ATENEO LAW JOURNAL

Published four times during the academic year by Ateneo Law Students

EDITORIAL BOARD

JOSE O. CASAS, *Editor-in-Chief*

RICARDO G. BERNARDO, JR.
Article Editor

ROBERTO V. ARTADI
Note Editor

ARSENIO L. GONZALES, JR.
Developments Editor

JOSE B. BUENAVENTURA
Developments Editor

FERNANDO R. ARGUELLES
Case Editor

JUAN N. DE CASTRO
Case Editor

ROMEO B. BATINO
Book Review Editor

FRANCIS ZOSA
Legislation Editor

STAFF MEMBERS

ROBERTO L. ABAD
MANUEL G. OJEDA
ROMEO R. VICENTE
REDENTOR A. SALONGA
JOSE B. CABRAL, JR.
RODOLFO U. JIMENEZ
MANUEL TIAOQUI
JAIME S. BAUTISTA
FRANCISCO M. MAGBAG
WALFRIDO R. PATAWARAN
EMMANUEL SANTIAGO
ALFREDO M. LAZARO
MARIO S. SINGSON
RENATO CALLEJA
RODRIGO L. SALUD
RODOLFO A. MABUTAS
GREGORIO P. MOLINA
MANUEL S. TONOGBANUA, JR.
RODOLFO B. ATO
OCTAVIO B. KATIGBAK
DEOGRACIAS CONCHU

Business and Circulation Department
PIO GUERRERO
Manager

PROF. FEDERICO B. MORENO
Faculty Adviser

DEDICATED TO OUR LADY, SEAT OF WISDOM

NOTE

THE SCOPE OF THE DUTY TO BARGAIN COLLECTIVELY

*Rodolfo U. Jimenez**

This paper is an exploration on the scope of the duty to bargain collectively. In the process attempt has been made to incorporate not only Philippine but pertinent American jurisprudence to achieve a broader appreciation of the subject. Not only that but considering that the *Industrial Peace Act*,[1] which is the basic law on collective bargaining in this jurisdiction, was copied from counterpart Acts[2] of the Congress of the United States, the jurisprudence in that country on the matter has authoritative effect in the Philippines.

I. COLLECTIVE BARGAINING DEFINED

A. *Where There Is No Agreement*

The *Industrial Peace Act* distinguishes between the existence and non-existence of a collective bargaining agreement. In the absence of such agreement, it defines "to bargain collectively" as:

> The performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith, for the purpose of negotiating an agreement with respect to wages, hours, and/or other terms and conditions of employment, and for executing a written contract incorporating such agreement if requested by either party, or for the purpose of adjusting any grievances or question arising under such agreement, but such duty does not compel any party to agree to a proposal or to make concession.[3]

This definition was copied almost verbatim from Section 8(d) of the *Labor Management Relations Act*[4] of the United States. The only substantial change made was the substitution of the phrase *promptly and expeditiously* for *at reasonable times*.

---

* PH. B., U.S.T., 1955; LL.B., ATENEO, 1960.
[1] R. A. No. 875, effective June 17, 1953.
[2] NATIONAL LABOR RELATIONS ACT (WAGNER ACT), and its amendatory act, the LABOR MANAGEMENT RELATIONS ACT (TAFT-HARTLEY ACT).
[3] INDUSTRIAL PEACE ACT § 13, par. 1.
[4] 29 USCA § 158(d).

LIBRARY

B. *Where There Is An Agreement*

Where there is a collective bargaining agreement, it also means:

> That neither party shall terminate or modify such agreement, unless it has served a written notice upon the other party of the proposed termination or modification at least thirty days prior to the expiration date of the agreement, or in the absence of an express provision concerning the period of validity of such agreement prior to the time it is intended to have such termination or modification take effect. It shall be the duty of both parties, without resorting to a strike or lockout, to continue in full force and effect all the terms and conditions of the existing agreement during the said period of thirty days.[5]

Also taken from the same section with substantial omissions.

C. *Summary of Standards*

Now then the statutory definition establishes the following standards for collective bargaining:

i. The obligation to bargain collectively is mutual, i.e., both the employer and the representative of his employees are bound to bargain.

ii. Both parties are required to meet and confer promptly and expeditiously.

iii. They are required to negotiate an agreement in good faith.

iv. But neither party is required to agree to a proposal or to make concession.

v. Nevertheless, if an agreement is reached, it must be reduced in writing when requested by either party.

vi. Where a collective bargaining agreement exists, neither party shall terminate or modify such agreement, unless a written notice thereof is served on the other party thirty days prior to the expiration of the agreement or the effectivity of the termination or modification, as the case may be. Neither party shall also resort to strike or lockout during that period of thirty days.

D. *Explanation*

i. *Mutuality*

Whenever a party desires and manifests its intention to bargain, the other may not refuse. Its refusal constitutes unfair labor practice. The employer may be fined for such refusal,[7] and it is sufficient cause for the Court of Industrial Relations (hereinafter referred to as CIR for brevity) to deny to the refusing union all its rights and privileges under the

[5] INDUSTRIAL PEACE ACT § 13, par. 2.
[6] *Id.* § 4(a) (6), (b) (3).
[7] *Id.* § 25, par. 2 in relation to § 15, par. 1.
[8] *Id.* § 15, par. 2.

statute.[8] The imposition of the fine however is lodged in ordinary courts and not in the CIR.[9]

ii. *Promptness*

Collective bargaining requires that the parties meet promptly and expeditiously. It is judicially settled that delay in the consideration of the employees' demands,[10] as when the employer engages in dilatory tactics,[11] like discussion of unrelated matters,[12] is not in fulfillment of the law. It constitutes refusal to bargain punishable as unfair labor practice.[13] It is not incumbent upon the employees continually to present new contracts until ultimately one meets the approval of the employer.[14] Delay, however, properly backed up with strong and sufficient reasons and not one calculated to embarrass or prejudice the employees is excusable, as when the demands are many and varied and involve fundamental questions affecting the life of the business of the employer.[15] This is only fair in keeping with the spirit of the substantive law provision that neither capital nor labor should act oppressively against each other.[16]

There is no provision of law specifically delimiting the length of excusable delay. Every case is decided according to the facts, conditions and circumstances attendant to it.[17] It has been held, however, that delaying to meet the union representative for four months constitutes sufficient refusal.[18]

iii. *Good Faith*

The parties are also required to meet and confer in good faith. They must deal with each other openly and sincerely endeavor to arrive at an agreement. Mere pretended bargaining, with a firm intent not to enter into any agreement, is not in fulfillment of the duty. Thus it has been held that mere discussion with the representative of the employees with fixed resolve on the part of the employer not to enter into any agreement violates the duty.[19] The refusal of an employer to bind himself contractually as to wage rates, hours of work and other conditions of

Hotel Restaurant Free Workers v. Kim San Cafe Restaurant, G.R. No. 8100, Nov. 29, 1957; Scoty's Dept. Store v. Micaller, G.R. No. L-8116, Aug. 1956.
See Phil. Marine Officers Ass'n v. CIR, G.R. No. L-10095, Oct. 31, 1957.
NLRB v. Union Pacific Stages, 99 F. 2d 153 (1938).
Interstate Steamship Co., 36 NLRB 1307 (1941).
INDUSTRIAL PEACE ACT § 4(a) (6).
M.H. Ritzwoller Co. v. NLRB, 114 F. 2d 432 (1940).
Phil. Marine Officers Ass'n v. CIR, *supra* note 10.
Art. 1701 CIVIL CODE OF THE PHILIPPINES.
NLRB v. Algoma Plywood & Veneer Co., 121 F.2d 602 (1941).
Martin Bros. Box Co., 35 NIRB 217 (1941).
NLRB v. Highland Park Mfg., 110 F.2d 632 (1940).

LIBRARY

employment, insisting upon the right to act unilaterally on such conditions has also been held a demonstration of bad faith.[20]

The following conducts had also been held by the National Labor Relations Board, the counterpart tribunal of the CIR, as indicative of bad faith:

1. Avoiding prompt bargaining conferences with the union.
2. Categorically rejecting the union's proposals without offering counterproposals or substantiating the employer's position. Making without justification counterproposals suggesting abandonment of previously obtained benefits.
3. Unilateral wage increases after refusing to negotiate wage increases with the union.
4. Ignoring the union's request for negotiation on disputed matters.
5. Permitting a minority to present and negotiate grievances falling within the scope of collective bargaining.
6. Refusing to reduce to a signed agreement the terms and provisions agreed upon.
7. Dilatory tactics during negotiations.
8. Engaging in unfair labor practices while bargaining with the union.
9. Attempting to bargain individually with the employees over the head of union agents.
10. Requiring the union to secure an agreement from competitors before bargaining.[21]
11. Failure of the company to make a single bona fide written proposal to the union over a 15-month period of negotiations, despite the union's submission of at least 3 drafts of proposed agreements.
12. Insistence upon meeting with the union at unreasonable hours and places.[22]

iv. *Freedom of Agreement*

While collective bargaining is imposed as a duty, the parties are at liberty to enter or not to enter into a collective bargaining agreement.[23] As well observed by a distinguished labor authority, Mr. Ludwig Teller, "the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory." Collective bargaining is of no advantage at all, unless it is voluntary on both sides.[24]

v. *Written Agreement*

Exception must be made however of the agreement concluded as a necessary incident of the duty to bargain. Once such an agreement is reached,

[20] Singer Mfg., Co. v. NLRB, 119 F.2d 131 (1941).
[21] WERNE, THE LAW OF LABOR RELATIONS 29 (1951).
[22] CHAMBERLAIN, COLLECTIVE BARGAINING 302 (1951).
[23] INDUSTRIAL PEACE ACT § 13, par. 1; see Pambusco v. Pambusco Employees' Union, 68 Phil. 541 (1939).
[24] Hitchman Coal & Co. v. Mitchell, 245 US 229 (1917).

its incorporation in a written instrument upon request by either party becomes mandatory. Refusal to write down and sign the agreement constitutes refusal to bargain.[25] The freedom to refuse to make an agreement relates to its substantial terms and not, once reached, to its expression in a written instrument.

It should be noted also that the execution of an agreement does not relieve the employer from negotiating with respect to modification, interpretation and administration thereof.[26] The obligation to bargain is a continuing one.[26a] In fact, the statute specifically requires that "any grievances or question arising" under the agreement be subject to the collective bargaining process.[27] Negotiations toward modification to be effective, however, require that a written notice of the proposed modification be served on the other party within the period provided by law.[28]

(a) *Oral Agreement*

The mandatory written agreement crystallizes only when there is a request made by either party. Now then, is an oral agreement within the pale of the law in the absence of such request? Professor Moreno of the Ateneo Law School suggests the affirmative. We fully subscribe to this view. While an oral understanding may be "inadequate to insure tranquility in the future relations of the parties,"[28a] the law is clear and we must not improve upon it.[28b]

vi. *Observance, Termination and Modification; No-strike-no-lockout Prohibition*

(a) *Observance*

Where there is a collective agreement, the parties are bound to respect the terms thereof during the entire period fixed for its validity. Even members who have been expelled from the union with whom a collective bargaining agreement has been concluded by the employer at the time that they were still members are not relieved from the responsibility of complying with the commitments of the union.[29] Correlatively, a laborer who has legally terminated his membership in the contracting union may

[25] Heinz & Co. v. NLRB, 311 US 514 (1941); Continental Oil Co. v. NLRB, 113 F.2d 473 (1940).
[26] NLRB v. Sands Mfg. Co., 306 US 332 (1939); Ideal Leather Novelty Co., 54 NLRB 761 (1944); Carroll et al., 56 NLRB 935 (1944).
[26a] Rapid Roller Co. v. NLRB, 126 F.2d 452 (1942); NLRB v. Highland Shoe, 119 F.2d 218 (1941); NLRB v. Sands Mfg., 96 F.2d 721 (1938).
[27] INDUSTRIAL PEACE ACT § 13, par. 1.
[28] *Id.* § 13, par. 2.
[28a] I TELLER, LABOR DISPUTES & COLLECTIVE BARGAINING 331 (1940).
[28b] See INDUSTRIAL PEACE ACT § 13, par. 1.
[29] Central Azucarera de la Carlota v. Allied Workers Ass'n, CIR No. ...V, June 27, 1949.

LIBRARY

claim the benefits of the agreement, even after he has ceased to be a member thereof.[30] Conversely, a union is not relieved from its contractual obligations by simply shifting its allegiance or transferring its affiliation.[31]

Also, not only members of the contracting union but all employees in the appropriate bargaining unit are bound by the collective contract. This includes those who have either failed or refused to designate the union as the bargaining representative.[32] The basis of this doctrine is the principle of majority rule which is applied in the determination of the bargaining representative.[33]

But the agreement cannot bind third parties. Thus, where the contracting company transferred all its rights and interests to another, the latter may displace the transferor's laborers, unless continuance of the original contract of employment is imposed as a condition of the transfer.[34]

Furthermore, although the parties are bound to observe the agreement for its duration, it has been held that a strike called before the expiration of a bargaining agreement which contains no prohibition against strike is legal where the demand is for a general increase in wages to take effect only after the expiration of the contract.[35] So also is a strike in support of demands made in accordance with a reopening clause in the agreement for wage adjustment.[36]

(b) *Termination or Modification*

The parties may terminate or modify an existing collective bargaining agreement, subject to the following requirements:

(aa) The party desiring to terminate or modify must serve a written notice upon the other of the proposed termination or modification thirty days prior to the expiration of the agreement or the intended effectivity of the proposed termination or modification.

(bb) Continue in full force and effect all the terms and conditions of the existing agreement during the said period of thirty days.

[30] Kapisanan Manggagawang Pinagyakap v. Franklin Baker Co., CIR No. 291-V, June 3, 1949.
[31] M & M Woodworking Co. v. NLRB, 101 F.2d 938 (1939); Peninsular-Occidental S.S. Co. v. NLRB, 98 F.2d 411 (1938).
[32] Wallace Corp. v. NLRB, 323 US 248 (1944); J.I. Case Corp v. NLRB, 321 US 332 (1944); Steele v. Louisville & Nashville Co., 323 US 192 (1944); Tunstall v. Bro. of Firemen, 323 US 210 (1944).
[33] J.I. Case Corp. v. NLRB, *supra*; Medo Phto Supply Corp. v. NLRB, 321 US 678 (1944); Wallace Corp. v. NLRB, *supra*; Steele v. Louisville & Nashville Co., *supra*; Barlow-Maney Laboratories, 65 NLRB 928 (1946); Tampa Shipbuilding Co., 67 NLRB 1359 (1946).
[34] Visayan Trans. Co. v. Java, 49 O.G. No. 10, 4293 (1953).
[35] Koppel (Phil.). Inc. v. CIR, 51 O.G. No. 5, 2376 (1955).
[36] WERNE, *op. cit supra* note 21, at 236.

(cc) Not to resort to strike or lockout during the same period.[37]

(dd) Offers to negotiate a new contract or one containing the proposed modifications.[37a]

Failure to comply with these requirements will subject the bargaining representative to a charge of unfair labor practice.[38] But failure to give notice does not result in automatic renewal of the existing contract.[39] It has been judicially intimated, however, that if the contract provided for automatic renewal in case notice is not given, failure to give such notice has the effect of renewing all the terms and conditions of the contract for another term.[40]

A strike or lockout prepetrated within the 30-day "cooling-off" period is illegal and subjects the employer to a charge of unfair labor practice for refusing to bargain and entitles the employee locked-out to back pay. In case of strike, the strikers forfeit their employee status.[40a] It has also been held that a union which strikes in violation of the notice requirement and in breach of a no-strike promise loses its status as collective bargaining agent.[40b]

(c) *No-strike-no-lockout Prohibition*

Conjunctive with the standards above-discussed is the prohibition against strike or lockout. Neither party may respectively call a strike or declare a lockout within the period of thirty days in which the notice is given,[41] or at all events without filing a notice of intention to strike or lockout with the Conciliation Service of the Department of Labor and within thirty days from said notice.[42] The declaration of a strike or lockout without previous notice is *prima facie* evidence of a violation of the duty to bargain collectively.[43]

There are other limitations on the right to call a strike or declare a lockout as a coercive measure to compel collective bargaining.[44] If the laborers are government employees employed in governmental functions, they cannot strike.[45] Only those performing proprietary functions may.[46]

[37] INDUSTRIAL PEACE ACT § 13, par. 2.
[37a] *Id.* § 13, par. 1, ist sent. This requirement is expressly provided in the Taft-Hartley Act, 29 USCA (1947 Supp.) Sec. 158(d) (2). It is believed that the opening sentence of Section 13 of the Industrial Peace Act sufficiently embodies the same.
[38] *Id.* Sec. 13, par. 2 in relation to Sec. 4(a) (6), (b) (3).
[39] International Harvester Co., 77 NLRB 242 (1948).
[40] PLDT Employees Union v. PLDT Co., G.R. No. L-8138, Aug. 20, 1955.
[40a] INDUSTRIAL PEACE ACT § 15, pars. 1 & 2 in relation to § 13.
[40b] Boeing Airplane Co v. NLRB, 174 F.2d 988 (1949).
[41] INDUSTRIAL PEACE ACT § 13, par. 2.
[42] *Id.* § 14(d).
[43] See INDUSTRIAL PEACE ACT § 15 in relation to §§ 14(a) & 13.
[44] See *id.* §§ 3, 11 & 14(d).
[45] *Id.* § 11.
[46] *Ibid.*

LIBRARY

A strike is likewise improper where an agreement providing for the peace-ful settlement of all differences between the parties has been entered into. Failure to observe the grievance procedure provided for in the agreemen is fatal to the legality of a strike.[48] It is also illegal where it is declared without giving the employer reasonable time within which to consider th demands made,[49] or during the pendency of a case in the CIR involving said demands.[50] Neither may a strike or lockout be declared where th CIR has issued a restraining order forbidding such conduct during the pen-dency of an industrial dispute certified to said Court by the President o the Philippines as involving an industry indispensable to the national in-terest.[51] Finally, the so-called "sympathetic strike" and "sitdown strike have been outlawed in this jurisdiction.[52] A strike that is likewise neve tolerated is one prosecuted by illegal means.[53] However, the defense o illegality of strike is deemed waived if the employer voluntarily agrees t reinstate the strikers.[54] Said reinstatement may be taken as evidence o discrimination against those not reinstated.[54a]

It must be noted that the declaration of a strike does not of itself terminat employment relation.[55] In fact, the statute includes in the term "employe an individual whose work has ceased because of a labor dispute or any u fair labor practice.[56] Strikers have a right, which may not be destroyed the employment of strike breakers,[57] to return to work after the settleme of the strike.[58] However, illegal acts of sabotage committed by the labore during a strike *ipso facto* terminate the right to work.[59] Mere unjustifi strike, where no acts of violence are involved, has also been interpreted

[47] PAL v. PAL Employees Ass'n, CIR No. 311-V, July 22, 1949.

[48] Liberal Labor Union v. Phil. Can Co., G.R. No. L-4834, March 28, 19

[49] Almeda v. CIR, G.R. No. L-7425, July 21, 1955; Insular Sugar Refini Corp. v. CIR, G.R. No. L-7394, Sept. 8, 1954.

[50] Luzon Marine Dept. Union v. Roldan, G.R. No. L-2660, May 30, 19 47 O.G. (S-12) 136; National Labor Union v. Phil. Match Co., 70 Phil. (1940).

[51] INDUSTRIAL PEACE ACT § 10.

[52] HILADO & HAGAD, PHIL LABOR & SOCIAL LEGISLATION 84-5 (1957-8). the United States "sitdown strike" extends to acts of disloyalty, as fering one's self to be his employer's competitor's agent, when done concert. Boeing Airplane Co. v. NLRB (CA 9 1956), 25 LW 2003.

[53] Liberal Labor Union v. Phil. Can Co., *supra* note 48; National Labo Union v. CIR, 6 8Phil. 732 (1939).

[54] Phil. Air Lines v. PAL Employees Ass'n, G.R. No. L-8197, Oct. 3 1958; Bisayas Land Trans. v. CIR, G.R. No. L-10114, Nov. 26, 1957; Citizen Labor Union v. Standard Vacuum Oil Co., G.R. No. L-7478, May 6, 1955

[54a] Phil. Air Lines v. PAL Employees Ass'n, *supra*.

[55] Rex Taxicab Co. v. CIR, 70 Phil. 621 (1940).

[56] INDUSTRIAL PEACE ACT § 2(d).

[57] Radio Operators Ass'n v. Phil. Marine Officers Ass'n, G.R. No. L-10 Nov. 29, 1957.

[58] See Jeffrey-De Witt Insulator Co. v. NLRB, 91 F.2d 134 (1937).

[59] National Labor Union v. CIR, *supra* note 53.

operate as a forfeiture of employee status.[60] Likewise, an employee loses his status as such if he participates in a strike declared without previous notice of a desire to negotiate an agreement.[61]

II. DUTY TO BARGAIN

In the absence of an agreement or other voluntary arrangement provid-ng for a more expeditious manner of collective bargaining, it shall be the uty of an employer and the representative of his employees to bargain ollectively in accordance with the provisions of this Act.[62]

Whenever a party desires to negotiate an agreement, it shall serve a writ-en notice upon the other party, with a statement of its proposals. The ther party shall make a reply thereto not later than ten days from re-eipt of such proposals.[63]

How It Arises

i. Where There Is No Agreement

In the absence of a collective bargaining agreement, the duty to bargain ises when a demand is made by a party upon the other for collective rgaining.[64] Until then the duty is a mere expectancy. Thus, if the rgaining representative, properly designated by the employees in the ap-opriate bargaining unit, makes no demand upon the employer, the latter's ty to bargain does not arise. The employer is not obligated to seek the representative of his employees.[65] But on demand the duty be-mes absolute. The refusal of the employer to bargain is unlawful[66] and ionable as unfair labor practice.[67]

Not even the existence of a strike,[68] nor his claim of union irresponsibi- nor an impasse in the bargaining process,[70] unless it indicates that greement is feasible,[71] may relieve him from the duty to bargain. Nor he demand, in case of a strike, as a condition for bargaining, the em-oyees' return to work,[72] nor require, as a condition precedent, certifica-

Cases cited note 50 *supra*.

INDUSTRIAL PEACE ACT § 15, par. 2.

Id. § 13.

Id. § 14(a).

Ibid.

NLRB v. Columbian Enameling & Stamping Co., 306 US 252 (1939); usch & Lomb Optical Co., 69 NLRB 1104 (1946); Barlow-Maney Labo-ories, *supra* note 33.

INDUSTRIAL PEACE ACT § 15.

Id. S 4(a)(6), (b)(3).

NLRB v. Carlisle Lumber Co., 94 F.2d 138 (1937).

See Cottrell & Sons, 34 NLRB 457 (1941); Scripto Mfg. Co., 36 NLRB (1941).

Jeffrey-Dee Witt Insulator Co. v. NLRB, *supra* note 58; Brown-BcLaren Co., 34 NLRB 984 (1941); Allen Inc., 1 NLRB 714 (1936).

Trenton Garment Co., 4 NLRB 1186 (1938).

Jeffrey-De Witt Insulator Co. v. NLRB, *supra* note 58; Virginian Ry. System Fed., 300 US 515 (1937).

LIBRARY

tion of the union as the bargaining representative. Only where the asserted bargaining representative fails to present adequate and reasonable proof of its majority representation, or when he has an honest doubt as to the majority status of several contending bargaining agencies, may he do so,[73] subject to the 12-month rule.[74]

Neither may he refuse by the mere expansion of his plant,[75] nor is his refusal justified by the fact that a rival union is compelling him, by economic pressure, not to bargain with the true bargaining representative.[76] Nor may he refuse to negotiate with a union already divested of its majority status, if at the time the original demand for bargaining was unlawfully refused said union represented the majority.[77]

ii. *Where There Is An Agreement*

Where a collective agreement exists, the duty to bargain arises immediately upon the conclusion of said agreement. Unlike bargaining toward the collective agreement, duty to bargain under this aspect self-operates. It does not require the initiative of either party upon the other; it is active and essentially a continuation of the initial bargaining negotiation. In fine, it is the enforcement of the terms agreed upon simply.

B. *The Need For Bargaining*

The need for collective bargaining cannot be over-emphasized. While the Constitution guarantees equality between employer and employee,[78] the protection is merely theoretical:

Richard T. Ely: Legal equality is by no means equivalent to equality in conditions.[79]

Warren B. Catlin: Under a system of individual bargaining, each man in the line is practically compelled to accept employment at the rate which the employer, with a limited number of places to be filled, thinks he can induce any other competent man to take.[80]

Lord Northington: Necessitous men are not, truly speaking, free men, but to answer a present exigency will submit to any terms which the crafty may impose upon them.[81]

73 ROTHENBERG ON LABOR RELATIONS 479 (1949).
74 INDUSTRIAL PEACE ACT § 12(b).
75 Lakeshore Elec. Mfg. Co., 67 NLRB 804 (1946).
76 NLRB v. NBC, 150 F.2d 895 (1945).
77 Frank Bros. v. NLRB, 321 US 702 (1944); NLRB v. Appalachian Elec. Power Co., 140 F.2d 217 (1944); NLRB v. P. Lorillard Co., 314 US 512 (1942); NLRB v. Bradford Dyeing Ass'n, 310 US 318 (1940).
78 PHIL. CONST. art. III § 1(1).
79 HILADO & HAGAD, *op. cit. supra* note 52, at 66.
80 *Id.* at 66.
81 *Id.* at 67.
82 INDUSTRIAL PEACE ACT § 12(a).

In a word, in the kingdom of labor capital is the king.

That the avoidance of the dictatorial power of capital is the realization which impelled the legislature to impose collective bargaining as a duty cannot therefore be disputed. Collective bargaining, as the primary purpose of unions,[82] is the strongest peaceably conceivable weapon of the working-man to offset by united action the employer's traditional advantage in the labor bargain. Nothing short of a collective shield can protect labor in bitter economic warfare:

Senator Wagner: Caught in the labyrinth of modern individualism and dwarfed by the size of corporate enterprise, he (the worker) can attain freedom and dignity only by cooperation with others in his group.[83]

Justice Holmes: One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is potent and powerful. Combination on the other is the necessary and desirable counterpart if the battle is to be carried on in a fair and equal way.[84]

The Civil Code of the Philippines itself carefully provides that labor contracts must be subject to the special laws on collective bargaining.[85]

C. *Legal Policy Thereon*

Yet while collective bargaining may be safely said to have been instituted to reduce the differential in power, equalization remains the policy of the law. The law does not spread the mantle of protection over labor alone. In protecting the rights of employees and laborers, it does not countenance oppression nor self-destruction of the employer.[86] It recognizes the eternal interdependence between labor and capital, that capital cannot do without labor, nor labor without capital.

In a penetrating statement of the concern of the law for both employer and employee, the Court of Appeals, speaking thru Justice Angeles, said:

Much as the courts would like to be sympathetic to the cause of labor... courts cannot be unfair and unreasonable to capital. They cannot be one-sided and myopic in their philosophy and think only of pleasing labor and commit disservice and injustice to capital, because labor cannot exist without the management and capital to cooperate with it.[87]

83 CHAMBERLAIN, *op. cit. supra* note 22, at 301.
84 Vegelahn v. Guntner, 167 Mass. 92, 35 LRA 722 (1896).
85 Art. 1700.
86 San Miguel Brewery v. National Labor Union, G.R. No. L-7905, July 30, 1955; Phil. Sheet Metal Workers Union v. CIR, G.R. No. L-2028, April 28, 1949, 46 O.G. No. 11, 5642; Manila Hotel Co. v. CIR, 80 Phil. 145 (1948); Manila Trading & Supply v. Zulueta, 69 Phil. 485 (1940).
87 Sanchez v. Ang Tibay, (CA) 54 O.G. 4515 (1958).
88 Standard Vacuum Oil Co. v. Phil. Labor Organization, G.R. No. L-4556, March 21, 1952.

6. Profanity;
7. Physical defects, such as defective vision or infectious disease;
8. Economic causes.[108]

ii. *Reinstatement and Back Pay — Rights of Employee*

Correlative with, and a check to, the employer's power to dismiss is the employees' right to be reinstated, at the discretion of the CIR.[109] The power of the CIR to order reinstatement[110] of illegally, unjustly or otherwise discriminatorily discharged, dismissed or laid-off employees has been upheld by the Supreme Court. Thus where an employee has been removed for negligent driving arising from fortuitous causes,[111] or for participating in a legal strike,[112] or for union activity,[113] or for violating company's "first come first served" policy,[114] the high court sustained the CIR order reinstating him. Employment elsewhere which is not equivalent,[115] or even when regular and substantially equivalent[116] to the position previously held is no ground for denying reinstatement. It may serve only to reduce the amount of back pay awardable for the discharge, dismissal or lay-off.[116a]

Resorting, again, to American authorities, dismissals for the following causes had also been held illegal, unjustified, or otherwise discriminatory and therefore reasonable grounds for reinstatement:[117]

1. Participating in an economic strike where the employer was guilty of unfair labor practices which prolonged the strike;[118]
2. Striking to enforce a demand for a wage increase;[119]
3. Prevention of a contemplated strike;[120]
4. Refusing to act as strike breaker;[121]
5. Dues delinquency caused by his refusal to pay a fine for non-attendance at a union meeting.[122]

10, 1949, 46 O.G. No. 9, 4236.

[108] WERNE, *op. cit. supra* note 21, at 130-132.

[109] C. A. No. 103 Sec. 19, par. 2; Dimayuga v. CIR, G.R. No. L-10213, May 27, 1957.

[110] INDUSTRIAL PEACE ACT § 5(c).

[111] Mindanao Bus Co. v. Mindanao Bus Co. Employees Ass'n, 40 O.G. (S-10) 114 (1940).

[112] Dee C. Chuan & Sons v. CIR, G.R. No. L-2548, Jan. 28, 1950, 47 O.G. 3476; Bardwill Bros. v. Phil. Labor Union, 70 Phil. 672 (1940).

[113] Phil. Mfg. Co. v. NLU, *supra* note 106.

[114] Tide Water Associates Oil Co. v. Victory Employees, G.R. No. L-2936, Dec. 23, 1949.

[115] Western Mindanao Lumber Co. v. Mindanao Fed. of Labor, G.R. No. L-10170, April 25, 1957.

[116] Phelps Dodge Corp. v. NLRB, 313 US 177 (1941); Continental Oil Co. v. NLRB, 313 US 212 (1941).

[116a] *Infra* note 129.

[117] For extended discussion, read WERNE, *op. cit. supra* note 21, at 180-181.

[118] *Ibid.*

[119] *Ibid.*

[120] *Ibid.*

[121] Gardner-Denver Co., 58 NLRB 81 (1944); Pinaud Inc. 51 NLRB 23 (1943).

[122] National Automotive Fibers, Inc., 5 CCH Labor Law Rep. 55792 (1959).

[123] Patterson-Sargent Co., 115 NLRB No. 225 (1956), 25 LW 2009.

However, employees discharged for deliberately discrediting their employer's products,[123] or for serious misconduct during a strike,[124] are not reinstatable, except when the employer offers to reinstate them.[125]

Other defenses against reinstatement:

> Intervening and valid union security agreement, bona fide corporate reorganization, prior participation in sitdown strike, breach of company rules or other misconduct. "Wildcat" strikes, physical inability, breach by employees or union of their contract with employer, unfavorable employment record, seasonality of work, lack of work, or because of the forfeiture of the right of reinstatement under the provisions of the Act.[126]

Reinstatement may be with or without back pay. There is no law which entitles the removed employee or laborer to such pay as a matter of right. The grant is discretionary with the CIR.[127] Where an award is made however the benefit extends not only to members of the union which appeared as a party in the litigation, but also to other employees who are not members of the petitioning union.[128]

As to the amount awardable, it has been held that any net earnings during the duration of the discharge are deductible.[129] Causes occuring during the back pay period which would have affected the employee had he not been discharged also operate to reduce the amount of the award.[130] By the same token, he is benefited by any rate increases if such increases would have affected him if he had not been discharged.[131]

III. BARGAINING AGENT

> The labor organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining...[132]

[124] Idaho Refining Co., 47 NLRB 1127 (1943); Mt. Clemens Pottery C., 46 NLRB 714 (1942); Quality & Service Laundry, 39 NLRB 970 (1942).

[125] The Fafnir Bearing Co., 73 NLRB 1008 (1947); Carey Salt Co., 70 NLRB (1946).

[126] ROTHENBERG ON LABOR RELATIONS 420-1 (1949).

[127] United Employees Welfare Ass'n v. Isaac Peral Bowling Alley, G.R. No. L-10327, Sept. 30, 1958; Dimayuga v. CIR, supra note 109; Union of Phil. Educ. Employees v. Phil. Educ. Co., G.R. No. L-4423, March 31, 1952; Antamok Goldfield Mining Co. v. CIR, 70 Phil. 340 (1940).

[128] Detective & Protective Bur. v. Guevara, G.R. No. L-8738, May 31, 1957.

[129] Social Security Bd. v. Nierotko, 327 US 358 (1946); see Pepsi-Cola Bottling Co. v. Phil. Labor Org., G.R. No. L-3506, Jan. 31, 1951.

[130] Matter of Ray Nichols Inc., 15 NLRB 846 (1939); Montgomery Ward & Co., 4 NLRB 1151 (1938).

[131] Acme Air Appliance Co., 10 NLRB 1385 (1939); Lone Star Bag & Bagging Co., 8 NLRB 244 (1938).

[132] INDUSTRIAL PEACE ACT § 12(a).

iii. *Selection*

There are two ways of selecting the bargaining representative:

(a) *At the Initiative of the Employees Alone*

This method obtains when the majority representation of the bargaining representative is recognized by the employer. When this happens, the employer must proceed to negotiate an agreement. Having conceded union majority, he cannot presently back out and demand proof thereof,[152] for having failed to do so at the first instance he is estopped.[153]

(b) *By Certification Election Conducted by the CIR*

The employer may immediately raise the question of majority representation when a demand for collective bargaining is made to him. He may require additional proof that the union represents a majority of the employees.[154] In that event, certification election becomes necessary.

This mode of selection also arises on petition by at least ten per cent of the employees in the appropriate unit,[155] unless (1) a certification election has occurred within one year from said request, or (2) there is an unexpired bargaining agreement not exceeding two years, or (3) a charge of company-domination of one of the labor unions intending to participate in the election is pending.[156]

A majority determines the outcome of the election,[157] and "majority" has been judicially construed to mean plurality of valid votes cast rather than majority of eligible voters,[158] except when a very substantial number of eligible voters failed to vote, in which case certification will be denied.[159]

B. *Of Employer*

The law in this respect is vague. It merely mentions "employer" every time it speaks of the duty to bargain,[160] and it defines the term as to include "any person acting in the interest of an employer."[161] A person so acting has been considered an employer.[162] Bargaining may thus be car-

[152] Dadourian Export Corp., 46 NLRB 498 (1942).
[153] See Golden Turkey Mining Co., 34 NLRB 760 (1941).
[154] Isaac Peral Bowling Alley v. United Employees Welfare Ass'n, *supra* note 141.
[155] INDUSTRIAL PEACE ACT § 12(c).
[156] Acoje Mines Employees v. Acoje Labor Union, G.R. No. L-1127[illegible], Nov. 21, 1958.
[157] INDUSTRIAL PEACE ACT § 12(b).
[158] Central Dispensary & Emergency Hosp. v. NLRB, 145 F.2d 852 (1944); N.Y. Handkerchief Mfg. Co. v. NLRB, 114 F.2d 144 (1940); NLRB v. Whittier Mills Co., 111 F.2d 474 (1940).
[159] Kendall Coal Co., 41 NLRB 395 (1942); Weinberger Sales Co., 2[illegible] NLRB 154 (1940).
[160] See INDUSTRIAL PEACE ACT §§ 12(d), 13, 14(d) & 15.
[161] *Id.* § 2(c).
[162] Continental Oil Co. v. NLRB, 121 F.2d 120 (1941).

ried on not necessarily face to face with the employer himself. Employees, however, may not demand that a particular person or officer negotiate with them.[163]

IV. PARTIES TO COLLECTIVE BARGAINING

A. *Employer*

The *Industrial Peace Act* defines "employer" so as to include any person acting in the interest of an employer, directly or indirectly, but not including any labor organization (otherwise than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.[164] As already pointed out,[165] it includes any person representing the interest of an employer. Very likely, it may yet reach out to groups provided they act in such interest.

But does it include the government? Under the parallel provision in the Wagner Act[166] from which Section 2(c) of the Industrial Peace Act was taken, "the United States, or any state, or political subdivision thereof,"[167] is expressly excluded from the concept of "employer", and, as amended, the exclusion further includes "wholly owned Government corporation."[168] We do not find this situation in our law. It has been suggested, however, that "by deliberate omission of the government or any subdivision thereof as an employer within the meaning of the Act," the same exclusionary effect is produced.[169] With due respect to that view, it is submitted here that the government may be an employer. This could be inferred from Section 11 of the Act which provides that the prohibition to strike against the government shall not apply to those employed "in proprietary functions of the government *including but not limited to* governmental corporation." Furthermore, in eliminating the "express exclusion clause" found in the parent provision, the legislature must have intended to make the government an employer, at least in the exceptional instance immediately recited.

A case in point is GSIS v. Castillo.[169a] There it was held that the government may be considered an employer when it is engaged in its proprietary or private functions.

There is no doubt that government-owned or controlled corporations may, in the same manner, be embraced in the term "employer". In a

[163] Great Southern Trucking v. NLRB, 127 F.2d 180 (1942).
[164] INDUSTRIAL PEACE ACT § 2(c).
[165] III (B)
[166] 29 USCA § 152(2).
[167] Other entities excluded: Fed. Reserve Bank; any corporation or association operating a hospital, if no part of the net earning inures to the benefit of any private shareholder or individual.
[168] 29 USCA (1947 Supp.) § 152(2).
[169] I FRANCISCO, LABOR LAWS 483 (1956).
[169a] G.R. No. L-7175, April 27, 1956.

LIBRARY

At any rate, the following have been held to be within the area of negotiations:

1. Bonuses[192]
2. Causes of strike[193]
3. Discharges[194]
4. Emoluments[195]
5. Grounds for dismissal of employees[196]
6. Group health and accident insurance[197]
7. Hours and composition of work shifts[198]
8. Machinery for the adjustment of grievances[199]
9. Merit wage increases[200]
10. Plant and employees rules[201]
11. Pension and treatment plans[202]
12. Price of meals served at place of employment[203]
13. Profit and sharing plans[204]
14. Reemployment of laid off employees[205]
15. Rest and lunch period[206]
16. Subcontracting[207]
17. Vacation and sick leave with pay[208]
18. Closed shop[209]
19. Check-off[210]
20. Seniority[211]

Even these are not final and conclusive. Subject to judicial temperament, they float along the ever changing tide of economic, social and political relationships.

VI. Conclusion

Recapitulating, it may be stated then that while collective bargaining is imposed as a mutual obligation of the employer and his employees, thru their proper representative, certain conditions are to be fulfilled, in default of which the right to compel negotiation is unavailing.

---

[192] Union Mfg. Co., 76 NLRB No. 47 (1948).
[193] Timken Roller Bearing Co., 70 NLRB 500 (1946).
[194] NLRB v. Bachelder, 120 F.2d 574 (1941).
[195] W.W. Cross & Co. v. NLRB, 174 F.2d 875 (1949).
[196] Woodside Cotton Mills, 21 NLRB 42 (1940).
[197] W.W. Cross & Co. v. NLRB, *supra* note 195.
[198] Woodside Cotton Mills, *supra* note 196; Timken Roller Bearing Co., *supra* note 193.
[199] Hughes Tool Co. v. NLRB, 147 F.2d 69 (1945).
[200] NLRB v. J.H. Allison & Co., 165 F.2d 766 (1948).
[201] Timken Roller Bearing Co., *supra* note 193.
[202] Inland Steel Co. v. NLRB, 170 F.2d 247 (1948).
[203] Weyerhauser Timber Co., 87 NLRB 672 (1949).
[204] Union Mfg. Co., *supra* note 192.
[205] Woodside Cotton Mills, *supra* note 196.
[206] National Grinding Wheel Co., 75 NLRB No. 112 (1948).
[207] Timken Roller Bearing Co., *supra* note 193.
[208] Isaac Peral Bowling Alley v. United Employees Welfare Ass'n, *supra* note 141; Earnshaw Docks & Honolulu Iron Works v. CIR, G.R. No. L-889[illegible], Jan. 23, 1957.
[209] Industrial Peace Act § 4(a)(4).
[210] Minimum Wage Law (R. A. No. 602) § 10(b)(3).
[211] Hilado & Hagad, *op. cit. supra* note 52, at 65.

REFERENCE DIGEST

Taxation: Criticisms On the Tax Exemption of New and Necessary Industries. — There has recently been an agitation on the part of the public against the present tax exemption privilege granted to new and necessary industries. Congress has been busy devising ways and means of amending it, but nothing so far has been done, at least substantially, to effect any desired change.

The author examines R.A. No. 35, the tax exemption law itself, the various Executive Orders implementing it, and R.A. No. 901 amending the enacted law.

In appraising the various provisions of these two Acts and the different Executive Orders, the author has found some glaring inequities in this particular tax exemption law. He points out the following:

First: the criterion of newness is not a sound basis for extending tax exemption,

Second: even firms that are already realizing enormous profits would be exempt from taxes under the present set-up,

Third: to increase the percentage of raw materials would be making them almost completely dependent on foreign sources of supply for their continued existence,

Fourth: those mostly benefited by the tax exemption law are the aliens and their corporations, and,

Lastly: by the further extension of the period of tax exemption, a situation may well arise whereby new industries would enjoy the unprecedented triple protection from competition, namely: tax exemption, tariff duties on competing foreign goods, and exchange and import controls.

The author submits that unless Congress initiates means to amend this tax exemption law, it would be a wiser move to junk it and let business have a field of free competition. (Florencio Ronquillo, *Criticisms on the Tax Exemptions of New and Necessary Industries, I U.E. LAW JOURNAL* No. 1, at 25-31 (1958). ₱3.00 at the University of the East. This issue also contains: Batacan, *The Need for Bar Reforms;* Albao, *The Stockholder's Right of Inspection of the Books and Records of the Corporation*).

International Law: The Right of Diplomatic Asylum. — The claim of Huk leader Alfredo Saulo for sanctuary at the local Indonesian