Bank Mergers and the Right to Bargain Collectively

Hans Leo J. Cacdac[*]

INTRODUCTION 622
I. BANK MERGER OVERVIEW 624
A. *Corporate Structure of Banks*
B. *Bank Merger Process*
C. *Effects of Merger*
D. *Bank Merger Activity*
II. UNIONIZATION IN THE BANKING INDUSTRY 629
III. SURVEY OF JURISPRUDENCE ON THE EFFECTS OF MERGERS ON THE RIGHT TO BARGAIN COLLECTIVELY 630
A. *American Jurisprudence*
B. *Philippine Jurisprudence*
IV. THE LAW ON DETERMINATION OF REPRESENTATION STATUS 639

---

* A.B. '89, J.D. '93, Ateneo de Manila University; M.C.L. '98, Samford University. Lecturer in Labor Law, Ateneo de Manila University School of Law (1998-2001). The author was formerly an Associate Lawyer (1994-98) of the *Sentro ng Alternatibong Lingap Panlegal* (SALIGAN), an alternative organization providing legal assistance for the empowerment of marginalized sectors. He later served as Coordinator of SALIGAN's Urban Poor Unit (1998-2001). Currently, he is the Director of the Bureau of Labor Relations, Department of Labor and Employment (DOLE).

The author was Notes and Communications Editor of Volume 36 and Associate Editor of Volume 37, *Ateneo Law Journal*. His previous works published by the *Journal* include: *Earned Social Conscience in Asia: International Industrial Relations Standards in National Legislation,* 48 ATENEO L.J. 950 (2004); *Judicial Interpretation of the Law on Just and Humane Evictions,* 46 ATENEO L.J. 66 (2001); *The Social Security Law of 1997: Context, Ramifications, Possibilities,* 45 ATENEO L.J. 87 (2001); *International Protection of Worker's Rights at a Crossroads: A Social Clause in the WTO,* 44 ATENEO L.J. 309 (2000); *People v. Pomar Revisited: Substantive Due Process and the Emergence of the Afford Protection to Labor Clause,* 42 ATENEO L.J. 331 (1998); *Justice Sarmiento and the State Protection to Labor: The Rule of Compassionate Law,* 37 ATENEO L.J. 116 (1993); *Bail, Waiver and Kumander Bilog,* 36 ATENEO L.J. 132 (1992).

This study was presented in a research round table conference sponsored by the Institute for Labor Studies (ILS) in 2002. The author acknowledges the invaluable assistance of BLR Med-Arbiter John Frederick de Dios, and Attys. Carrie Bee Hao and Harvey Dychiao.

Cite as 49 ATENEO L.J. 621 (2004).

V. A TALE OF TWO MERGERS. 641
A. Equitable and PCI Bank: A Four-Cornered Fight
B. Bank of the Philippine Islands and Far East Bank & Trust Company: Organized Meets Unorganized
VI. FINDINGS AND RECOMMENDATIONS 648

INTRODUCTION

The wave of mergers that captivated the Philippine banking industry in the 1990's arose out of a "sink or swim" scenario in the face of a global trend towards liberalization of financial services.

The policy encouraging mergers may have been triggered by the passage of Republic Act No. 7721 in 1994,[1] which allowed the entry of foreign banks into the country. At that time, the influential Bankers Association of the Philippines (BAP) declared that the removal of the ownership ceiling of local banks could encourage mergers and consolidations. They posited that this may be the only effective measure to compete with bigger foreign banks. Smaller commercial banks may merge with larger universal banks to further strengthen the position of domestic banks against foreign competitors.[2]

Numerous issuances by the *Bangko Sentral ng Pilipinas* (BSP) unequivocally support bank mergers and consolidations as it increased minimum capital requirements of banks and investment houses. There are also incentives given to financial institutions that undertake mergers or consolidations.[3]

BSP Governor Rafael Buenaventura has renewed his call for mergers to boost the stability of banks and shield them from external shocks in the wake of the global recession brought about by the terrorist attacks of 11 September 2001.[4] But in the Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services, held in Geneva from the 5th to the 9th of February 2001, governments were implored to anticipate and address "the negative social and employment impacts which mergers and acquisitions may have, and assist social partners to find

1. An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes, Republic Act No. 7721 (1994).
2. Margie Quimpo-Espino, *New Law Scraps Foreign Ownership Ceiling in Banks,* PHIL. DAILY INQUIRER, May 12, 1994, at 17.
3. Bangko Sentral ng Pilipinas, Manual of Regulations for Banks § X112 (2003).
4. Rocel C. Felix, *BSP Renews Call for Bank Mergers,* PHIL. STAR, Dec. 1, 2001, at 25.

commonly agreed solutions to mitigate the negative effects of mergers and acquisitions." [5] Proposed measures relating to employment, working conditions, training, social dialogue, and International Labor Organization (ILO) action were endorsed by a majority of the delegates to the meeting.

Insofar as ILO action is concerned, the delegates encouraged the promotion of relevant international labor standards in the area of freedom of association[6] and the right to collective bargaining.[7]

In the context of bank mergers in the Philippine setting, there exist several problems concerning the right to collective bargaining of an exclusive bargaining representative in either the surviving or dissolved corporation. More particularly, the following questions must be addressed:

1. What happens to the exclusive bargaining representative status of a collective bargaining agent in surviving and dissolved corporations? Should the exclusive bargaining representative status of either one survive the merger?

2. Are there available modes of determining representation status in a merger situation?

3. Should an existing collective bargaining agreement in the surviving or dissolved corporation be respected after the merger?

Relative to enforcement of the right to organize and collectively bargain under ILO Convention Nos. 87 and 98, it becomes imperative to resolve the dilemma in bargaining representative status in a merger situation. After all, employees affected by mergers in the banking industry need their bargaining representatives to effectively advocate issues on security of tenure, training, and working conditions.

This Article will suggest solutions to the three points of inquiry. Part I will be a brief narrative on the phenomenon of mergers in the banking industry. Part II will render a report on unionization in the banking industry. Part III will give a survey of Philippine and American jurisprudence on the

---

5. Conclusions on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector, International Labor Organization (ILO) Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector (Feb. 5-9 2001).

6. Convention Concerning Freedom of Association and Protection of the Right to Organize, July 9, 1948, I.L.O. No. 87, 68 U.N.T.S. 17.

7. Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, July 1, 1949, I.L.O. No. 98, *available at* http://www.unhchr.ch/html/menu3/b/j_ilo98.htm (last accessed Dec. 21, 2004).

effect of mergers on the collective bargaining rights of an exclusive bargaining representative and any existing Collective Bargaining Agreement (CBA) at the time of the merger. Part IV will discuss the modes of determining representation status under the Labor Code and its Implementing Rules and Regulations. Part V will present the experience of two notable bank mergers in the past few years namely between Equitable and PCI Bank, and between Bank of the Philippine Islands and Far East Bank and Trust Company. Finally, Part VI will provide possible remedies and courses of action.

To limit the scope of this Article, matters concerning the effects of bank mergers on security of tenure or in terms and conditions of employment, while significant, will not be the focus of discussion. As of late, the Bureau of Labor Relations (BLR) has been involved in consultations on the settlement of representation disputes; hence, the proposal of policies on resolving representation issues in a merger situation has become its timely initiative.[8]

I. BANK MERGER OVERVIEW

A. *Corporate Structure of Banks*

Banking institutions are those engaged in the lending of funds obtained from the public through the receipt of deposits of any kind. They are formed as stock corporations. Republic Act No. 337, or The General Banking Act specifically states that domestic banking institutions shall be organized in the form of stock corporations.[9]

Consequently, a bank has the same corporate structure and features as any other private commercial corporation. It is governed by a board of directors and operated by officers. It has a juridical personality separate and distinct from its individual stockholders. It is, by mere fiction of law, its own person with full capacity to enter into a contract, just like any other individual. It also has the right of succession. It continues to exist despite the

8. Under Administrative Order No. 55, series of 2002, the Secretary of Labor and Employment created a committee to review dispute settlement procedures enforced by the Department. Pursuant thereto, Administrative Order No. 178, series of 2002, mandated the committee to conduct national consultations.

9. An Act Regulating Banks and Banking Institutions and for Other Purposes, Republic Act No. 337, § 7 (1948) [The General Banking Act]. Meanwhile, the General Banking Law provides as a condition for the organization of banks or quasi-banks that the entity is a stock corporation (*See* An Act Providing for the Regulation of the Reorganization and Operations of Banks, Quasi-banks, Trust Entities and for Other Purposes, Republic Act No. 8791, § 8 (2000)).

death or replacement of its stockholders. Stockholders may therefore sell their shares in a bank without affecting its existence.

However, a bank differs from other private corporations by the numerous regulatory issuances it must comply. Because the function of receiving deposits from the public is imbued with public interest, its operation is strictly regulated by the BSP.

A bank, being a mere creature of the law, must first secure a special authority or grant from the State in order to be formed. Thus, it cannot be formed by mere agreement of its shareholders. Its articles of incorporation and by-laws must first be submitted to the Securities and Exchange Commission (SEC) by the shareholders, and correspondingly, the SEC must approve these documents before formation of a bank takes place.

Unlike most other private corporations, a bank must first secure an authority from the BSP. According to the General Banking Act, the SEC shall not register the articles of incorporation and by-laws of any bank, unless these are accompanied by a certificate of authority issued by the Monetary Board of the BSP.[10] In reviewing these documents, the BSP looks into whether the public interest and economic conditions justify such authorization. It also determines whether the amount of capital, the financing organization, direction and administration, as well as the integrity and responsibility of the organizers and administrators, reasonably assure the safety of interests the public may entrust to the bank.[11]

B. Bank Merger Process

1. Definitions

"Merger" is a union whereby one or more existing corporations are absorbed by another corporation which survives and continues the combined business.[12] On the other hand, "consolidation" is the union of two or more existing corporations to form a new corporation called the consolidated corporation.[13]

The parties to a merger or consolidation are called constituent corporations. However, while in a consolidation all the constituent corporations are dissolved and absorbed by the new consolidated enterprise,

10. R.A. No. 337, § 9 -10.

11. *Id.*

12. CESAR VILLANUEVA, PHILIPPINE CORPORATE LAW 607 (2001 ed.).

13. *Id.*

in a merger, all constituent corporations, except the surviving corporation, are dissolved.[14]

2. Plan of Merger

The board of directors or trustees of each bank shall approve a plan of merger setting forth the following:

a) The names of the constituent corporations proposing to merge;
b) The terms of the merger and the mode of carrying the same into effect;
c) A state of the changes, if any, in the articles of incorporation of the surviving corporation; and
d) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.[15]

3. Stockholder's Approval

Upon approval by majority vote of each of the board of directors of the constituent corporations of the plan of merger, the same shall be submitted for approval by the stockholders or members of each of the corporations at separate corporate meetings duly called for the purpose.[16]

Notice of such meetings shall be given to all stockholders or members of the respective banks at least two (2) weeks prior to the date of the meetings, either personally or by registered mail. Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger. [17]

The affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each bank shall be necessary for the approval of such plan.[18]

4. Right of Appraisal

Any dissenting stockholder may exercise his/her right of appraisal, provided that if after the approval by the stockholders of such a plan, the board of directors should decide to abandon such, the appraisal right shall be extinguished.[19]

---

14. *Id.* at 464-65.

15. The Corporation Code of the Philippines, Batas Pambansa Blg. 68, § 76 (1980).

16. *Id* §68; §77.

17. *Id.*

18. *Id.*

19. *Id.*

5. Amendment of the Plan of Merger

Any amendment to the plan of merger may be made, provided such amendment is approved by majority vote of the respective banks and ratified by the affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each institution.[20]

6. Articles of Merger

After the approval by the stockholders of the merger, the articles of merger shall be executed by each of the banks, to be signed by the president and vice-president and certified by the secretary or assistant secretary of each institution setting forth the plan of merger, the number of outstanding shares, and as to each bank, the number of shares or members voting for and against such plan, respectively.[21]

7. Financial Statements

Under current SEC rules, the applying banks are required to submit their respective financial statements which serve as basis for fixing the shares to be issued in favor of the merged bank relative to the net assets to be absorbed by the surviving bank as of a specific date. The date is important because it indicates the values of said assets as of that date. In fact, it is required that the articles of merger should be filed not more than 120 days from the date of the long form audit report for each of the constituent corporations.[22]

8. BSP and SEC Approval

The articles of merger shall be submitted to the SEC in quadruplicate copy for approval after the favorable recommendation of the BSP has been obtained.[23] When the SEC is satisfied that the merger is consistent with the provisions of the Corporation Code and other related laws, it shall issue a certificate of merger, at which time the merger shall be effective.[24]

C. Effects of Merger

The legal effects of a bank merger are as follows:

---

20. *Id.*

21. *Id.* § 78.

22. VILLANUEVA, *supra* note 12, at 610.

23. B.P. Blg. 68, § 79.

24. *Id.*

1) The constituent banks shall become a single corporation which, shall be the surviving bank designated in the plan of merger;

2) The separate existence of the constituent banks shall cease, except that of the surviving bank;

3) The surviving bank shall possess all the rights, privileges, immunities and powers of each of the constituent corporations and shall be subject to all the duties and liabilities of a corporation organized under the Corporation Code;

4) All property, real or personal, and all receivables due on whatever account including subscriptions to shares and other chooses in action, and all and every other interest of, or belonging to, or due to each constituent bank, shall be taken and deemed to be transferred to and vested in such surviving bank without further act or deed;

5) The surviving bank shall be responsible and liable for all the liabilities and obligations of each of the constituent banks in the same manner as if such surviving bank had itself incurred such liabilities or obligations;

6) Any claim, action or proceeding pending by or against any of such constituent banks may be prosecuted by or against the surviving bank; and

7) Neither the rights of creditors nor any lien upon the property or any of each constituent bank shall be impaired by such merger.[25]

The general legal effect of merger is not to disrupt the legal continuity of the underlying "business enterprises" of each constituent corporation.[26]

D. Bank Merger Activity

Between 1973 and 2000, there were about 31 bank mergers,[27] with only 15 cases occurring after R.A. 7721. However, the so-called "big-boy" mergers

25. VILLANUEVA, *supra* note 12, at 611-612 *citing* B.P. Blg. 68, § 80.

26. *Id.* at 612.

undoubtedly were undertaken between 1998 and 2000, with standouts such as the Equitable–PCI Bank merger with P45.3 billion combined capital and the Bank of the Philippine Islands–Far East Bank and Trust Co. union with P50 billion combined capital leading the way.

While it would still be difficult to give a definite answer as to whether the recent wave of mergers has actually benefited the industry,[28] most observers believe that the Philippine banking system managed to survive the Asian financial crisis of 1997 relatively unscathed and that there is no banking crisis in the Philippines.[29]

II. UNIONIZATION IN THE BANKING INDUSTRY

As a central registry of labor organizations, workers' associations and collective bargaining agreements, the BLR maintains records pertinent to unionization in the banking industry. As of September 2002, there were 132 labor organizations in the banking sector, with 28,959 members. Independent unions comprised 64% of all registered labor organizations in the industry, and membership in these independent unions comprised 83% of the unionized banking workforce. Bank unions constituted only 0.7% of the over-all organized workforce, with 132 out of 17,573 registered locals/chapters, independent unions, and workers' associations.

As of 2002, there were only four registered collective bargaining agreements with the Bureau, representing 1,465 workers.[30] While this does not accurately reflect the number of CBAs in the industry, these four registered agreements represent a decline from the 49 registered CBAs as of November 2000.[31]

---

27. *See* Roundtable Discussion on Lessons from Mergers and Consolidations in the Banking Industry, Banking Industry Tripartite Council (BITC), Appendix A (Nov. 14, 2000).

28. Felicisimo Dolor Jr., *Mergers As Processes, Not Events,* BUSINESS WORLD, Aug. 16, 2000, at 28.

29. Ma. Socorro Gochoco-Bautista, *The Past Performance of the Philippine Banking Sector and Challenges in the Post-Crisis Period in* 10 RISING TO THE CHALLENGE IN ASIA: A STUDY OF FINANCIAL MARKETS 41 (1999).

30. The banks with registered current CBAs are the following: Pangasinan Savings & Loan Bank, Planters Development Bank, RCBC Savings Bank, and Sugbuanon Rural Bank.

31. Roundtable Discussion on "Lessons from Mergers and Consolidations in the Banking Industry," Banking Industry Tripartite Council (BITC), Annex G (Nov. 14, 2000).

Data from the Bureau of Labor and Employment Statistics (BLES) indicate that as of April 2002, there were 137,000 bank employees in the country. With 28,959 unionized bank employees on record, the industry appears to be 21% organized.[32]

III. SURVEY OF JURISPRUDENCE ON EFFECTS OF MERGERS ON THE RIGHT TO BARGAIN COLLECTIVELY

A. *American Jurisprudence*

The United States Supreme Court has been confronted with the issue of the effect of a merger on the rights of a collective bargaining agent. The term "successor employer" usually denotes an employer who has purchased or assumed a business.[33] A successor employer may obtain a business through "merger, sale of stock, sale of assets, loss of a renewable contract, incorporation of a formerly unincorporated entity, dissolution of a corporation, bankruptcy" or other means.[34]

The evolution of judicial dictum in this regard can be traced to *John Wiley & Sons, Inc. v. Livingston*,[35] where the Court resolved the issue of whether the arbitration provisions of a collective bargaining agreement survived a merger, so as to be operative upon the surviving corporation. District 65, Retail, Wholesale and Department Store Union, AFL-CIO, entered into a collective bargaining agreement with Interscience Publishers, Inc., a publishing firm, for a term expiring on 31 January 1962. The agreement did not contain an express provision making it binding on successors of Interscience. On 2 October 1961, Interscience merged with John Wiley & Sons, Inc., another publishing firm, and ceased to do business as a separate entity.

At the time of the merger, Interscience had about 80 employees, 40 of whom were represented by the union. It had a single plant in New York City and did an annual business of over $1,000,000. Wiley was a much larger concern, having separate office and warehouse facilities with about 300

32. This estimate may, however, be bloated because the data available does not distinguish between government and private banks.

33. B. Glenn George, *Successorship and the Duty to Bargain,* 63 NOTRE DAME L. REV. 277 (1988).

34. Jonathan Silver, *Reflections on the Obligations of a Successor Employer,* 2 CARDOZO L. REV. 545, n.1 (1981).

35. John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 84 S. Ct. 909, 11 L. Ed. 2d 898 (1964).

employees, and doing an annual business of more than $9,000,000. None of Wiley's employees were represented by a union.

In discussions before and after the merger, the union and Interscience (later Wiley) were unable to agree on the effect of the merger on the collective bargaining agreement and on the rights of employees covered thereunder. The union's position was that despite the merger, it continued to represent the covered Interscience employees taken over by Wiley and that Wiley was obligated to recognize certain rights of such employees which had "vested" under the Interscience bargaining agreement.[36] Such rights concerned matters typically covered by collective bargaining agreements such as seniority status, severance pay, among others. The union contended that Wiley was required to make certain pension fund payments called for under the Interscience bargaining agreement.

Though Wiley, for purposes of its own pension plan, recognized the Interscience service of the former Interscience employees, it nonetheless asserted that the merger terminated the bargaining agreement for all purposes. It refused to recognize the union as bargaining agent or to accede to the union's claims on behalf of Interscience employees. All such employees, except a few who ended their Wiley employment with severance pay, continued in Wiley's employ.

No satisfactory solution having been reached, the union commenced an action to compel arbitration one week before the expiration date of the Interscience bargaining agreement.

The Court, speaking through Mr. Justice Harlan, held that the disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances, the successor employer may be required to arbitrate with the union under the agreement.

The Court expressly recognized the central role of arbitration in effectuating national labor policy. It would be a derogation of the federal policy of settling labor disputes by arbitration if a change in the corporate structure or ownership of business enterprise had the automatic consequence of removing a duty to arbitrate previously established. This is just as true in mergers where the contracting employer is absorbed by another corporation.

The Court likewise noted that there may be cases wherein the lack of any "substantial continuity of identity" in the business enterprise before and after a change would make a duty to arbitrate something imposed from nothing, and that a union may have abandoned its right to arbitration. But

36. *Id.* at 545.

neither of these situations were present in the case at bar.[37] Moreover, it was clarified that the Court did not suggest any view on the question surrounding a certified union's claim to continued representative status following a change in ownership.

Although *Wiley* never directly addressed questions pertaining to the continued rights of a collective bargaining agent, subsequent decisions discussing *Wiley*'s impact crystallized the Court's positions on the matter.

In *National Labor Relations Board (NLRB) v. Burns International Security Services, Inc.*,[38] the Court established a number of significant principles on the question of the duty of a successor to bargain with the predecessor's union. Wackenhut provided plant protection services for Lockheed at a California airport, under a contract to terminate on 30 June 1967. On March 8, the United Plant Guard Workers (UPG) was certified as the bargaining representative for Wackenhut employees and a three-year labor contract was executed on April 29 of the same year. Lockheed invited bids for a new protection-services contract, informing all bidders of the UPG certification and contract with Wackenhut. Although Wackenhut submitted a bid, Lockheed awarded the contract to Burns effective 1 July 1967. Burns retained 27 of the Wackenhut guards and brought in 15 of its own guards from other locations. It however refused to bargain with the UPG or honor its labor contract. It even recognized a rival union, American Federation of Guards (AFG), which represented Burns employees elsewhere.

The NLRB found the Lockheed plant to be an appropriate bargaining unit and held Burns to be a successor both to Wackenhut's duties to bargain with UPG within four months from its certification and to respect the labor contract with UPG. The Court, through Mr. Justice White, sustained the Board's order to bargain with UPG but unanimously refused to enforce the board's order to honor the labor contract. It held that Burns had not merely retained former Wackenhut employees as a majority of its own workforce at the Lockheed plant, but also used them to perform the same tasks under supervision organized as before. But these factors were clearly treated as less significant than the successor majority comprised of former Wackenhut employees.[39]

The Court held that Burns' obligation to bargain with the union over terms and conditions of employment stemmed from its hiring of Wackenhut's employees and from the recent election and Board certification,

37. *Id.* at 546.

38. NLRB v. Burns International Security Services, Inc., 406 U.S. 272, 92 S. Ct. 1571, 32 L. Ed. 2d 61 (1972).

39. *Id.* at 279-80.

because a mere change of employers or ownership in the employing industry is not an "unusual circumstance" as to affect the force of the Board's certification within the normal operative period if a majority of employees after the change of ownership or management were employed by the preceding employer.

Burns laid down the following principles on successorship:

1) When a company hires majority of its workforce in an appropriate bargaining unit employees who had worked for a unionized company and these employees continue to perform the same work in the same setting, the successor company is obligated to recognize and bargain with the predecessor's union during the same period of time as the predecessor would be obligated to do.

2) The duty to bargain would not carry over to a company acquiring a unionized business in any of three situations: (a) when recruitment by the successor employer results in, for example, "an almost complete turnover of employees," provided that the successor does not purposely avoid hiring predecessor employees because they are union members; or (b) when—even if all of the predecessor's employees are retained—because the successor's "operational structure and practices" differ from those of the predecessor, the former bargaining unit is no longer appropriate, in a case when the former Wackenhut employees had been dispersed among Burns employees at other locations; or (c) when, for other reasons, the successor nurtures in good faith a reasonable doubt that the union continues to represent a majority within the unit.

3) The duty to bargain ordinarily does not commence until the successor has hired as a majority of its workforce the former employees of the predecessor, such that the status quo from which bargaining is to begin is that which obtains between the successor and its own workforce at that time, rather than the earlier status quo between the predecessor and its workforce.

4) An obligation to abide by the predecessor's contract must be found in some express or implied assumption of such an obligation by the successor, and cannot rest merely on the

> retention of a majority of former employees without consensual dealings between the parties. [40]

In a separate opinion, Mr. Justice Rehnquist argued that *Burns* presented a weak case for the imposition of any duties on the new employer because Burns did not purchase the assets of Wackenhut or have any other relationship with Wackenhut other than hiring some of its old employees and performing some work that Wackenhut had previously performed. The majority opinion pointed out that the narrower holding in *Wiley* dealt with a merger occurring against the background of New York State law which embodied the general rule that in merger situations, the surviving corporation is liable for the obligations of the disappearing corporation.[41]

In *Howard Johnson Co. v. Hotel & Restaurant Employees Detroit Local Joint Board*,[42] the Court applied *Burns* and sustained the refusal to arbitrate by a purchaser of company assets. The Grissom family operated a restaurant and motor lodge under franchise from Howard Johnson. Howard Johnson leased the realty and purchased the personal property used in the restaurant and motor lodge from the Grissoms. After hiring only nine of its predecessor's 53 employees, Howard Johnson commenced operation of the establishment with a complement of 45. It refused to recognize the union that had bargained collectively with the Grissoms and to assume any obligations under the existing labor agreements. The union sued both the Grissoms and Howard Johnson to require them to arbitrate the extent of their obligations to the Grissom employees. The Grissoms admitted the duty to arbitrate while Howard Johnson denied any such duty.

The Court, through Mr. Justice Marshall, also distinguished this case from *Wiley* on the ground that it involved a merger as a result of which, the initial employing entity completely disappeared. It also emphasized that in *Wiley,* the surviving corporation hired all of the employees of the disappearing corporation.[43]

After *Howard Johnson*, successorship cases were decided based on two questions: (1) whether a majority of the new company's employees were former employees of its predecessor; and (2) whether there was "substantial

---

40. ROBETY A. GORMAN, BASIC TEXT ON LABOR LAW, UNIONIZATION AND COLLECTIVE BARGAINING 120-24 (1976 ed.).

41. Justice Harlan invoked Section 90 of the N.Y. Stock Corporation Law and 15 FLETCHER, PRIVATE CORPORATIONS § 7121 (1961 rev. ed.).

42. Howard Johnson Co. v. Hotel & Restaurant Employees Detroit Local Joint Board, 417 U.S. 249, 94 S. Ct. 2236, 41 L. Ed. 2d 46 (1974).

43. John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 552, 84 S. Ct. 909, 11 L. Ed. 2d 898 (1964).

continuity of identity in the business enterprise." The NLRB developed criteria for determining the second question: (1) whether there was substantial continuity of the same business operations; (2) whether the same plant was used; (3) whether the same or substantially the same work force was employed; (4) whether the same jobs existed under the same working conditions; (5) whether the same machinery, equipment and methods of production were used; (6) whether the same product was manufactured or the same services offered; and (7) whether the same supervisors are employed.[44]

Burns and *Howard Johnson* provided the parameters for the applicability of a predecessor's collective bargaining agreement in assets-only and business enterprise transfers,[45] but remained unclear as to whether the Court would have ruled differently in both cases if the transfer of operations arose through a merger. After all, American state corporate law generally provides that all pre-merger assets and liabilities, including unexpired executory contracts, become assets and liabilities of the surviving corporation after a merger.[46]

B. Philippine Jurisprudence

Book V of the Labor Code of the Philippines encourages collective bargaining by giving employees the right to self-organization.[47] It allows workers to form or join a labor union and outlines the procedure for bargaining representative certification. Once a union has been certified, it becomes an unfair labor practice for the employer to refuse to bargain collectively with employee representatives.[48] But the law does not expressly impose the duty to bargain in cases where a formally unionized business is merged to a non-union or different union company. The duty of a successor employer to bargain with a predecessor union came from jurisprudence.[49] Underlying such a duty is the assumption that industrial peace will be maintained as long as the employees' reasonable expectations are carried out.

---

44. Georgetown Stainless Mfg. Corp., 198 N.L.R.B. 234, 236 (1972).

45. *See* Villanueva ACCLE, *infra* note 51.

46. *See e.g.* Model Business Corp. Act § 11.06 (a) (2)-(3) (1991); Cal. Corp. Code § 1107 (a) (West 1990); Del. Code Ann. Tit. 8, § 259 (a) (1991); N.Y. Bus. Corp. Law § 906 (b) (Consol. 1983).

47. A Decree Instituting A Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice as amended, Presidential Decree No. 442 [LABOR CODE] art. 243.

48. *Id.* at art 248 (g).

49. Fernando vs. Angat Labor Union, 5 SCRA 248 (1962).

The successorship doctrine in labor law represents the attempt to establish the extent of predecessor and purchaser liability that may result from the transfer of ownership or control of a business enterprise.[50] Dean Cesar Villanueva of the Ateneo Law School points out four aspects of corporate reorganization relative to the application of the doctrine:

1) Affecting the assets and operations of the corporation;
2) Dealing with the underlying business enterprise;
3) Directly affecting stockholdings of equity investors; and
4) Directly affecting the juridical entity or capital structure.[51]

In the "assets-only" level, the contracting parties are only interested in the "raw" assets and properties of the business.[52] In the "business-enterprise" level, the primary interest is essentially to obtain the "earning capability" of the venture.[53] There is no interest in the juridical entity that owns the business enterprise, and therefore the dealings are directly on the business enterprise itself. The "equity" level constitutes looking at the entirety of the business enterprise as it is owned and operated by the corporation.[54] In the "equity" level, the purchaser takes control and ownership of the business by purchasing the shareholdings of the corporate owner. [55]

In an "assets-only" transfer, employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam*, therefore binding only between the parties concerned.[56] This was the clear pronouncement of the Supreme Court in *Sundowner Development Corporation v. Drilon*.[57] In *MDII Supervisors and Confidential Employees Association v. Presidential Assistant on Legal Affairs*,[58] the Court exhorted the buyer to give preference to qualified separated

---

50. *See* 48 Am. Jur. 2d , *Labor and Labor Relations* § 1417-19 (1994).

51. Cesar L. Villanueva, Corporation Law Aspects of Corporate Reorganization, Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (Jun. 16, 2000) [hereinafter Villanueva ACCLE].

52. VILLANUEVA, *supra* note 12, at 593.

53. *Id.* at 594.

54. *Id.*

55. *Id.*

56. *Id.*

57. Sundowner Development Corporation v. Drilon, 180 SCRA 14 (1989).

58. MDII Supervisors and Confidential Employees Association v. Presidential Assistant on Legal Affairs, 79 SCRA 40 (1977).

employees in the filling of vacancies "for reasons of public policy and social justice."[59]

However, in *Central Azucarera del Danao v. Court of Appeals*,[60] the Court emphasized that the sale or disposition must be motivated by good faith. In *National Labor Union v. Court of Industrial Relations*,[61] unstable management-union relations sufficed to have alerted the buyer to the unfair labor practice implications of the purchase.[62]

In cases such as *San Teodoro Development Enterprises v. Social Security System*[63] and *Oromeca Lumber Company v. Social Security System*,[64] the Court upheld the principle that in "business enterprise" transfers, the transferee should be liable for the debts and liabilities of the transferor. The purpose of the doctrine is to protect creditors of the business by not allowing them a remedy against the new controller or owner of the business enterprise. Indeed, in *Sunio v. NLRC*,[65] the Court proclaimed that the sale of a business of a going concern does not *ipso facto* terminate employer-employee relations insofar as the successor-employer is concerned, and that the change of ownership or management of an establishment is not one of the just causes for termination of employment. [66]

Dean Villanueva posits that in the case of *Yu v. NLRC*[67] the Court clarified that in the field of Labor Law, the doctrine of business-enterprise transfer, which makes the transferee liable for the business obligations of the transferor, is really a species of the doctrine of piercing the veil of corporate fiction and requires a certain degree of continuity of the same business by the same owners using the corporate fiction as a shield. This means that the transferor ceases to exist and operate on its own.[68]

In an equity transfer situation, the employees remain with the corporate employer in exactly the same manner as before the equity transfer, therefore

---

59. *Id.* at 47.

60. Central Azucarera del Danao v. Court of Appeals, 137 SCRA 295 (1985).

61. National Labor Union v. Court of Industrial Relations, 116 SCRA 417 (1982).

62. *Id.*

63. San Teodoro Development Enterprises v. Social Security System, 8 SCRA 96 (1963).

64. Oromeca Lumber Company v. Social Security System, 4 SCRA 1188 (1962).

65. Sunio v. NLRC, 127 SCRA 390 (1984).

66. *Id.*

67. Yu v. NLRC, 245 SCRA 134 (1995).

68. VILLANUEVA, *supra* note 12, at 627.

the purchaser does not assume any personal liability to the employees.[69] Dean Villanueva underscored the fact that there is only a change in ownership or control of the corporate employer in such a case.[70]

Cases of changes in juridical entity or capital structure involve the concept of mergers and consolidations. In these arrangements, there is no liquidation of assets of the dissolved corporation, and the surviving or consolidated corporation acquires all their properties, rights and franchises. In addition, the stockholders of the dissolved corporation usually become the surviving corporation's stockholders.

Prof. Cesario Azucena of the U.P. School of Industrial Relations (UP-SOLAIR) and Ateneo Law School invokes Section 80 of the Corporation Code and explains that in unionized establishments, the merger will not terminate an existing collective bargaining agreement. The same holds true for the bargaining representative status of the union party to such an agreement.[71]

Atty. Ancheta Tan of the Employers Confederation of the Philippines (ECOP)[72] and Prof. Domingo Disini Jr. of the U.P. College of Law[73] support Prof. Azucena's views, which seem to be consistent with the Supreme Court ruling in *Filipinas Port Services, Inc. v. NLRC*,[74] a case which involved the integration of different stevedoring and *arrastre* corporations into a single dockhandlers' corporation. Invoking Section 3 of Act No. 2772, which is a precursor to Section 80, the Court held that by the fact of consolidation, a succession of employment rights and obligations had occurred between the new corporation and the employees of the dissolved entities.[75] But *Filipinas Port Services* may have covered only the computation of retirement benefits for services rendered even prior to the merger.

---

69. *Id.* at 629.
70. *Id.*
71. Cesario A. Azucena Jr., Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (Jun. 16, 2000).
72. Ancheta K. Tan and Yasmin Suzette J. Tan, *Collective Bargaining and Security of Tenure in Connection with Joint Ventures, Mergers, Consolidations and Privatization,* 13 PHIL. L. GAZ.13 (1998).
73. Domingo P. Disini, Jr., Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (Jun. 16, 2000).
74. Filipinas Port Services, Inc. v. NLRC, 200 SCRA 773 (1991).
75. *Id.*

Labor relations concerns may be an entirely different matter. The Supreme Court has made no categorical pronouncement as to the effects of a merger or consolidation on the representative status of an incumbent bargaining agent, or on an existing collective bargaining agreement. The Court may have provided an opening in *Cardona v. NLRC*,[76] which involved salary differentials caused by a merger between Commercial Bank and Trust Company (CBTC) and the Bank of the Philippine Islands (BPI). The CBTC employees wanted the differentials to be paid based on the provisions of their CBA with CBTC, the dissolved corporation. The Court found that CBTC employees' allowances were already standardized and aligned to the level of BPI employees, and that the invoked CBA was not executed because negotiations were aborted by the merger. "There being no perfected contract…" Mme. Justice Melencio-Herrera declared, "…it cannot, therefore, be the source of any legal obligation."[77]

But if the basis for the differentials were benefits in a perfected CBA between CBTC and the union, would the Court have ruled differently? Given the subsequent ruling in *Filipinas Port Services*, an affirmative inference appears reasonable. But whether the representative status of the incumbent union in the dissolved corporation will be recognized remains unclear. In *Cardona*, the Court did not attribute bad faith to BPI for non-continuation of CBA negotiations with the CBTC union because CBTC employees were already absorbed into the BPI incumbent union.

However, Court of Appeals (CA) Justice Vicente Veloso, also a professor of the Ateneo Law School is of the opinion that Section 80 does not include obligations under a collective bargaining agreement because such agreements are *in personam* and should not be included among the assumed liabilities and obligations referred to in the law.[78]

IV. THE LAW ON DETERMINATION OF REPRESENTATION STATUS

Mechanisms pertaining to petitions for certification election have been instituted in the Labor Code for organized[79] and unorganized[80]

76. Cardona v. NLRC, 195 SCRA 92 (1991).

77. *Id*. at 97.

78. Justice Vicente Veloso, Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (Jun. 16, 2000).

79. LABOR CODE, art. 256 provides:

> Representation issue in organized establishments. – In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day

establishments. In unorganized establishments, such petitions should be granted upon the concurrence of two requisites, namely: (a) the filing of a petition; and (b) by a legitimate labor organization.[81] The law appears to facilitate the conduct of an election in this regard.

In organized establishments, the Med-Arbiter shall automatically order an election by secret ballot when a verified petition is supported by the written consent of at least 25% of all the employees in the bargaining unit.[82] If the percentage requirement has not been observed, the Med-Arbiter is still empowered to order the conduct of an election for purposes of ascertaining which of the contending labor organizations shall be the exclusive bargaining agent.[83]

Under the rules implementing Book V of the Labor Code, as amended by Department Order No. 40, series of 2003, there is another mode of determining representation status aside from a certification election, *i.e.*, voluntary recognition.[84] Where there is only one legitimate labor

> period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five (25%) percent of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.

80. *Id.* art. 257 provides: Petitions in unorganized establishments. – In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by a legitimate labor organization.

81. *Id.* arts. 256-257.

82. *Id.* art. 256.

83. California Manufacturing Corp v. Laguesma, 209 SCRA 606 (1992).

84. Department of Labor and Employment, Department Order 40-03, Rule VII (2003).

organization operating within the bargaining unit, the employer and the union shall submit a notice of voluntary recognition with the regional office which issued and recognized the labor union. In addition, the following documents must be submitted: (a) a joint statement under oath attesting to the fact of voluntary recognition; (b) certificate of posting of the joint statement of voluntary recognition for 15 consecutive days in at least two conspicuous places in the establishment or bargaining unit where the union seeks to operate; (c) the approximate number of employees in the bargaining unit, accompanied by the names of those who support the voluntary recognition comprising of at least a majority of the members of the bargaining unit; and (d) a statement that there is no other legitimate labor organization operating within the bargaining unit. [85]

Where the notice of voluntary recognition is sufficient in form, number and substance, the regional office through the Labor Relations Division shall, within 10 days from receipt of the notice, record the fact of voluntary recognition in its roster of legitimate labor unions and notify the labor union concerned.[86] From the time of recording, the union shall enjoy the rights, privileges and obligations of an exclusive bargaining representative.[87]

V. TALE OF TWO MERGERS

A. *Equitable and PCI Bank: A Four-Cornered Union Fight*

The blockbuster merger between Equitable Banking Corporation (EBC) as the surviving corporation and Philippine Commercial International Bank (PCIB) as the absorbed corporation, culminated with the approval of its articles of merger by the SEC on 2 September 1999. At the time of the merger, EBC ranked 11th among all other banks in terms of assets with P103.786B, and 5th in terms of capital with P16.342B.[88] PCI Bank, on the other hand, was ranked 6th in terms of assets with P139.758B, and 3rd in terms of capital with P24.524B.[89]

On 12 May 1999, a consortium composed of EBC, the Government Service Insurance System (GSIS), and the Social Security System (SSS) acquired 72% shareholdings in PCI Bank for P31.5B, which the Lopez and

85. *Id.* §1 -2.

86. *Id.* §3.

87. *Id.* §4.

88. Ma. Salve I. Duplito, Reena J. Villamor and Raymond G. Falgui, *Equitable Joins GSIS, SSS in PCIBank Buy,* BUSINESS WORLD, May 13, 1999, at 1.

89. *Id.*

Gokongwei families put up for auction. EBC paid a total of P16B for the 38% of the 72% interest, with GSIS and SSS equally footing the bill for the remaining 34% at P7.5B each.[90] The result was an industry giant with an estimated market value of P80B, making it 9th among publicly-traded companies.[91] The Plan of Merger signed on 15 July 1999 indicated that:

> 1.4.3. EBC shall thereupon and thereafter possess all the rights, privileges, properties, branches, offices and franchises of PCIB, and all the property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to PCIB, shall be taken by and deemed transferred to and vested in EBC by operation of law by virtue of and as provided in Section 80 (4) of the Corporation, without further act or deed.
>
> 1.4.4. EBC shall be responsible and liable for all the liabilities and obligations of PCIB in the same manner as if EBC had itself incurred such liabilities or obligations, and any pending claim, action or proceeding brought by or against PCIB may be prosecuted by or against EBC. The rights of creditors or liens upon the property of PCIB shall not be impaired by the merger; provided that EBC shall have the right to exercise all defenses, rights, privileges, set-offs and counterclaims of every kind and nature which PCIB may have, or which EBC may invoke under existing laws.

It is estimated that 1,400 EBC employees were merged with 3,400 PCI Bank rank-and-file employees.[92] Prior to the approval of the merger, an in-house publication, "The Merger Times," was created to serve as a communication tool for understanding the reasons and effects of the merger. However, then president of the union of PCI Bank employees Gamaliel Dinio lamented that from May to August 1999, union members and officials were "literally in the dark about the merger talks."[93]

There was a dialogue between the employees and the bank on 7 September 1999 where several proposals relative to redundancy and separation were made. Management simply took note of them and emphasized the "long and tedious" integration process. Dinio concluded that "the last lesson … is that the integration process … could have proceeded

---

90. *Id.*

91. Elena R. Torrijos, *Equitable Moves to Complete PCIB Takeover,* PHIL. DAILY INQUIRER, June 17, 1999, at B1.

92. Interview with Ma. Rosanna L. Testa, Head, Human Resources Division, Equitable PCI Bank, in Equitable Bank PCI Bank Tower, Makati City (Aug. 6, 2002).

93. Gamaliel Dinio, Presentation at the Roundtable Discussion on "Lessons from Mergers and Consolidations in the Banking Industry," Banking Industry Tripartite Council (BITC), November 14, 2000.

more smoothly and more successfully if the employees' union was given a role in the process and representation in the various integration teams."[94]

At the time of the merger, there was an existing CBA between the EBC and the Labor Union of Equitable Bank Employees (LUEBE) effective from 1 December 1995 until 30 November 2000. The economic and non-economic provisions of the agreement were up for renegotiation upon their expiration on 30 November 1998. Hence, on 16 July 1999 a renewed CBA was signed by EBC and LUEBE representatives, amending seven provisions and retaining all others. There is no provision on merger in this 1995-2000 agreement.

On the other hand, PCI Bank had a CBA with the PCI Bank & Employees Union (PCIBEU) as awarded in a Decision by the National Labor Relations Commission (NLRC) effective from 1 January 1998 to 31 December 2000. The provision on merger stated as follows:

> In the event of a future merger, consolidation, reorganization or any other similar arrangement, the BANK undertakes to officially inform the absorbing institution of the existence of the CBA and shall exert its best efforts to ensure that the employee benefits, in their totality, under this Agreement, are not diminished.[95]

At the time of the approval of the merger on 2 September 1999, the two CBAs with LUEBE and PCIBEU were still in effect. It was a conscious decision on the part of management to allow the two CBAs to remain effective until their expirations on 30 November 2000 and 31 December 2000, respectively.[96]

LUEBE attempted to commence renegotiations with management sometime in September 2000, but a petition for certification election was filed by the Equitable Bank Employees Association-Philippine Technical Clerical Commercial Employees Association (EPEA-PTCCEA) on 2 October 2000.[97] EPEA-PTCCEA appeared to be a chartered local of PTCCEA by virtue of a charter certificate dated 28 September 2000. A certificate of creation was eventually issued certifying that EPEA-PTCCEA submitted complete supporting documents for creation on 31 October 2000. The President of EPEA-PTCCEA, Nestor Nerbes, was a former treasurer of PCIBEU. In the petition, Nerbes averred that the PCIBEU had been effectively dissolved by virtue of the merger. PCIBEU President Gamaliel

---

94. *Id.*

95. 1998-2000 Collective Bargaining Agreement between PCI Bank-PCIBEU, art. 3, §5 (on file with the author).

96. Interview with Ma. Rosanna L. Testa, *supra* note 92.

97. Docketed as NCR-OD-M-0010-001.

Dinio reacted by informing Nerbes that he was considered resigned from PCIBEU effective 2 October 2000, and accused him of delaying bargaining renegotiations between the PCIBEU and Equitable PCI Bank.[98]

On 15 November 2000, the bank filed a Comment with Motion to Include Indispensable Parties[99] praying for the declaration of LUEBE and EPCIBEU as indispensable parties to the petition.[100] Summons was then issued to representatives of LUEBE and EPCIBEU.

On 29 November 2000, a motion for intervention was filed by the United Employees Union of Equitable PCI Bank, Inc.-FFW Chapter (FFW Local), with a charter certificate issued by FFW on 27 November 2000.

A manifestation and omnibus motion were filed by EPCIBEU on 6 December 2000, where it contended that the former PCIBEU survived the merger and was renamed to EPCIBEU. It claimed that the petition was defective for failure to comply with the 25% support signature requirement, and sought confirmation of its status as the exclusive bargaining representative of all rank and file employees of Equitable PCI Bank. Hence, it demanded dismissal of the petition.

During the hearing on 6 December 2000, all parties except EPCIBEU appeared. There was an agreement to conduct a consent election. But the parties were given time to respond to EPCIBEU's manifestation and omnibus motion. On 12 December 2000, the bank opposed EPCIBEU's move to dismiss the petition, and reiterated its non-objection to the conduct of a certification election considering the existence of four unions in the establishment.

On 15 December 2000, LUEBE filed an opposition to the motion for intervention filed by the FFW local, arguing that the motion for intervention should have complied with the 25% support signature requirement.

After requiring the bank to submit the documents pertaining to the merger, DOLE-NCR Med-Arbiter Agatha Ann L. Daquigan rendered a decision ordering the conduct of a certification election among the rank-and-file employees of Equitable PCI Bank with the following as choices: a)

---

98. Letter of PCIBEU President Gamaliel Dinio and Executive Vice-President Maximo C. Elemino to Nestor N. Nebres (2000) (on file with the author).

99. *Id.*

100. By this time, PCIBEU had petitioned for a change of name with the Department, from PCI Bank Employees Union (PCIBEU) to Equitable PCI Bank Employees Union (EPCIBEU).

EPEA-PTTCEA; b) LUEBE; c) EPCIBEU; d) United Employees Union of Equitable PCI Bank Inc.-FFW Chapter; and e) No Union.

On 29 January 2001, EPCIBEU filed an appeal assailing the legal personality of EPEA-PTCCEA and the FFW local. In addition, it also raised the failure to comply with the 25% support signature requirement, and the alleged failure to file the petition within the freedom period of the CBA with PCIBEU which expired on 31 December 2000.

By authority of the Secretary of Labor, DOLE Undersecretary Rosalinda Dimapilis Baldoz affirmed the order for the conduct of the election in a Resolution dated 26 February 2001.

In essence, Undersecretary Baldoz refuted EPCIBEU's contentions as follows:

1.) EPEA-PTCCEA and the FFW local acquired legal personality during the pendency of the representation question, which made up for the fact that they were not registered at the time of the filing of the petition and the motion for intervention, respectively. With respect to EPEA-PTCCEA, its acquisition of legal personality on 31 October 2000 meant that it could easily have filed another petition for certification election thereafter, considering the EBC-LUEBE CBA was set to expire on 30 November 2000. Thus, in allowing a retroactive effect of its registration to the date of filing of the petition on 2 October 2000, there was an avoidance of the circuitous process of dismissing the petition and having it re-filed by the petitioner.

2.) Neither LUEBE nor PCIBEU could claim continuity of exclusive bargaining status for either of the two banks or with the consolidated Equitable PCI Bank.

3.) When more than one union raises a representation issue, it is not necessary that all unions that challenge the incumbent must comply with the 25% support signature requirement.

4.) Since Equitable Bank survived the merger, the freedom period should be that pertaining to the EBC-LUEBE CBA, which was from 2 October 2000 to 30 November 2000.

5.) The reason why the Med-Arbiter ruled for a certification election is precisely because a genuine representation issue was raised against EPCIBEU.

On 15 May 2001, an Entry of Judgment was issued by the Bureau in behalf of the Secretary.

On 5 September 2001, the certification election was conducted and DOLE-NCR. Election Officer Cynthia J. Tolentino issued an Order

proclaiming EPCIBEU as the sole and exclusive bargaining agent of all rank-and-file employees of the bank.

On 15 January 2002, EPCIBEU and the bank signed a collective bargaining agreement effective from 1 January 2001 to 31 December 2005.

B. Bank of the Philippine Islands and Far East Bank & Trust Company: Organized Meets Unorganized

On 7 April 2000, the SEC issued the Certificate of Filing of the Articles of Merger and Plan of Merger of Bank of the Philippine Islands (BPI) as the surviving corporation and Far East Bank & Trust Company (FEBTC) as the absorbed corporation.

At the time of the merger, BPI ranked 3rd in commercial lending, while FEBTC ranked 7th with P130 billion in assets. The acquisition allowed BPI to double its assets under management and surpass Metrobank as the nation's top commercial lender. [101] By August 2000, BPI ranked 1st in terms of assets, deposit accounts, investment in bonds, loans, and capital accounts.[102] The deal also resulted in the creation of the biggest local bank in terms of branch network, including kiosk branches with close to 700.[103] There were 30 unions in BPI,[104] with FEBTC having no unions at all. Based on estimates,

101. *Bank Mergers: FEBTC Seen as a Big Catch,* PHILIPPINE DAILY INQUIRER, Oct. 18, 1999, at B9.

102. *Banking Quarterly*, PHILIPPINE DAILY INQUIRER, Aug. 16, 2000.

103. History and Tradition of Bank of the Philippine Islands, *at* http://info.bpiexpressonline.com/bpiprod/BPIAbout.nsf/History+and+Tradition/History&Tradition?OpenDocument (last accessed Dec. 21, 2004).

104. These unions are the following: (1) BPI Employees Union-Zamboanga (2) BPI Employees Union-Pagadian City (3) Universal Bank Employees Union-Malaybalay (4) BPI Employees Union-Butuan (5) BPI-Employees Union-Surigao-ALU (e) BPI Employees Union-Bislig (f) BPI Employees Union-Davao City (6) BPI Midsayap Employees Union (7) BPI Services Employees Labor Union (8) BPI Family Bank Employees Union and its Branches (9) Bank of PI Bacolod Branch Extension Office & Victorias Agency District Office-FFW (10) BPI Employees Union-Tagbilaran (11) BPI Employees Union-Dumaguete (12) BPI Employees Union-Central Luzon (13) BPI Employees Union-Southern Tagalog (14) BPI-Bicol Employees Union (15) Associated BPI Tagum Branch Employees Union (16) Associated Bank of PI Employees Union-ALU (17) BPI Employees Union-Gingoog-ALU (18) BPI Employees Union-Cotobato City-ALU (19) BPI Motorized Messengers Association-WSN (20) BPI 1851 Club Employees Union-NAFLU (21) BPI Employees Union-Cebu City-ALU (22) BPI Employees Union-ALU (23) BPI Employees Union-Butuan-ALU (24) BPI Employees Union-Tagbilaran-ALU (25) BPI Employees Union-Malaybalay-ALU (26) BPI Iloilo Branch Workers Union-FFW (27)

there were 3,300 BPI employees who merged with 1,700 FEBTC employees.[105]

The Human Resources Department conducted dialogues with the employees and the union on the merger and early retirement program. There was information dissemination regarding the merger through the internal newsletter "Banconews."[106]

There was a CBA between the bank and 28 exclusive bargaining representatives effective from 1 April 1996 to 31 March 2001. Renegotiations for the 1999 to 2001 provisions were signed in the early part of 2000, or two months prior to the merger. Art 2, §5 (Union Security) of the 1996 to 2001 agreement contained a provision on merger, as follows:

> Should the bank merge or consolidate with another bank during the term of this agreement, the merged or resulting bank shall honor and respect the stipulations in this agreement.

Management continued to respect all 28 CBAs after the merger. With no challenge on the incumbency of the bargaining agents, renewed CBAs in all but the Davao City branch were signed effective 1 April 2001 to 30 March 2006.[107]

One major effect of the merger was on the membership of the bargaining agents because FEBTC employees were given the option to "join or not to join" the union.[108] BPI Employees Union-Metro Manila President

---

NUBE-BPI Family Savings Bank Inc. Employees Chapter (28) BPI Consumer Banking Group Employees Union (29) BPI Northern Luzon Employees Union (30) BPI Employees Union-NCR.

105. Interview with Enrico C. Ballesteros, President, BPI-Employees Union-NCR, in BPI Head Office, Makati City (Sept. 4, 2002).

106. Lourdes B. Orosa, Vice-President, Human Resource Management Group, Bank of the Philippine Islands, Presentation at the Roundtable Discussion on Lessons from Mergers and Consolidations in the Banking Industry, Banking Industry Tripartite Council (BITC), Nov. 14, 2000.

107. Interview with Miguel C. Andaya (Senior Vice-President), Lourdes B. Orosa (Vice-President, Human Resource Management Group), Donna P. Shotwell (Vice-President, Human Resource Management Group), Atty. Rene T. Tale (Assistant Vice-President), Bank of the Philippine Islands, in BPI Head Office, Makati City (Aug. 6, 2002).

108. This is found in Art 2, §1 (Union Security) of the CBA which read: "*Maintenance of membership.* All regular employees who are members of the UNION on the date of the signing of this Agreement, or those who may hereafter join the Union, must remain members in good standing thereof as a condition of their continued employment with the BANK, but those

Enrico S. Ballesteros commented that this weakened the bargaining power of the union because with a bargaining unit of 3,100 employees, only 1,500 are union members.[109] But the bank has encouraged former FEBTC employees to join the union.[110]

VI. FINDINGS AND RECOMMENDATIONS

Based on jurisprudence, the Labor Code and its Implementing Rules and Regulations, and the EBC-PCI Bank and BPI-FEBTC mergers, the following principles were established:

a) In a scenario where both surviving and absorbed corporations are unionized:

1) With respect to the exclusive bargaining agent in the surviving corporation:

i) The bargaining agent status of the union in the surviving corporation can remain intact after a merger that occurs immediately prior to the expiration of the representation aspect of a collective bargaining agreement.

ii) The bargaining agent status of the union in the surviving corporation after a merger that occurs prior to renegotiation of the CBA within the five-year representation aspect remains unclear.

2) With respect to the exclusive bargaining agent in the absorbed corporation:

i) The legitimate status of the union in the absorbed corporation continues, provided it files a petition for change of name to suit the merger.

ii) The bargaining agent status of the union in the absorbed corporation can remain intact after a merger that occurs immediately prior to the expiration of the representation aspect of a collective bargaining agreement.

---

employees who are not members of the Union on the date of the signing of this Agreement shall be free to join or not to join the Union."

109. Interview with Enrico C. Ballesteros, *supra* note 105.

110. Interview with Miguel C. Andaya, et al., *supra* note 107. It was mentioned that the CBA hold out in Davao City filed a case questioning the legality of not placing the former FEBTC employees within the purview of the union security clause.

iii) The bargaining agent status of the union in the surviving corporation after a merger that occurs prior to renegotiation of the CBA within the five-year representation aspect remains unclear.

b) In a scenario where the surviving corporation is organized and the absorbed corporation is unorganized:

i) The bargaining agent status of the union remains intact after a merger that occurs immediately prior to the expiration of the representation aspect of a collective bargaining agreement.

ii) The bargaining agent status of the union after a merger that occurs prior to renegotiation of the CBA within the five-year representation aspect remains unclear.

c) In a scenario where the surviving corporation is unorganized and the absorbed corporation is organized:

i) The legitimate status of the union continues, provided it files a petition for change of name to suit the merger.

ii) The bargaining agent status of the union after a merger that occurs prior to the second or third-year renegotiation points or prior to the fifth year of the representation aspect remains unclear.

d) Collective bargaining agreements at the time of the merger are respected until the expiration of the fifth year.

e) In a certification election that follows after expiration of the fifth year of all CBAs, bargaining agents in the surviving and absorbed corporations may participate. Other petitioning and intervening unions may participate without complying with the 25% support signature requirement.

f) With respect to the CBA renegotiated after the fifth year:

i) The agreement may retroact to the first day after the fifth year of the last-expiring CBA.

ii) Employees from the absorbed corporation may be excluded from the coverage of the union security clause.

g) Consultations with the bargaining agent/s ensure employees' participation in the integration processes.

The underlying policy that begs clarification is the application of paragraphs 4 and 5 of Section 80 of the Corporation Code to collective bargaining rights, to wit:

> (4) All property, real or personal, and all receivables due on whatever account including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent bank, shall be taken and deemed to be transferred to and vested in such surviving bank without further act or deed;
>
> (5) The surviving bank shall be responsible and liable for all the liabilities and obligations of each of the constituent banks in the same manner as if such surviving bank had itself incurred such liabilities or obligations.

Once a surviving bank is deemed responsible for the obligations to recognize a collective bargaining agent and agreement, there is no point in distinguishing between a merger that occurs before or after second or third-year renegotiation points of the CBA. This avoids a meticulous determination of whether a majority of the surviving bank's employees were former employees of the absorbed corporation or whether there was "substantial continuity of identity in the business enterprise," as articulated in *Burns* and *Howard Johnson*.

The applicability of paragraphs 4 and 5 of Section 80 to collective bargaining agents and agreements can be embodied in the rules implementing Book V of the Labor Code. If paragraphs 4 and 5 of Section 80 could not be applied, then the tests employed in *Burns* and *Howard Johnson* may be expressly outlined.

Also, unclear areas in the scenarios enumerated above may be clarified through administrative fiat. For instance, a situation where there are bargaining agents in the surviving and absorbed corporations prior to the CBA renegotiation periods can be resolved by a certification election process established under the rules.

Finally, consultation mechanisms with a collective bargaining agent relative to a merger or the integration process arising out of a merger can be outlined in merger provisions in collective bargaining agreement.