director of Labor Education and Assistance for Development (LEAD), and a member of the Bagong Alyansang Makabayan (BAYAN) Legal Aid Center.

9 Maristela, A Young Man Perishes in the long, dark night called the 'New Society', Philippine Panorama, Dec. 8, 1986, at 22.

10 More particularly, *Marcos vs. Manglapus*, 177 SCRA 668 (1989) and 178 SCRA 760 (1989); *Guazon vs. De Villa*, 181 SCRA 623 (1990); and *Umil vs. Ramos*, 187 SCRA 311 (1990).

11 *See* Sarmiento, *The Supreme Court and Human Rights — 1901-1991: An Analysis*, 1 ATENEO HUMAN RIGHTS LAW JOURNAL 103 (1992).

constitutes a recognition of human rights as a whole (political as well as economic and social) and therefore brings about far-reaching and substantial consequences, suggesting perhaps the equal (if not greater) value of his achievement in the area of labor law *vis-a-vis* constitutional law.

A point of worthy mention: the welfare of workers in the government sector, albeit normally beyond the domain of the "protection to labor" clause, will be the subject of three cases mentioned in this note. It is evident that the compassion factor will spill over to employees of the civil service, reminiscent of Justice Makasiar's dissent in *Alliance of Government Workers vs. Minister of Labor*,[12] where he declared that the laboring masses of the government-owned and -controlled agencies demand as much dignity, self-welfare and security as workers of the private sector do.[13]

The inclusion of these three cases does not, in any way, intend to entangle the civil service system with the labor-management scheme in the private sector. Truly, the two systems have in between them vast differences in policy and purpose. But "worker protection" is a term easily encompassing any kind of structural severance. As Justice Sarmiento himself put it, "we should not rationalize compassion."[14]

I. Labor Law as Compassionate Law[15]

The Rule of Law is the epitome of a constitutional government. Mr. Justice Malcolm's terse concept of the "rule of law" went thus: a government of laws, and not of men. He added: "No man – no set of men – no party – can wantonly be permitted to set the law at naught."[16]

The development of the Rule of Compassionate Law directs the protection normally afforded by law to the Filipino people in general[17] to a specific segment of the populace, almost always a disadvantaged

[12] 124 SCRA 1 (1983) (Makasiar,J.,dissenting).

[13] *Id.* at 28.

[14] *PLDT vs. NLRC*, 164 SCRA 671, at 683 (1988).

[15] It should not be inferred from such designation that present labor laws have entirely eradicated the ills of the working class. Labor legislation does suffer from some noted imperfections.

[16] 1 G. MALCOLM, CONSTITUTIONAL LAW OF THE PHILIPPINE ISLANDS 229 (1920).

[17] PHIL. CONST. art.II, sec.1.

class. "Compassion" literally means "suffer with",[18] which conjures an ever-idealistic set-up – the State descending to the underprivileged, shielding them from further harm, and guiding them in their proverbial ascent to mainstream society.

Our labor laws are compassionate laws. The sad plight of workers, past and present, requires no elucidation. Dean Pacifico Agabin of the University of the Philippines School of Law detailed the emergence of the pro-labor overtones now embodied in present labor and social welfare legislation. He noted the development of the *laissez faire* doctrine in early Philippine jurisprudence in order to accommodate American business concerns in the country.[19] The decision of the Supreme Court in *People vs. Pomar*[20] was an easy confirmation of the *laissez faire* policy. In striking down the Women and Child Labor Law's mandate for employers to give maternity leave pay to women employees, Mr. Justice Johnson averred that the law

> deprived every person, firm, or corporation owning or managing, a factory, shop or place of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon.[21]

In the light of the appalling insensitivity to the cause of the working class, Prof. Agabin pointed out that

> the framers of the (1935) Constitution saw to it that the Supreme Court (ruling) in (*Pomar*) would have no precedent value by inserting (a provision) in the Constitution calculated to blunt the legal effect of the (case). Thus, to override the *Pomar* doctrine, the delegates approved a blanket protection for laborers by providing that the State should "afford protection to Labor, especially to working women and minors" and shall regulate the relations between landowner and tenant, and between labor and in industry and agriculture."[22]

[18] It was derived from the Latin words *com* (with) and *passus* (a past participle of *pati*, or "to suffer"). WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, at 369 (2d ed. 1958).

[19] *See* Agabin, *Laissez faire and the due process clause: How economic ideology affects constitutional development*, 44 PHIL. L.J. 709 (1969).

[20] 46 Phil. 440 (1924).

[21] *Id.* at 454.

[22] Agabin, *supra* note 19, at 723.

It was then that President Manuel L. Quezon proclaimed: "The philosophy of *laissez faire* in our Government is dead."[23]

The 1973 Constitution likewise provided that "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 relations between workers."[24]

The 1987 Constitution echoed the interventionist position of the Government when it adopted the State protection to labor as a policy enunciated in not one, but two articles: the Declaration of Principle and State Policies and Social Justice and Human Rights. Our supreme law mandates:

> ART. II, SEC. 18. The state affirms Labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.
>
> ART. XIII, SEC. 3. The state shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all...

Senator Lorenzo Tanada and Professor of Law Enrique Fernando stressed that the Constitution has recognized that the solution of labor problems in the Philippine can best be met by state interference where labor needs the help of the government to enable labor to protect its own interest.[25]

The Labor Code of the Philippines[26] affirms the basic State policy as regards labor. Sec. 3 declares: "The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers."

II. Carrying out the Command

Justice Sarmiento was appointed to the Supreme Court in January 1987, and that same year a labor leader characterized the labor

[23] *Id.*

[24] PHIL. CONST. art.II, sec.9 (1973).

[25] 2 L. TAÑADA & E. FERNANDO, CONSTITUTION OF THE PHILIPPINES 1242 (4th ed.).

[26] PRES. DECREE NO. 442 (1974) as amended by REP. ACT 6715 (1989).

situation as "dynamic."[27] For all its inaccuracy it was a comprehensible assessment. Labor then was in an ambivalent mood. It found success in the positive growth rate of 0.13% in the GNP. The Aquino government ended the succession crisis and the uncertainties over what the country would be like after the end of Marcos' rule.[28] Workers also found new worth in their right to organize and to strike. In 1986, strikes proliferated more than in any other period in our history.[29] The unions were giving vent to their pent-up dissatisfaction during the repressive Marcos years and were testing the limits to freedom under the new dispensation. In addition, the Labor Ministry had an avowed pro-labor chief in the person of human rights lawyer Augusto Sanchez. But there was no escaping the gruesome and fateful realities. The Marcos legacies of mass poverty, mass unemployment, and stark social inequality were still there.[30] Thus, labor still clamored for reforms which, among others, included strict enforcement and upgrading of minimum labor standards on health, safety and wages; also, an overhaul of the existing labor relations system consistent with nationalist industrialization and genuine agrarian reform.[31]

At the time labor knew problems remained unsolved, but the seeds of economic development had been planted. The Aquino government redefined constitutional democracy, more particularly the restoration of the independence of the judiciary. It was not too long ago, during the dark days of despotic rule, when each Supreme Court Justice's chamber was equipped with two telephones one accepting the usual calls, and one which was a hot line to accommodate the voice from Olympus.[32] After EDSA, the one strong voice that would guide the Supreme Court would be the 1987 Constitution. In labor cases, that meant the time-tested command "afford protection to labor." In days to come, the Supreme Court would remain a strong bastion for labor justice from where the employees could well expect assured

[27] Mendoza, *Achieving Industrial Peace*, Manila Chronicle, Sept.28, 1987, at 9.

[28] Ofreneo, Labor Power After EDSA, Philippine Currents, Apr.1987, 8-12.

[29] There were 571 strikes that year, involving some 167,424 workers and causing a loss of 28.8 million man-hours. *Id.* at 10.

[30] *Id.*

[31] From a declaration by the participants in the Second Round Table Conference on labor's vision of economic recovery, Philippine Currents, May 1987, at 17-18.

[32] Hizon, *One Hundred Days of the New Brethren*, Philippine Daily Inquirer, July 29, 1986, at 20.

protection for their rights to security of tenure, self-organization, just and humane conditions of work and other constitutional and legal rights.[33]

Abraham F. Sarmiento was part of this timely crusade. His votes in labor cases, whether in *ponencia*, concurrence or dissent, were characterized by a marked compassionate leaning mostly derived from compassionate law itself. There were five areas of labor law which comprised Justice Sarmiento's worthy inclinations: jurisdiction, security of tenure, money claims, self-organization, and due process of law.

A. *Jurisdiction*

Jurisdiction of labor offices in labor cases is of great importance because quasi-judicial agencies tasked to decide labor disputes have acquired expertise in the specific matters entrusted to their jurisdiction. As a result, the findings of these agencies are accorded by the Court not only with respect but even finality if they are supported by substantial evidence. This has been the pronouncement in a long line of cases, the latest being *Tiu vs. NLRC*.[34] The considerations are primarily pro-labor: competence and expediency in disposition of cases. The end result: an orderly administration of justice.

Justice Sarmiento's first decision on labor jurisdiction, *National Union of Bank Employees vs. Lazaro*,[35] was a strict adherence to this objective. A union brought an unfair labor practice (ULP) with damages case for violation of the collective bargaining agreement (CBA) against the employer and another bank which assumed the employer's liabilities through a merger. Justice Sarmiento's disposition of the case was firmly grounded on the Labor Code. The labor arbiter had jurisdiction for two cogent reasons. First, the Code clearly granted arbiters the power to grant damages as an incident to the ULP case. Second, such jurisdiction was for "the orderly administration of justice." Though the employees' causes might have been delayed, the ruling still had their concerns in tow. Having the regular courts decide their ULP case could have been a source of a more vexatious delay, not to mention open the door to an aberration – judicial legislation.

[33] Jimenez, *Analysis of Supreme Court Decisions in 1988*, 16 JOURNAL OF THE INTEGRATED BAR OF THE PHILIPPINES 30 (1988).

[34] 215 SCRA 540 (1992).

[35] 157 SCRA 123 (1988).

In *Associated Labor Unions vs. Borromeo*,[36] Justice Sarmiento reasserted the importance of the jurisdiction of labor officials in labor cases. In granting certiorari and prohibition against a Regional Trial Court (RTC) judge who ordered striking employees to allow employer representatives to enter the work premises, he noted that the jurisdictional precept was "basic and elementary." He had occasion to condemn the judge's resort to military assistance in order to implement his order. Justice Sarmiento said that the act diminished in no small measure the rights of the working man enshrined in the Constitution.[37]

A particular issue in labor jurisdiction which confronted Justice Sarmiento and the Court was that involving a legal tussle between labor arbiters and Department of Labor (DOLE) Regional Directors in cases involving money claims exceeding P5,000. *Briad Agro Corporation vs. Dela Serna*[38] was a Sarmiento opinion decided by the Court *en banc*. He concluded that Executive Order No. 111, applied retroactively, intended to grant concurrent jurisdiction to the Regional Directors and Labor Arbiters insofar as money claims of workers were involved. On motion for reconsideration by the losing party, Justice Sarmiento modified his ruling,[39] in view of the enactment of the Herrera-Veloso Law (Republic Act No. 6715) on March 2, 1989. It was apparent that labor arbiters now had original exclusive jurisdiction to hear and decide money claims over ₱ 5,000. Justice Sarmiento was quick to add that the Court was "not reversing itself, but merely applying the new law." The curative nature of labor arbiter's jurisdiction statutes called for its retroactivity.

In between the two *Briad Agro* opinions came *Maternity Children's Hospital vs. Secretary of Labor*,[40] another *en banc* decision, this time authored by the late Mr. Justice Medialdea. The latter drifted away from Justice Sarmiento's reasoning in *Briad Agro I*, in the sense that Justice Medialdea saw no need to retroact E.O.111. A law existing at the time the cause of action accrued, Presidential Decree No. 850, gave Regional Directors enforcement powers over their already-existing visitorial powers to monitor compliance with labor standard provisions of the Labor Code. The conclusion reached was the same as *Briad Agro I*, i.e., concurrent

[36] 166 SCRA 99 (1988).

[37] *Id.* at 108.

[38] 174 SCRA 524 (1989).

[39] 179 SCRA 269 (1989).

[40] 174 SCRA 632 (1989).

jurisdiction between the Regional Director and Labor Arbiter. But the reasoning was different. Justice Sarmiento concurred subject to his opinion in *Briad Agro I*. At any rate, *Briad Agro II* settled the matter. The retroactivity-of-curative-statutes theory prevailed.

Matters because complicated in *Servando's, Inc. vs. Secretary of Labor*.[41] The concurrent jurisdiction argument resurfaced, even bearing overtones of Justice Medialdea in *Maternity Children's Hospital*, stressing the distinction between visitorial and enforcement powers of the Regional Director and his power to adjudicate money claims below ₱ 5,000. The former was proposed to absorb all claims regardless of the amount. Mr. Justice Padilla, as *ponente*, struck down Justice Medialdea's argument, favoring Justice Sarmiento's analysis in *Briad Agro II*: Labor Arbiters have exclusive jurisdiction over claims exceeding ₱ 5,000, plain and simple. Therefore, when the Regional Director's findings in the exercise of his visitorial powers disclosed an employee claim of over ₱ 5,000, the matter should be referred to the Labor Arbiter.

Justice Sarmiento went with his Second Division brother. Thus, when the same issue returned to the Court via *Sphinx Security and Foreign Boat Watchman Agency vs. Secretary of Labor*,[42] Justice Sarmiento simply heeded *Servando's, Inc.* It bears repeating that the consideration in rulings favoring the Labor Arbiter's jurisdiction ultimately hinged on the workers' welfare. As noted by Justice Padilla in *Servando's, Inc.*, the summary process before the Regional Directoris not to adequate to prove the workers' claims. He based this concern on the "elementary demands of due process" which labor so truly deserves.

Jurisdiction as a matter linked to the protection of labor was best exemplified in Justice Sarmiento's dissent in *Manila Public School Teachers Asso. vs. Laguio, Jr.*[43] That case involved so-called Rule 45 appeals by certiorari to the Supreme Court. There was a conglomeration of cases commonly asking for an invalidation of the Secretary of Education's return-to-work order in the famous (or infamous) teacher's strike of 1990. (These orders were disobeyed, resulting in a mass termination of defiant teachers.) The Supreme Court, through Mr. Justice Narvasa, was rather terse, despite an exhaustive narration of facts. Simply, it proclaimed, Rule 45 appeals contemplate a question of law. The cases

[41] 198 SCRA 156 (1991).

[42] 202 SCRA 527 (1991).

[43] 200 SCRA 323 (1991) (Sarmiento, J., dissenting).

involved a factual question which called for making "the crucial determination of what in truth transpired concerning the disputed incidents."[44]

Justice Sarmiento dissented. (Justices Gutierrez, Cruz, Feliciano, and Padilla registered their own dissenting opinions.) He expressed lament over the Court's ruling in words of spontaneous expression:

> What I find apparent is that a thousand or so of our countrymen will be out of work because the Supreme Court cannot supposedly try facts.
>
> * * *
>
> I also submit that it is to trivialize the noblest profession, if it is not to trivialize the serious crisis confronting the State of Phillippine education, to dismiss these complaints as if it involved simple personalities demanding money.[45]

A point of curiosity in Justice Sarmiento's dissent was his reference to *Lansang vs. Garcia*,[46] the Court's fact-finding venture to justify the declaration of Martial Law. The reason for the relaxation of the "question of law" rule then was the urgency of the troublesome situation. Analogously, Justice Sarmiento saw in the harrowing condition of public school teachers an urgency of like proportion. Again, there was without question a "must" for him to undertake.

B. Security of Tenure

The right to security of tenure was the running theme in a number of Justice Sarmiento's opinions. In *Indino vs. NLRC*,[47] he laid down the settled rule that this right cannot be denied on the basis of mere speculation. He elaborated that the dismissal of an employee from work involves not only the loss of his position but, more importantly, his means of livelihood. In this case the mere mention of the recession following Ninoy Aquino's death in 1983 constituted a "flimsy excuse" for employers to close shop.

[44] *Id.* at 334-45.

[45] *Id.* at 349.

[46] 42 SCRA 448 (1971)

[47] 178 SCRA 168 (1989).

In *Anscor Transport Terminals, Inc. vs. NLRC*[48] a theft charge against an employee provided another solid ground for discussion on the subject of security of tenure. Justice Sarmiento noted that the charge before the NLRC must pass the substantial evidence test so as to justify termination. The strained relations doctrine was suggested to justify non-reinstatement, but Justice Sarmiento rejected this contention because "some hostility is invariably engendered between the parties as a result of litigation. That is human nature."[49] In *Golden Farms vs. Bughao,*[50] he dissented from of the Second Division's reversal of an NLRC decision to reinstate an employee after acquittal in a criminal case for theft of the employer's goods. Justice Padilla spoke for the majority and cited three Third Division cases penned by then Chief Justice Fernan which ruled that an employee who has been exonerated from a criminal charge may still be dismissed for loss of confidence arising from his misconduct.[51] Justice Sarmiento averred that "acquittal cleansed (the employee) of any wrongdoing and must be reinstated with backwages."[52]

The problem of acquisition of security of tenure also appeared in Justice Sarmiento's opinions. In both *Octaviano vs. NLRC*[53] and *De Jesus vs. Philippine National Construction Corporation,*[54] he reaffirmed the oft-pronounced rules concerning attainment of regular status in cases when the employee is allowed to work after a probationary period[55] or engaged in activities usually necessary or desirable in the usual business or trade of the employer.[56] In the latter case, he even undertook the task of distinguishing between a term and a condition. The first, when present in a contract of employment, constitutes the employee as hired on a project basis. The second places one under regular status.

Teachers were also involved in the security of tenure question. *Espiritu Santo Parochial School vs. NLRC*[57] involved teachers on probationary status whose services were terminated after a 10-month period. The issue was the propriety of their dismissal. The school cited *Biboso vs. Victorias Milling Co., Inc.*[58] as a case in point. Justice Sarmiento's rejoinder was another unmasking of an unnoticed legal dichotomy. He noted that in *Biboso*, the contracts to teach were for definite periods spanning only one year. The contracts in *Espiritu Santo Parochial School* did not stipulate any period at all. Thus, there was a needed referral to the Manual of Regulations for Private Schools which provided for a 3-year probation period during which time the security of tenure provision applies.

University of Sto.Tomas vs. NLRC[59] was a test in construing the aforesaid Manual of Regulations for Private Schools. The majority of the Court *en banc*, through Mr. Justice Gancayco, held that under the Rules only full-time teachers can become permanent employees after 3 consecutive years of satisfactory service. It all boiled down to the issue of whether or not the employee in question was a full-time or part-time teacher. Paragraph 78 of the Manual considers a full-time teacher one who has a normal teaching load of 18 hours a week. With a load of less than 18 hours a week, not even the employee's 4 consecutive years of satisfactory service could save him from part-time status.

Justice Sarmiento was a lone dissenter in this case. He maintained that the 18-hour requirement only operated as a restraint upon the schools not to grant teachers excessive man-hours. In a word, the 18 hours was merely a maximum set by the regulations. The fact that the instructor also operated a clinic (thus truly categorizing him as "part-time" in the regular sense of the word) did not stop the Justice from centering his analysis around the Manual of Regulations. In *Alcuaz vs. PSBA, Quezon City Branch,*[60] the teachers' security of tenure was related to their freedom of expression. Teachers joined students in what was considered to be a "noisy demonstration" within school premises. A teacher who joined the demonstration was terminated. The attainment of permanent status, according to the Manual, required more than three or more years of *satisfactory services*. Mr. Justice Paras, speaking for the Court *en banc*, was swift in his disposition of the case.

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[48] 190 SCRA 147 (1990).

[49] *Id.* at 153.

[50] 195 SCRA 323 (1991).

[51] The three Third Division cases were the following: *Nasipit Lumber vs. NLRC*, 177 SCRA 93 (1989); *Cruz vs. Medina*, 177 SCRA 565 (1989); and *Mercury Corporation vs. NLRC*, 177 SCRA 580 (1989).

[52] Golden Farms, 195 SCRA at 327.

[53] 202 SCRA 332 (1991).

[54] 195 SCRA 468 (1991).

[55] Labor Code, Art.281.

[56] Labor Code, Art.280.

[57] 177 SCRA 802 (1989).

[58] 76 SCRA 250 (1977).

[59] 182 SCRA 371 (1990) (Sarmiento, J., dissenting).

[60] 178 SCRA 135 (1989) (Sarmiento, J., dissenting).

"Having participated in the 'unlawful demonstration'", he declared, "his services cannot be deemed satisfactory."

Justice Sarmiento and that other avowed liberal, Mr. Justice Cruz, filed separate dissenting opinions. Justice Sarmiento's attack was two-pronged: first, "noisy demonstrations" are not necessarily unlawful, unless intimidation, coercion, or violence is established. Following the apparent validity of the demonstration – second – the teacher, after three and a half years of continuous satisfactory services, should be deemed as permanent. Justice Sarmiento bewailed the majority's position: "what is evident to me finally is that by a stroke of a pen, we would have, in all likelihood, punished him for exercising his constitutional right of free expression and peaceable assembly."

Despite his conspicuous lamentations, Justice Sarmiento still managed to concur with a unanimous Court in *Brent School, Inc. vs. Zamora*[61] which enunciated that stipulations in employment contracts providing for "term employment" or "fixed period employment" are valid when the periods agreed upon are knowingly and voluntarily entered into by the parties without force, duress, or improper pressure exerted on the part of the employee; and when such stipulations were not designed to circumvent the laws on security of tenure.[62] Justice Sarmiento meticulously dissented on that one part of the decision where the *ponente*, Mr. Justice Narvasa, indicated a resemblance between employment contracts and ordinary contracts contemplated by Book IV (Obligations and Contracts) of the Civil Code. He was quick to point out that labor contracts are impressed with public interest, such that no attempt at equating them with ordinary contracts should ever be allowed. The dissent seemed to be for purely academic purposes, but there was a tacit suggestion never to lose grip on the State-cuddled concerns of the working class.

The usually liberal Second Division and the relatively conservative First Division rendered conflicting decisions in two cases involving the same issue. The Court broke the stalemate in an *en banc* decision. *Filipinas Port Services, Inc. vs. NLRC*[63] concerned the different stevedoring and arrastre corporations operating in the Port of Davao which were integrated into a single dockhandler corporation known

[61] 181 SCRA 702 (1990) (Sarmiento, J., concurring in part and dissenting in part).

[62] *Id.* at 716.

[63] 200 SCRA 773 (1991).

as Filipinas Port Services, Inc. (Filport for brevity). Filport's labor force was mostly taken from the integrating corporations. Some of these employees claimed retirement benefits from Filport to be computed from the time when they were still with the integrated corporations. The First Division ruled that Filport could not assume labor contracts undertaken by its predecessors. Justice Sarmiento's Second Division held Filport liable for retirement benefits for services rendered during the pre-Filport period. The Court *en banc* went with the Second Division ruling. The majority opinion, penned by Second Division Member Justice Paras, found that Filport, being an alter ego of the different merging corporations, had the obligation not only to absorb the workers of the dissolved companies but also to include the length of services earned by the absorbed employees with their former employers as well. To deny the employees the fruits of their labor corresponding to the time they worked with their previous employers would render at naught the constitutional provisions on labor protection, more particularly their right to security of tenure.

The plight of NLRC officials terminated due to the reorganization of the Commission as per R.A. 6715 was under consideration in *Mayor vs. Macaraig*.[64] The constitutionality of the Act was put in issue, specifically Sec. 35, providing that "(a)ll positions (of NLRC officials) are hereby declared vacant." Justice Sarmiento joined a unanimous Court *en banc* in ruling that the termination of NLRC officials pursuant to the said Sec. 35 was unconstitutional and void because R.A. 6715 did not abolish the NLRC. Hence, any new qualifications for NLRC officials should be prospective in application, lest it undermine their rights to security of tenure.

The case of *Dario v. Mison*[65] is, according to the Philippines Judicial Weekly,[66] Justice Sarmiento's best decision. Quite understandably, because it was post-EDSA judicial review at its best, scrutinizing pertinent Constitutional provisions to arrive at a conclusion congenital to a truly democratic setting. The case involved Commissioner of Customs Salvador M. Mison, who relieved Bureau of Customs employees to give way to his appointments. The Commissioner's constitutional basis was Sec. 16 of the Article on Transitory Provisions, referring to a grant of separation

[64] 194 SCRA 672 (1991).

[65] 176 SCRA 84 (1989).

[66] Vol.1, No.18-A.

pay to those separated under the Freedom Constitution, which, in turn, allowed government reorganization without cause. It was his contention that the 1987 Constitution allowed him to reorganize without cause pursuant to the defunct Freedom Constitution.

Justice Sarmiento ruled that there was no provision for automatic vacancy in the present Charter, in contrast to the 1935, 1973, and Freedom Constitution. He stated:

> As we have demonstrated, reorganization under the aegis of the 1987 Constitution is not as stern as reorganization under the prior Charter. Whereas the latter, sans the President's subsequently imposed constraints, envisioned a purgation, the same cannot be said of the reorganization inferred under the New Constitution because, precisely, the New Constitution seeks to usher in a democratic regime. But even if we concede *ex gratia argumenti* that Sec. 16 is an exeption to the due process and no-removal "except for cause provided by law" principles enshrined in the very same 1987 Constitution, which may possibly justify removals "not for cause", there is no contradiction in turn here because, while the former Constitution left the axe to fall where it might, the present organic act requires that removals "not for cause" must be as a result of reorganization. As we observed, the Constitution does not provide for "automatic" vacancies. It must also pass the test of good faith – a test not obviously required under the revolutionary government formerly prevailing, but a test-well-established in democratic societies and in this government under a democratic charter.[67]

Mison's act miserably failed the good faith test because 522 were brought in to replace the 394 personnel who were terminated for allegedly economic reasons. "This betray(ed) a clear intent to `pack' the Bureau of Customs."[68] Justice Sarmiento's final word was attributed to the 522 Mison replacements:

> We recognize the injury (the replacements) would sustain. We also commiserate with them. But our concern is the greater wrong inflicted on the dismissed employees on account of their illegal separation from the civil service.[69]

At any rate, he ordered the payment of whatever benefits that may be provided by law to these replacements. Justices Fernan, Narvasa,

[67] Dario, 176 SCRA at 126.

[68] *Id.* at 129.

[69] *Id.* at 132.

Feliciano, Regalado, and Second Division Chairperson Melencio-Herrera dissented in this case.

C. Money Claims

It goes without saying that money claims are the centerpiece of workers' concerns. Wages and other monetary considerations were the subject of disputes which Justice Sarmiento's pen did resolve.

Universal Corn Products v. NLRC[70] involved the 13th-month pay. The question which confronted the Second Division was whether or not the employer should grant the CBA-mandated Christmas bonus in the face of payment of the 13th-month pay as per P.D. 851. Justice Sarmiento opined that the Christmas bonus was distinct from the 13th-month pay, having been granted to workers with cognizable loyalty. This was not the purpose of the law in granting the 13th-month pay.

Phil.Geothermal, Inc. vs. Noriel[71] delved into the very core – the workers' salary. Pending CBA negotiations, the employer granted a ₱ 200 per month salary increase. Deadlock in negotiations ensued, and so the workers struck. The Secretary of Labor assumed jurisdiction over the dispute. He resolved the deadlock by awarding to all covered rank-and-file employees of the company a wage increase of ₱ 800 per month. The company implemented this increase only to the extent of ₱ 600/month, in the belief that the amount of ₱ 200 granted previously was creditable to the aforesaid ₱ 800 increase. The employer contended that the ₱ 200 increase was granted with the understanding that it was to be credited to any future increases.

Justice Sarmiento explained that no sufficient proof of such an understanding was put forward by the employer. On the other hand, the union clearly pointed out through Minutes of the negotiations that the agreement was precisely to exclude the ₱ 200 from whatever would be the negotiated wage increase. The ₱ 200 increase, apparently, was an act of grace unilaterally extended by the Company which would not be withdrawn.

That the company's early morning 30-minute assembly should be compensable waiting time was Justice Sarmiento's cry of dissent in *Arica vs. NLRC.*[72] Preliminary activities before an average working

[70] 153 SCRA 191 (1987).

[71] 164 SCRA 532 (1988).

[72] 170 SCRA 776 (1989) (Sarmiento, J., dissenting).

day comprised a roll call, assignment of individual work, accomplishment of a report, getting working materials in the stockroom, and travelling to the workplace. Justice Paras, speaking for the majority, confined his basis in ruling for non-compensability to the *res judicata* rule. A 1978 decision by the Minister of Labor had already resolved the same issue involving the same parties.

Justice Sarmiento noted that the case before the Minister did not involve the same "waiting time" for present consideration. There were less restrictions to what was previously characterized as mere "assembly time," as the latter substantially involved a mere roll call. Hence, the new "waiting time" had more restrictions, which meant that the workers did not have the leisure of using the 30-minute period all to themselves.

The area of "labor-only" contracting was tackled in two decisions penned by the good Justice. In both *Tabas vs. CMC, Inc.*[73] and *Deferia vs. NLRC*,[74] he reiterated the established rule that a "labor-only" contractor is considered merely an agent of the employer, and therefore liability must be shouldered by either one or shared by both. Of great significance was the added pronouncement in *Tabas*, where Justice Sarmiento stated that any contract absolving the labor-only contractor from future liability as an employer should not affect the rights of workers to run after the latter for their valid labor claims.

Prescription of actions for workers' money claims was the point of discussion in *Pan-Fil Co.,Inc. vs. Agujar*.[75] An Able Seaman demanded separation pay and wages for the remainder of his contract with a vessel and a local manning agency after he was unjustifiably ordered to disembark with still an unexpired portion of two months remaining in big contract. The claim, however, was filed with the Philippine Overseas Employment Administration (POEA) almost 3 1/2 years after his employment was terminated. The employer raised the defense of prescription pursuant to Art.292[76] of the Labor Code. The Solicitor-General, arguing for the POEA, commented that the prescriptive period

[73] 169 SCRA 497 (1989).

[74] 194 SCRA 525 (1991).

[75] 167 SCRA 267 (1988).

[76] Art.292: "Money claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within 3 years from the time the cause of action accrued; otherwise they shall be forever barred."

of 4 years in Art. 1146 of the Civil Code applied. Justice Sarmiento, in writing for the majority, agreed with the Solicitor-General, mainly because Art. 1146 provides for the 4-year period "upon an injury to the rights of the plaintiff."[77]

A divided Supreme Court showed dissents by Justices Narvasa, Melencio-Herrera, Gancayco, and Cruz (in rare disagreement with his fellow liberal). In essence, they averred that the distinction between "injury to rights" and "sheer monetary demands" was, in the words of Justice Cruz, "plain quibbling."

The lesson we learn from *Pan-Fil* is the "irrationality" of compassionate law. Justice Sarmiento's dissent in *Brent School* was a subtle reproach of the majority opinion's association of an ordinary contract contemplated by the Civil Code with a labor contract "imbued with a public interest." But in *Pan-Fil* the same Justice Sarmiento found basis in the provisions of the Civil Code in doing away with the 3-year prescriptive period and allowing the unjustly terminated employee's claim to prosper. It is, however, an "irrationality" easily rationalized. What could easily be considered as judicial flip-flop elevates into unflinching obedience to a constitutional mandate to protect labor. The circumstances of the case were, of course, a crucial factor. The Able Seaman fell victim to the arbitrary hand of his employer, having been terminated in a land far from his own. Just almost seven months earlier, Justice Sarmiento went with the majority in *Cebu Institute of Technology vs. Ople*[78] in ruling that teachers' demands for their share in incremental proceeds arising from tuition fee increases fell under the scope of the 3-year prescriptive period. Thus, "injury to rights" as stated in Art.1146 would mean, in the light of *Pan-Fil* and his compassionate inclinations, rights which have been deprived in the most distressing and appalling fashion.

The question of the propriety of awarding "financial assistance" to a justly-terminated employee was the issue in *PLDT vs. NLRC*.[79] A stern Justice Cruz spoke for the majority in declaring that separation pay shall be allowed in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting

[77] REP. ACT NO. 386, NEW CIVIL CODE (1950).

[78] 160 SCRA 506 (1988).

[79] 164 SCRA 671 (1988) (Sarmiento,J.,dissenting)

moral character. Where the reason for the valid dismissal is habitual insubordination or an offense involving moral turpitude, the employer may not be required to give the dismissed employee separation pay or financial assistance. Justice Sarmiento dissented. His brief expression of dismay: "(w)e cannot rationalize compassion. I vote to affirm the grant of financial assistance."[80]

Workmen's compensation figured in two majority and two dissenting opinions by Justice Sarmiento. This area was a fertile ground for a stricter application of compassionate law, simply because the worker was faced with poverty *and* disease as well. *Segovia vs. Republic*[81] was an open-and-shut case. It held that an employee who suffered from pulmonary tuberculosis deserved compensation benefits even without the necessary x-ray report or finding. A legal presumption of causation existed under the old Workmen's Compensation Act whenever an illness was contracted by an employee in the course of employment. The employer there failed to rebut such a presumption, having anchored his defense on procedural matters instead. Also, doubts as to whether or not tuberculosis was compensable were resolved in favor of the claimant.

Gonzaga vs. Secretary of Labor[82] involved an employee who filed a claim for compensation benefits after developing cirrhosis of the liver, diabetes mellitus, and rheumatoid arthritis during employment. He was awarded maximum lump sum compensation plus reimbursement for medical and hospitalization expenses as the "nature of his disability and the process of his recovery may require and that which will promote his early restoration to the maximum level of his physical capacity pursuant to Section 13 of the Workmen's Compensation Act (WCA)."

After two years, the employer refused to reimburse the employee for medical expenses, invoking a two-year limit agreed upon and stipulated in a CBA between labor and management. The employee cited a 1980 decision, *Biscarra vs. Republic*,[83] in which a divided Court

[80] The SCRA indicates that Madame Justice Grino-Aquino expressed these sentiments, but a perusal of the Advanced Sheets (at 12) shows that the dissent should be properly attributed to Justice Sarmiento who departed from usual practice and noted his statement below (instead of above) his signature. Thus, the dissent appeared above Justice Grino-Aquino's signature.

[81] 160 SCRA 296 (1988).

[82] 172 SCRA 528 (1989) (Sarmiento, J., dissenting).

[83] 95 SCRA 248 (1980) (Teehankee, J., dissenting).

declared that the Workmen's Compensation Act offered no maximum either as to the amount paid or the time within which such rights may be availed of. Writing for the majority, Mr. Justice Feliciano, a confessed advocate of judicial balancing,[84] abandoned *Biscarra* and adopted Justice Teehankee's dissent in the said decision. It was therefore ruled that the WCA cannot be invoked for the payment or reimbursement of subsequent medical expenses of the employee after his retirement from work as a result of his total and permanent disability because it was obvious that such expenses were no longer curative and no amount of medical treatment could restore him to his lost physical capacity for work or labor. The maximum lump sum compensation was enough to terminate employer liability. Justice Feliciano stressed that cases involving temporary disability were erroneously applied in *Biscarra*. In the end, the two-year limitation in the CBA prevailed.

Justice Sarmiento was at his dissenting best. He affirmed Justice Makasiar's (the *Biscarra ponente*) "no maximum amount" pronouncement, tearing down any distinction between "temporary" or "permanent" disability in awarding reimbursement expenses. He spoke of the "trend of increasing medical liability" mentioned in *Biscarra*, "a point on which the majority (was) conspicuously silent." In a display of relentless application of compassionate law, Justice Sarmiento concluded with unspeakable fervor:

> The economic costs of providing for an unlimited medical liability, in my view, is hardly the point. A leadership that claims to have no finances with which to minister to the people's needs does not deserve to lead the people. And while this opinion does not deny the realities of present economic conditions, I would like to think that the country's financial distress is a challenge to the Government in charting its priorities.[85]

The companion cases of *Raro vs. ECC*[86] and *Rodriguez vs. ECC*[87] upheld the employer in ruling that the presumption of compensability in the old WCA gave way to the Employees' Compensation provisions

[84] "Judicial balancing" is a mode of judicial analysis which takes account of the legitimate individual and social interests, reflected in constitutional and statutory provisions or in general principles of law, competing for ascendancy in particular disputes presented for adjudication. *See* Manila Public School Teachers Asso., 200 SCRA, at 344 (Feliciano,J.,dissenting).

[85] Gonzaga, 172 SCRA at 545-46.

[86] 172 SCRA 845 (1989) (Sarmiento,J.,dissenting).

[87] 178 SCRA 30 (1989) (Sarmiento,J.,dissenting).

in the Labor Code. In the latter law, the employee is required to prove a *positive* proposition, i.e., that the risk of contracting the disease was increased by working conditions. In *Raro*, Justice Gutierrez reiterated the decision of his Third Division in *Sarmiento vs. ECC.*[88] Since the employee's ailment was a brain tumor, or one with no sure scientifically identifiable causes, the employee was deemed to have failed to established his claim. Justice Sarmiento dissented (Justice Paras filed a separate dissent) and once again ruled for the employee by insisting that the Labor Code did not do away with the presumption of compensability established by the WCA. The *Raro* dissent will be most-remembered for its unmistakable wit and wisdom:

> It must likewise be noted that the (employee) is suffering from (a brain tumor), whose cause medical science is yet to unravel. It would then be asking too much to make her prove that her illness was caused by work or aggravated by it, when experts themselves are ignorant as to what brings it about.
>
> I do not believe, finally, that the question is a matter for legislation. Compassion, it is my view, is reason enough.[89]

Rodriguez emerged from the Second Division. The usually unanimous quintet (Justices Melencio-Herrera, Paras, Padilla, Sarmiento, and Regalado) voted 3-2, with Justices Paras and Sarmiento standing pat on their *Raro* dissents.

In *Vicente vs. ECC*,[90] Justice Sarmiento had another chance to write for the majority in a case easily decided in favor of the ailing employee. The Court proclaimed that the employee suffered from a permanent total disability as established by a previous ECC determination and by a certification of the employer's physicians.

The degree of preference granted to payment of workers' wages in the event of the employer's insolvency was a nagging question which confronted the Court in a number of cases. The source of all debate was Art.110 of the Labor Code, indeed a breakthrough provision insofar as it gave workers first preference as regards wages due

[88] 161 SCRA 312 (1988).

[89] *Raro*, 182 SCRA at 854.

[90] 193 SCRA 190 (1991).

them in the event of bankruptcy or liquidation of an employer's business.[91] But the Court's construction of this overzealous gesture by the legislature was another matter. In *Republic vs. Peralta*,[92] the Court, through Justice Feliciano, enunciated that Art.110 in its pre-R.A.6715 form did not give workers' claims preference over customs duties in consonance with Arts. 2241 and 2242 of the Civil Code.[93] He added that all that Art. 110 did was to affect the order of preference enumerated in Art. 2244, dealing with the free portion of the insolvent person's property. Justice Sarmiento went with a majority beset by a dissent filed by Justice Cruz, who claimed that the workers' preference based on Art. 110 was absolute.

Peralta's application to credits other than unpaid claims of the government was not clear. Thus, two Third Division decisions applied it in cases[94] involving private credits, while two First Division decisions[95] upheld the workers' preference in such instances by virtue of the distinction between taxes (in *Peralta*) and other credits. The landmark case of *Development Bank of the Philippines (DBP) vs. NLRC*[96] was decided *en banc* to resolve the conflict. The majority opinion, written by Madame Justice Melencio-Herrera, chose to invoke *Peralta*, and pronounced that Art. 110 could only have amended Art. 2244 of the Civil Code, and nothing else. Justice Melencio-Herrera proceeded to establish an added interpretation of the law — such limited preference applies only when insolvency proceedings are properly commenced.

No less than the three Second Division Justices Paras, Padilla, and Sarmiento joined Justice Cruz on the dissenting side. Justice Padilla

[91] Prior to R.A.6715, Art. 110 read: "In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to bankruptcy or liquidation, any provision to the contrary notwithstanding."

After R.A. 6715, Art. 110 was amended to read as follows: "In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their unpaid wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before the claims of the Government and other creditors may be paid."

[92] 150 SCRA 37 (1987).

[93] Arts. 2241 and 2242 enumerate special preferred credits involving movable and immovable property in case of distribution of the assets of an insolvent person.

[94] *DBP vs. Santos*, 171 SCRA 138 (1989) and *DBP vs. Secretary of Labor*, 179 SCRA 630 (1989).

[95] *A.C. Ransom Labor Union-CCLU vs. NLRC*, 150 SCRA 498 (1987) and *Phil. Nat. Bank vs. Cruz*, 180 SCRA 206 (1987).

[96] 183 SCRA 328 (1990) (Sarmiento J., dissenting).

had the most elaborate and exhaustive presentation of them all, averring that Art. 110 granted an absolute preference, taking into consideration the strong wording brought in by the amending R.A. 6715. Nowhere did Art. 110 provide for an insolvency proceeding as a condition *sine qua non* for its application.

Justice Sarmiento joined Justice Padilla in his dissent. In addition, he reminded the Court about the provisions of the law (in the Constitution and in statute) which manifested a compassionate concern for the cause of the workingman. He asserted:

> Labor has been the doormat of the economy when it should be its hub. And now, we will make them fall in line with creditors of management in collecting what it (labor) already owns — its just wages. I do not think this is in accord with established State policies.[97]

The cases that followed would become *DBP vs. NLRC*'s progeny.[98] Three of these cases were decided by the Second Division. One would surmise that the question there would be resolved in favor of labor, what with Paras, Padilla, and Sarmiento dissenting in *DBP vs. NLRC*. But Justice Paras displayed adherence to the *en banc* Court mandate and decided to join a majority, with the remaining liberal twosome maintaining their dissents.

D. Self-Organization

No enumeration of basic workers' rights will be complete without any mention of the right to self-organization. Not only is this right among those to be protected by the State pursuant to its labor policy, it is enshrined in our Bill of Rights as well.[99] Essentially, the right to self-organization is the right of the employees to form, join, or assist in the formation of a labor organization of their own choosing for purposes of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for purposes of collective bargaining or for their mutual aid and protection.[100]

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[97] *Id.* at 346.

[98] *Bolinao vs. Padolina*, 186 SCRA 368 (1990); *DBP vs. NLRC*, 186 SCRA 841 (1990); *Banco Filipino Savings and Mortgage Bank vs. NLRC*, 188 SCRA 700 (1990); and *DBP vs. Minister of Labor*, 195 SCRA 463 (1991).

[99] PHIL. CONST. art.III, sec.8.

[100] LABOR CODE, Art. 246.

In *CLLC E.G. Gochangco Workers Union vs. NLRC*,[101] Justice Sarmiento reproved obstruction of the workers' exercise of this right. The employer in this case was engaged in packing, crating, and warehousing and had a contract with the United States Air Force stationed in Clark Air Base. The union sent a letter to the employer requesting permission for certain officers and members of the union to attend the hearing of their petition for certification election. The employer refused to acknowledge receipt of the letter and preventively suspended the union officers and members who attended the hearing. The ground alleged by the employer was abandonment of work. Later, the Air Base gate passes of the employees were confiscated by the Base guards. It was not long before they were all terminated. A complaint for constructive lock-out and unfair labor practice was forthcoming. The Labor Arbiter would rule for the employees, but the NLRC reversed him.

Justice Sarmiento found for the employees. He proclaimed that the employer was guilty of an unfair labor practice, and more:

> (i)n this connection, the respondent company deserves our strongest condemnation for ignoring the (employees') request for permission for some time out to attend the hearing of their petition before the med-arbiter. It is not only an act of arrogance, but a brazen interference as well, with the employees' right to self-organization, contrary to the prohibition of the Labor Code against unfair labor practices.[102]

As a rejoinder to the employer's defense that the confiscation of the gate passes was caused solely by the American guards, he added that

> (w)e cannot be fooled by the company's pretenses that the subsequent confiscation by the Americans of the (employees') passes is beyond the powers of management. To start with, those passes would not have been confiscated had not management ordered the suspension.[103]

The NLRC was not spared from his onslaught, after it confirmed the validity of an alleged waiver of claims made by the employees. The waiver, he declared, involved monetary claims which were unrelated to the ULP case.

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[101] 161 SCRA 655 (1988).

[102] *Id.* at 663.

[103] *Id.* at 663-64.

> What disturbs even more, however, is the perplexing gullibility with which the respondent NLRC would fall for such an indefensible position.
>
> Wittingly or unwittingly, (the NLRC) had made itself a pawn of the respondent corporation or otherwise had yielded to its influence. The Court rebukes (counsel for the company), for his unbecoming act and the individual members of the Commission itself, for besmirching the integrity of the Commission.
>
> In any event, we have held that ULP cases are not, in view of the public interest involved, subject to compromises.[104]

The Labor Arbiter essentially awarded the employees reinstatement with backwages. The Second Division awarded them the same but added moral and exemplary damages as well.[105] Justice Sarmiento concluded: "As the conscience of the government, it is this Court's sworn duty to ensure that none trifles with labor rights."

In *Madrigal Company,Inc. vs. Zamora*,[106] the Second Division was again guided by Justice Sarmiento in finding that the subject reduction of capital was really a subterfuge to evade the employees' demand for salary adjustments and that mass lay-offs of employees were under the guise of a retrenchment policy which constituted an unfair labor practice.

E. Due Process of Law

The due process of law guaranteed by the Bill of Rights,[107] when applied to labor laws, pertains to procedural due process, recalling to mind *Ka* Pepe Diokno's plain notion of due process, i.e., "doing the right things in the right way."[108]

Ka Pepe's "right way" in labor cases echoed Mr. Justice Laurel's "seven cardinal primary requirements" of due process in administrative proceedings.[109] But Justice Sarmiento's decisions zoomed in on two

[104] *Id.* at 667.

[105] NEW CIVIL CODE, Arts. 2220, 2229, and 2231.

[106] 151 SCRA 355 (1987).

[107] PHIL CONST. art.III, sec.1.

[108] J. DIOKNO, *A Filipino Concept of Justice*, in A NATION FOR OUR CHILDREN 25 (1987).

[109] *See Ang Tibay vs. Court of Industrial Relations*, 69 Phil. 635 (1940).

nuances of procedural due process in labor cases: speedy labor justice and termination hearings.

Speedy labor justice is a concomitant concept of due process in labor cases.[110] Justice Sarmiento was well-aware of the prejudice caused to the worker by any delay. In *Segovia*, he indicated that the Second Division's predisposition to decide the case instead of remanding it to the Secretary of Labor[111] was consistent with the promise to render speedy labor justice, "for (the) case had been pending for over 10 years and a remand to the Secretary would unduly prejudice the parties."

In *Montoya vs. Escayo*,[112] Justice Sarmiento wrote that the Katarungang Pambarangay Law,[113] which required the submission of disputes before the barangay Lupong Tagapamayapa prior to their filing with the court or other government offices, was not applicable to labor cases. He harkened to the Labor Code which granted *original and exclusive* jurisdiction over conciliation and mediation disputes in the Regional Offices of the Department of Labor. Above all, conciliation of labor disputes would defeat the very salutary purposes of the Code.

> Instead of simplifying labor proceedings designed at expeditious settlement or referral to the proper court or office to decide it finally, (application of the Katarungang Pambarangay Law) would only duplicate the conciliation proceedings and unduly delay the disposition of the labor case.[114] An argument of a similar nature could have partly driven him to dissent in the *DBP* cases, for requiring insolvency proceedings as a condition *sine qua non* before Art. 110 should be applied would unduly delay the whole claims process, considering the *original and exclusive jurisdiction* awarded to Labor Arbiters insofar as workers' claims are involved.[114]

He rejected the petition to intervene filed by the National Power Corporation in *Phil. Geothermal*, asserting that the NPC had no direct interest in the litigation, not being an employer of the union members involved. There was only an indirect interest at stake, i.e., whatever payments were to be made by the employer to the employees must be reimbursed by the NPC. "More importantly," Justice Sarmiento

[110] *See* Bacuñgan, *Speedy Labor Justice*, 1 PHIL. LABOR REVIEW, 52 (1976).

[111] PRES. DECREE No. 954 (1976) mandated that decisions by the Workmen's Compensation Commission (WCC) shall be reviewed by the Secretary.

[112] 171 SCRA 442 (1989).

[113] PRES. DECREE No. 1508 (1978).

[114] *Montoya*, 171 SCRA at 449.

asserted, "the intervention by the NPC would only unduly delay the disposition of the present case and unnecessarily complicate this suit."

The rule on the period of filing appeals or motions for reconsideration with the NLRC established in *Vir-Jen Shipping and Marine Services vs. NLRC*[115] was reiterated by Justice Sarmiento in *Erectors, Inc. vs. NLRC.*[116] The 10-day period for filing appeals from decisions of labor arbiters or compulsory arbitrators was held to be 10 *calendar* days. But *Erectors, Inc.* had a familiar twist to it. The case originated from the POEA, which decided against the employer. The NLRC dismissed the latter's appeal because it was filed out of the reglementary 10-calendar-day period. On petition for review before the Second Division, the employer's counsel cited a non-existing POEA rule prescribing the period of appeal as 10 *working* days. Justice Sarmiento was infruriated.

> It is, therefore, obvious that the counsels for the (employer) deliberately tried to mislead this Court if only to suit their client's ends. On this regard, said counsels have much explaining to do.
>
> * * *
>
> The counsels for the (employer) are (admonished) for foisting a non-existent rule with the warning that repetition of the same or similar offense will be dealt with more severely. With triple costs against the (employer).[117]

In *SM Agri and General Machineries vs. NLRC,*[118] Justice Sarmiento concurred with Justice Padilla's *ponencia* which modified *Vir-Jen Shipping* and *Erectors, Inc.*, maintaining that when the last day for filing an appeal falls on a legal holiday, it can be filed the next business day following the legal holiday. The "peculiar facts of the case" removed it from within the ambit of the aforesaid two cases and placed it within the prescribed rule in the Revised Administrative Code.

An essential aspect of speedy labor justice concerns executing decisions in favor of the employee. In *Aris (Phil.) Inc. vs. NLRC,*[119] Justice Sarmiento concurred with a unanimous Court *en banc* in upholding the constitutionality of Art. 233 of the Labor Code concerning

[115] 115 SCRA 347 (1982).

[116] 158 SCRA 421 (1988).

[117] *Id.* at 426.

[118] 169 SCRA 20 (1989).

[119] 200 SCRA 246 (1991).

mandatory and automatic reinstatement of a prevailing employee pending the employer's appeal. The *ponente* Mr. Justice Davide adverted to the State's power to enact "police power legislation" for the welfare of the laboring class.

Justice Sarmiento set aside a Labor Arbiter's order to stay execution of her decision in *Bongay vs. Martinez.*[120] It was, in his opinion, an exercise of discretion in an otherwise ministerial duty, for the decision had long become final and executory.

"Forum-shopping" was his unequivocal finding in *Villanueva vs. Adre.*[121] A decision was handed down by the labor arbiter and on appeal the NLRC ordered the employer company and its president to pay. The latter went to the RTC to obtain an injunction after the NLRC sheriff levied on his property. Justice Sarmiento dismissed the RTC case and held the company official and his lawyer in contempt of court, suspending the latter from the practice of law for 3 months.

Justice Sarmiento was an innovator in the area of due process in termination disputes. His triad of *Ruffy vs. NLRC,*[122] *Tingson vs. NLRC,*[123] and *De Vera vs. NLRC*[124] uniformly laid down the proper procedure for a valid termination. Notice (comprising notice of the charge *and* notice of dismissal) and hearing (consisting of an ample opportunity to be heard) are essential.

In *Ruffy* and *Tingson,* the employees were terminated pursuant to a notice of dismissal and was asked to explain thereafter. In *De Vera,* there was a Notice of Preventive Suspension which did not apprise the employee of the causes of his dismissal, not to mention an "interview" which suffered from the same deficiency. Justice Sarmiento applied his formula and found no sufficient notice and/or ample opportunity to be heard in all these cases.

But his jurisprudential brainchild will always be *Salaw vs. NLRC.*[125] In that case the employee already admitted before the Philippine Constabulary his complicity with a co-worker in the prohibited sale

[120] 158 SCRA 552 (1988).

[121] 172 SCRA 826 (1989)

[122] 182 SCRA 365 (1990).

[123] 185 SCRA 498 (1990).

[124] 200 SCRA 439 (1991).

[125] 202 SCRA 7 (1991).

of some of the employer's assets. He was then summoned by his employer to appear before the Personnel Discipline and Investigation Committee *without counsel or a representative.* That was all the good Justice needed to blow the whistle on the errant employer:

> It is true that administrative and quasi-judicial bodies are not bound by the technical rules of procedure in the adjudication of cases. However, the right to counsel, a very basic requirement of (due process), has to be observed. Indeed, the right to counsel is guaranteed by the 1987 Constitution to any person under investigation, be the proceeding administrative, civil, or criminal.[126]

As for the employee's admission before the Philippine Constabulary, suffice it to say that Justice Sarmiento considered that to be inadmissible in view of the absence of counsel during investigation. Reinstatement and backwages were therefore in order.

A compassionate majority awarded a justly terminated employee an indemnity of P1,000 for being terminated without due process in *Wenphil Corporation vs. NLRC.*[127] Justice Sarmiento went along with this this majority.

F. Police Power

As mentioned earlier, the abandonment of the *laissez faire* policy has brought about legislative enactments for the welfare of the workers. More often than not, management will exhaust its remedies of seeking redress before the courts, launching a direct (the constitutionality question) or an indirect (the propriety of executive acts) attack on these measures.

As earlier stated, Justice Sarmiento concurred with Justice Davide's *ponencia* which upheld the "automatic reinstatement pending appeal" clause of R.A.6715 in *Aris (Phil.) Inc.*

In *Philippine Association of Service Exporters, Inc. (PASEI) vs. Drilon,*[128] the constitutionality of a Department of Labor Order temporarily suspending the deployment of female domestic helpers abroad was challenged for violation of the equal protection clause, the right to travel, and the legislative character of police power enactments.

[126] *Id.* at 13.

[127] 170 SCRA 69 (1989).

[128] 163 SCRA 386 (1988).

Justice Sarmiento spoke for a unanimous Court *en banc* when he declared the measure to be free from constitutional infirmities. He insisted on the valid discrimination between female and male workers, in view of the "unhappy plight that has befallen our female labor force abroad ... and exploitative working conditions marked by, in not a few cases, physical and personal abuse." Anent the alleged denial of the right to travel, he asserted that the police power of the State constitutes an implied limitation on the Bill of Rights. Although police power is truly within the domain of the legislature, such an authority was lawfully delegated to the Department when it was granted rule-making powers in the enforcement of the Labor Code.

PASEI defined the wide scope of the protection to labor clause. In *National Union of Bank Employees vs. Lazaro,* it was held that this guarantee does not necessarily result in a decision in favor of workers, for there still was the long-term consideration of "orderly administration of justice" which was ultimately beneficial to their cause. In *PASEI,* Justice Sarmiento asserted:

> "Protection to labor" does not signify the promotion of employment alone. What concerns the Constitution more paramountly is that such an employment be, above all, decent, just, and humane. It is bad enough that the country has to send its sons and daughters to strange lands just to satisfy their employment needs at home. Under these circumstances, the Government is duty-bound to insure that our toiling expatriates have adequate protection, personally and economically, while away from home.[129]

Delegation of legislative power was precisely the point of discussion in *Employers Confederation of the Phils. vs. National Wages and Productivity Commission.*[130] R.A.6727 authorized the creation of Regional Wage Boards to determine minimum wage rates for all workers in various regions. The Regional Board of the National Capital Region (NCR) increased the minimum wage by P17 in the NCR. It also issued an amended wage order granting an across-the-board wage increase to workers already being paid more than existing minimum wage rates. Opponents of the order contended that the Board acted in excess of the authority granted by R.A.6727, because under the said law the Board should only prescribe "minimum wages", and not "salary ceilings."

[129] *Id.* at 397.

[130] 201 SCRA 759 (1991).

Justice Sarmiento saw nothing wrong with the amended wage order. He pointed out that the law was intended to rationalize wages, first, by providing for full-time boards to police wages round-the-clock, and second, by giving the boards enough powers to achieve this objective. He noted the increasing trend in applying the "salary-cap method" in fixing wages which has reduced disputes arising from wage distortion. There was, to his mind, a practical utility for the existence of wage boards which were nevertheless guided by standards in wage-fixing set by the law itself. Of particular interest was his admonition of the apparent (and rather expected) *laissez faire* advocacy of the employers' group. He implicitly affirmed the righteousness of State intervention in labor-management relations, primarily attached to the State's protection to labor policy.

III. Management Prerogatives

Though he was not one to consider the "balancing" of contending rights if one of those rights would be that of labor's, Justice Sarmiento will not go down in history as a robed unionist. His calling was to protect labor. As "protection" means "preservation from loss, injury, or annoyance,"[131] there were cases when he found occasion to conclude that the loss, injury, or annoyance to the employee was so minimal that it warranted tempered, or, in some cases, no protection at all.

In cases when such protection was not granted, Justice Sarmiento fell back on the fundamental exercise of management prerogatives in the conduct of its business. *Reliance Surety and Insurance Co.,Inc. vs. NLRC*[132] involved employees who were acrimonious enough to commence a strike due to a dispute which started from a change of the seating arrangement in the workplace. Addressing the union officers' bad faith in staging the strike, he stated that

> (i)n effecting a change in the seating arrangement in the office of the underwriting department, the (employer) merely exercised a *reasonable* management prerogative which the employees did not validly question, much less assail as an unfair labor practice. The Court is indeed at a loss how rearranging furniture, as it were, can justify a four-month-long strike.[133]

[131] WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, at 1446 (2d ed. 1958).

[132] 193 SCRA 365 (1991).

[133] *Id.* at 370-71.

In *National Federation of Labor Unions vs. NLRC*,[134] Justice Sarmiento spoke for the Second Division in denying an employee's demand for higher wages after being designated a new title (Energy Manager) pursuant to a new law.[135] His claim of promotion to the managerial level was rejected because the fitness of workers for hiring and firing, promotion or reassignment, are exclusive prerogatives of management. Promotion does not necessarily entitle the employee to a corresponding salary increase. Besides, there was no substantial proof that the employee was vested with any of the powers and prerogatives of a managerial employee.

On the other hand, the lesser degree of protection deemed sufficient by Justice Sarmiento in *Wenphil* was in the form of an "indemnity" as recompense for the lack of due process in terminating the employee. In *PLDT*, his dissent made precise reference to the justly dismissed employee's 10 years of service which therefore entitled her to separation pay in the form of "financial assistance."

IV. Shadow of an Activist

Conservatives will be quick to misconstrue Justice Sarmiento's protectionist predisposition as judicial activism.[136] But it bears repeating that protection to labor was *already* a State policy long before he assumed office. He resolved not to create nor alter State policy but merely applied it. After all, the affirmation of labor as a primary social economic force is really an assertion of the supremacy of human dignity over things.[137]

It would, however, be inexcusable oversight not to suggest his fervent reference to such a policy. His zeal gains unusual character in view of the fact that Principles and State Policies in Art. II are fundamentally obligations of the government, particularly the *legislative and executive departments* as its policy determining organs.[138] But

[134] 202 SCRA 346 (1991).

[135] BATAS PAMBANSA Blg. 73, THE OMNIBUS ENERGY CONSERVATION LAW (1980).

[136] Judicial activism's key element is a court's willingness to make significant changes in public policy, particularly in policies established by other institutions. *See* Canon, *A Framework for the Analysis of Judicial Activism*, in SUPREME COURT ACTIVISM AND RESTRAINT 385 (S. Halpern & C.Lamb eds. 1982).

[137] IV RECORDS OF THE CONSTITUTIONAL COMMISSION 891.

[138] V. SINCO, PHILIPPINE POLITICAL LAW 116 (11th ed. 1962).

while they were directives addressed to the executive and to the legislature, they also obligated the judiciary to be guided by the provisions in the exercise of the powers of judicial review.[139] Moreover, Justice Fernando once remarked that

> (t)he obligation to protect labor is incumbent on government. It calls for the enactment of necessary legislation. What is more, the executive in its implementation and the *judiciary* in its interpretation, must be equally mindful of such constitutional injunction.
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> It would imply at the very least, then, that the State cannot just afford to be a neutral umpire in any struggle between labor and management. It means that considering its lesser weight in the competition of the market, the balance is to be tilted in its favor through laws faithful to such a command. What is more, they must be translated into actuality both by the executive and the *adjudicative* branches of government.[140] (italics supplied)

CONCLUSION: REAPING JUST FRUITS

Frankfurter observed: "Greatness in the law is not a standard quality, nor are the elements that combine to attain it."[141] The ingredients that made a Justice Abraham F. Sarmiento are not similar to those that comprise the greatest jurists. Comparison is not of the essence. What is crucial now is the man is perceived — what he was, what he has done. Certainly the message evoked from his votes and opinions in labor cases will be a source of estimation, but the assessment will be incomplete. Prof. Ralph Winter of Yale commented that "in evaluating a judge's work, one must look not simply to the results reached, but also to the quality of a judge's opinions."[142] Concurrences inclusive, Justice Sarmiento's advocacy in labor law decisions was safely grounded on the constitutional command to protect labor. His frequent references to compassion were not plucked out of thin air.

[139] 2 J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 2 (1988).

[140] E. FERNANDO, *The Revised Constitution as Fundamental Law: As to rights, reaffirmation and rededication*, in PERSPECTIVES ON THE NEW CONSTITUTION 131-2 (1973).

[141] Frankfurter, *The Supreme Court in the Mirror of Justices*, 105 U. PA. L. REV. 781, at 784 (1957).

[142] Winter, *TM's Legacy*, 101 YALE L.J. 25 (1991).

No less than the supreme law of the land has adopted this policy. Of course, it took a persona with a self-contained passion for social justice to have allowed himself to be dominated by such constitutional bias.

His attacks on inadequate worker protection or the lack of it — direct, spontaneous, sometimes laconic ("we should not rationalize compassion") — do more than acknowledge the Supreme Court's exercise of its "tyrannical" prerogative.[143] Emphatically, they were affirmations of what the judiciary, particularly the High Court, really is: a *"last bulwark* of constitutional rights and liberties."[144] "The matter never could have reached this point if there was enough compassion to observe compassionate law," he would have blurted out, but that would be unbecoming of an Associate Justice of the Supreme Court.

At the end of the day, his juristic outreach really served to sensitize labor officials and management for, as *Ka* Pepe had once intimated, we cannot abolish socio-economic inequality but we can change human relations so that "we can see to it that whatever inequalities remain in our society are not caused by our relations with (or actions towards) each other."[145]

[143] Sen. Arturo Tolentino, in a privilege speech on 17 May 1993, lamented that the added powers of the Supreme Court in the 1987 Constitution makes the High Tribunal a "potential tyrant."

[144] 2 BERNAS, *supra* note 139, at 254.

[145] DIOKNO, *supra* note 108, at 30.