the duration of special sessions for the following reasons:

(1) Section 9, Article VI of our Constitution, enumerates his powers concerning special sessions, and its failure to grant him the authority to fix the duration of special sessions is a denial of such power under the principle of *expressio unius exclusio alterius est.*

(2) The phrase "no special session shall continue longer than thirty days," contained in the aforesaid section, has meaning if the President fixes only the convening date of a special session. It is meaningless if the President fixes its duration. It is a principle of constitutional construction that constitutional provisions should be harmonized to give meaning to every word therein.

(3) The constitutional provision limiting the maximum duration of special sessions is a limitation on legislative power, and it is a principle of constitutional construction that it should be construed strictly. Such strict construction logically favors a denial of any implication authorizing the President to further limit such legislative power by fixing the duration of special sessions.

(4) An interpretation sustaining the power of the President to fix the duration of special sessions is (a) repugnant to the express power of Congress to adjourn for more than three days should both Houses agree, which latter power virtually grants Congress the power to terminate or fix the duration of its regular and special sessions, subject of course to the maximum periods of duration of such sessions as prescribed by the Constitution, (b) contrary to the cardinal principle of separation of powers, and (c) destructive of the deliberative nature of our representative institutions.

(5) A construction favoring presidential determination of the duration of special session implies that Congress does not perform its official duty regularly, which implication is contrary to the legal presumption that official duty is always regularly performed.

(6) The grant to the President of the power to fix

765; Carroll vs. Wright, 63 S. E. 260; State *ex rel.* Ach. *et al.* v. Braden *et al.*, 181 N. E. 138.

the duration of special sessions in the draft submitted by the sub-committee of the Sponsorship Committee of the Constitutional Convention, and the elimination of such power in the Constitution as finally adopted, is a clear indication of the intention of the framers of the Constitution to deny him this power.

(7) The argument that contemporaneous executive construction given in our country to said provision upholds the power of the President to fix the duration of special sessions because some Governors General and all the past Presidents of the Philippines had at one time or another fixed the duration of special sessions, loses force when it is taken into account that Governor General Murphy and Acting Governor General Hayden did not follow such practice.

(8) The uniform practice in the United States, the place of origin of the constitutional provision under discussion, has always been for the Presidents of the United States and state governors to fix only the convening date and not the duration of special sessions.

COMPULSORY ARBITRATION AND THE *MAGNA CHARTA* OF LABOR *

by *JUDGE JOSE S. BAUTISTA* **

The Bill[1] alluded to is both good and laudable insofar as it aims to promote industrial peace by reinforcing trade unionism as well as to adjust between unions and employers the process of collective bargaining.

* During the congressional deliberations that preceded the passage of what is now popularly known as the *Magna Charta* of Labor, the Hon. Quintin Paredes, then President *Pro Tempore* of the Senate, requested the author of this paper to render an opinion respecting the provisions of Senate Bill No. 423, later passed as Republic Act No. 875. The opinion was originally written in Spanish.

** Court of Industrial Relations.

[1] Senate Bill No. 423, now Republic Act No. 875.

However, the proposed law scuttles compulsory arbitration and the power of the Court of Industrial Relations to decide disputes involving working conditions. In this respect the Bill, far from protecting labor, is in the last analysis favorable to Capital alone.

Compulsory arbitration has been eliminated because it is looked upon as an undue restriction of the exercise by Capital and Labor of free enterprise, thereby giving rise to the insinuation that the method for regulating employer-laborer relations through collective bargaining [2] is democratic, while that through compulsory arbitration undemocratic.

The latter method is as democratic as the former.

The Filipino people, by their approval in a plebiscite of our Constitution which declares: "The state may provide for compulsory arbitration,"[3] have clearly sanctioned the establishment of compulsory arbitration by the enactment of a law[4] dictated under the force and authority of that Constitution.

Free enterprise in the world of business is nothing more than competition, a contest between Capital and Labor. Fostered by any given opportunity, absolute unrestrained economic liberty inevitably will bring about the triumph of the strong over the weak.

Against the superior material and educational resources of Capital, the efforts of the ill-provided laborer are futile. It must therefore seem that protection of the weak is the sanction to liberty. Otherwise, there can be no true liberty. Under rightful circumstances, the Government owes to no laborer its protection and aid. But when that laborer becomes powerless to prevent or curb the abuses that are heaped on him, the Government must step in and furnish him that protection and aid. Since therefore our labor unions are still in their incipient stages of formation, the necessity for the passage of Commonwealth Act No. 103[5] becomes understandable.

[2] See Section 12, Republic Act No. 875.
[3] Section 6, Article XIV, Constitution of the Philippines.
[4] Commonwealth Act No. 103.
[5] Commonwealth Act No. 103, as amended, is entitled, "An Act to afford protection of labor by creating a Court of Industrial Relations empowered to fix minimum wages for laborers and maximum rentals to be paid by tenants, and to enforce compulsory arbitration between employers or landlords, and employees or tenants, respectively; and by prescribing penalties for the violation of its orders."

In order then that the contest or fight be fair, it is essential that the strength of the combatants be equal and their weapons bear a proportion one to the other. Under any other condition, the weak is bound to be crushed. It therefore becomes opportune for us to ask: Can the Filipino laborer carry on the fight? How does he actually stand? How does his personal and social condition compare with that of his American counterpart?

In our country the following facts are evident:

(1) The great majority of Filipino laborers is scattered and disunited. Only ten per cent (10%) of city laborers have banded themselves into unions. With the sole exceptions of Negros Occidental and Pampanga, there exists no real rural organization among the farmhands of the country.

(2) Even among members of the few legitimate labor organizations, a lack of solidarity and sense of responsibility is apparent; there is a dearth of interest in, and zeal for, the cause of the union. Such a state of affairs breeds mass defections, thereby superbly enabling an employer to maneuver the union as fits his fancy: now changing its officers, now exercising in a thousand and one ways his indisputable influence over its members. In many cases that have come to our attention in court, we have noticed laborers abandon their union to take their employers' side even against the just demands of their own unions, and then rejoin the same after the latter have obtained a favorable decision: no doubt to share in the gain.

(3) Due to a dismal lack of responsibility and interest, only a limited few pay the fees prescribed by union rules. Many unions have no funds to meet their minimum expenses. And to aggravate matters, many employers refuse to adopt the "check off" system in order that, being in dire need of funds, the union's hands are tied and prevented from bringing action against them. In many of the strikes in the City of Manila, strikers have had to live on the charity of generous persons and institutions.

In this matter of strikes may we mention in passing that a large segment of the Filipino people are of a colonial mentality. Far from sympathizing with the strikers' cause or at least inhibiting themselves from taking sides in the conflict, as people in other countries inhibit themselves, they somehow favor the employer. Thus, we witness the general public continue to patronize strike-stricken moviehouses, stores, shops and transportation companies. This is merely one aspect of the matter.

Another aspect concerns powerful employers who in many instances avail themselves of the services of the police to break up picket lines, or to escort scabs into the sanctuary of the factory, thereby frustrating or defeating the purpose of the whole movement.

Forlorn and all alone, without judicial protection, the laborer must face the abuses of the free enterprise system.

(4) If there are no "company unions" in the United States, in the Philippines they are legion. And if by the term "company union" we mean that which, in its formation and administration, is aided and abetted by the employer, then in truth we can say that there are more "company unions" than legitimate labor unions in our country.

(5) In Manila and other cities, jobs at present are scarce and the jobless multitudinous. Farm laborers from the provinces worsen matters by emigrating to the cities or suburbs thereof. And what situation is brought about? Due to over-abundance of labor in the cities, industrial wages drop; the depletion of farm labor causes agricutural costs to spiral upwards, and with them the cost of living. We have therefore no healthy balance between industrial wages and the cost of living. The social disorder thus continues and nothing is gained by hiking industrial wages in population centers while the cities continue to siphon farm labor.

These then are a few of the aspects of the peculiar condition of the Filipino laborer. This condition will become truly pitiful if compulsory arbitration is suppressed. Without judicial power to decide disputes, no court will be able to stop strikes, which will multiply; since there will be no judicial authority to order a return to work, strikes will be long, costly and violent, like those in the United States. The situation will serve as an ideal basis for the growth of Communism here.

It has been observed that in all cases wherein the Court of Industrial Relations has not acted or has refrained altogether from issuing a back-to-work order, the employer has invariably triumphed and succeeded in dissolving the union or in converting it into a "company union." This fact distinctly demonstrates that, as Filipino unionism now stands, the union, left on its own in the field of unlimited competition, cannot survive.

With reference to dismissal cases, the Filipino laborer is better protected by Commonwealth Act. No. 103, as amended, than his American counterpart. In the United States the laborer may be dismissed by the employer for any reason other than for "union activities" or "unfair labor practices." In this country dismissal is possible only upon the concurrence of a "just cause."[6]

In other words, the American working man can ask for readmittance to his job only if he has been ousted on account of having engaged in union activities. In this country reinstatement can always be asked when there exists no "just cause" for dismissal. Likewise, in the United States the burden of proof that the dismissal was by reason of union activities devolves upon the worker, a difficult task since it consists in proving what are intimately subjective matters, such as the intent and designs of the employer, which the latter can easily conceal or disfigure. Here the *onus probandi* that a just motive exists weighs on the shoulders of the employer. Unless therefore the employer can prove the existence of a just cause, the dismissed employee will be entitled to reinstatement.

The exclusive basis for a sincere social order is the imparting of justice supplemented by the virtue of charity. That is why the very law which affords protection to the worker categorically commands that the Court of Industrial Relations "shall act in accordance with justice and equity and the substantial merits of the case."[7] There is

[6] Section 19, Commonwealth Act No. 103, as amended.
[7] Section 20, Commonwealth Act No. 103, as amended.

no substitute for justice and equity. So long as no other formula is found which can prevent litigations and dissolve conflicts, and as long as there exists one citizen who can, with dignity and honor, administer justice, the jurisdiction of the Court of Industrial Relations to decide and settle conflicts should not be withdrawn.

I must admit that the Industrial Court is not perfect; that it has failed to establish a social jurisprudence notwithstanding the time that has elapsed; that it has stumbled into grave errors. But the principles and objectives which have breathed life into that Court will outlast and outlive everything that is transitory and accidental. Rectify the errors; change the judges, if need be, but save the principles.

With profound reverence for the memory of President Quezon, I conclude these lines with the words[8] of that great apostle of Social Justice:

> That our laborers in the farm as well as in the factories still suffer from long-standing unfair practices, no one can successfully deny. These injustices, however, cannot be remedied by merely applying here legislation in force in other countries. For such legislation would not take into account local conditions nor the incipient stage of our industrial life and the almost primitive state of our agriculture. Government administration is a practical question and statesmanship consists in the wise application of sound doctrines, bearing in mind the actual conditions that have to be met with in each case. Even the most up-to-date progressive labor legislation, if not in keeping with prevailing conditions here, may easily upset our existing industries, prevent the establishment of new ones, and retard the advance of our agriculture. I, therefore, advocate a policy of progressive conservatism based upon the recognition of the essential and fundamental rights of labor.[9]

[8] Delivered at the Opening of the First Session in the Assembly Hall, Legislative Building, Manila, June 16, 1936.

[9] Messages of the President, Vol. 2, Part I (Revised Edition), p. 161.

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