conduct was also a clear and direct violation of the following portion of his oath as a lawyer: "x x x. I will do no falsehood, x x x." (Underscoring ours.) As a penalty and as a warning, respondent is ordered suspended from office for a period of two years. (SIMPLICIO NATAN *vs.* SIMEON CAPULE, *Administrative Case No.* 76, July 23, 1952.)

LABOR LAW

THE COURT OF INDUSTRIAL RELATIONS

Jurisdiction. General Jurisdiction of CIR; Art. 302 *of Code of Commerce Applied. Period of Employment; Dismissal without Cause.*

FACTS: MT and 36 others had been employed as carpenters by petitioner who was engaged in construction and repair of vessels. On April 26, 1949, an announcement was made that work would be stopped in said company for two weeks or more from April 30th to make an inventory and that laborers would be notified as to resumption of work. After two weeks, respondents appeared at the premise for work but were not allowed to do so. They returned at the end of May but were again refused. Respondents filed action in CIR for recovery of one month's compensation inasmuch as they were not given one-month's notice as required by Art. 302 of Code of Commerce. Company asked for dismissal of case on ground of lack of jurisdiction, and on ground that Art. 302 did not apply. Pending proceedings 10 of the original 37 petitioners withdrew after settling amicably with the company. Questions at issue:

HELD: (1) Art. 302 provides: "In cases in which the contract does not have a fixed period, any of the parties may terminate it, advising the other thereof one month in advance."

"The factor or shop clerk shall have a right, in this case, to the salary corresponding to said month."

(a) Employees in present case although paid weekly are not engaged for a fixed period. The manner or computation of payment, whether monthly or weekly, does not determine the period of employment. (b) Respondents were dismissed through no fault of theirs, they having offered to work after the termination of inventory; hence they were dismissed without cause. (c) In Philip. Trust v. Smith Navigation Co., court held that contract of repair of vessels was a commercial transaction and as such was governed by Code of Commerce. It may therefore be implied that petitioner

herein is a commercial company. But even assuming it is not, respondents are entitled to one month's wages in lieu of compensation because CIR has general jurisdiction to decide labor disputes, amount of salary wages, living condition, etc.

(2) CIR has jurisdiciton over this case. The four requisites exist: (1) dispute, industrial or agricultural; (2) dispute is causing or is likely to cause strike or lockout; (3) said dispute arose from difference as regards wages, dismissals, lay-off; (4) number of employees or laborers exceeds 30.

Disputes in present case involve a lockout within the contemplation of law; which is the suspension of employee's services. Reduction of respondent laborers from 37 to 27 did not affect jurisdiction of court. Once CIR acquires jurisdiction it retains it until case is completely decided. (STA. MESA SLIPWAYS AND ENGINEERING CO., INC. *vs.* CIR and MACARIO TADINA ET AL., G. R. No. L-4521, August 18, 1952.)

Jurisdiction Over Government Public Service Corporations.

FACTS: MWD contends that CIR lacked jurisdiction over it because it was not engaged in agriculture or industry, it having been organized not for profit but to furnish water supply and sewerage service.

HELD: In determining the jurisdiction of labor courts, the term "industrial relations" refers to affairs relating to industry and involving government departments devoted to public service. The business of providing water supply and sewerage service may for all practical purposes be likened to that of coal companies, gas and power companies, power plants, ice plants, etc. (METROPOLITAN WATER DISTRICT *vs.* COURT OF INDUSTRIAL RELATIONS and METROPOLITAN WATER DISTRICT WORKERS' UNION, G. R. No. L-4488, Aug. 27, 1952.)

Power to issue Writ of Injunction; when it lies.

Where a union is trying to accomplish its purpose in a manner detrimental to public interest through threat or violence, injunction will lie to restrain said entity. (UNITED WORKERS OF THE PHIL. *vs.* BISAYA LAND TRANS. CO. ET ALS., G. R. No. L-4111, March 31, 1952.)

AWARDS

Award of CIR may comprise laborers other than those who signed the demand or were identified with the walkout.

FACTS: On November 6, 1948, the Caledonia Pile Workers' Union and Repair Shop Workers' Union filed with the CIR a petition, one of the demands therein was for a "general increase of one peso for all employees and laborers of the above-mentioned organizations." On November 4, 1949, the CIR fixed a scale of salary increases based on the basic daily and monthly wages or salaries of the employees and laborers, retro-active to January 1, 1949.

On March 13, 1951, the unions and the LASEDECO submitted to the CIR a stipulation of facts and asked to know whether the above wage and salary increases apply to the employees and laborers who work in the Provincial Tractor Pools. Pending this action, Carlos Ramos, a retired employee who worked in the Tractor Pool in the province of Bataan, intervened and claimed payment of the differential between the salary paid him and the new rate set by the court in the decision of November 4, 1949. LASEDECO objects, claiming that only members of the unions who made demands, struck, picketed or otherwise made a common cause with the strikers, are entitled to the benefits won under the decision of November 4, 1949.

ISSUE: May employees and laborers of the Provincial Tractor Pools who were not parties to the petition of November 6, 1948, receive the benefits under the decision of November 4, 1949?

The requirement of more than 30 employees to sign a petition with the CIR (Sec. 4, Commonwealth Act 103) only means that the required number is necessary to set the machinery of the CIR in motion. But once the CIR has legally taken cognizance of the case, the court's decision may comprise employees and workers other than those who signed the demand or were identified with the walkout, because to limit the application of the CIR's decision granting increase of wage and other privileges to striking workers would in its effect put a premium on strikes. (LAND SETTLEMENT AND DEVELOPMENT CORPORATION *vs.* CALEDONIA PILE WORKERS UNION, REPAIR SHOP WORKERS UNION and CARLOS RAMOS, G. R. No. L-4877, February 26, 1952.)

Payment of Bonus.

FACTS: Petition filed in the CIR praying that the Philippine Education Co. pay its employees as their share of the profits in the *form of a bonus* the amount of ₱513,666.39.

HELD: The payment of bonus is not from the legal point of view a contractual and enforceable obligation. But the petitioner (Philippine Education Co.) is not sued before a court of justice. Taking into consideration the facts and circumstances of the case—that bonuses had been given to the employees and laborers at least in three previous years; that the amount of ₱90,706.36 has been set aside for payment as bonus to its employees and laborers and the reason for withholding the payment thereof was the strike staged by the employees and laborers for more favorable working conditions which was declared legal by the respondent court, justice and equity demand that bonus already set aside for its employees and laborers be paid to them. (PHILIPPINE EDUCATION CO., INC. *vs.* CIR and UNION OF PHILIPPINE EDUCATION EMPLOYEES (NLU), G. R. No. L-5103, December 24, 1952.)

Right of Capital to a fair return on its investment. Section 5, *C. A. No.* 103.

FACTS: In this case, a controversy over wage increases, the CIR rendered a decision granting an increase of ₱0.50 to all daily wage workers and of ₱10.00 to all monthly salaried employees who are receiving from ₱200 down. The petitioner alleges that the respondent CIR committed a grave abuse of discretion in fixing the amount of the award because the award does not allow petitioner to make a fair and reasonable return on its investment.

HELD: The right of capital to a fair return on its investment should not be allowed as an excuse for reducing wages or salaries to or below the minimum living wage. The award of increases allowed by the CIR are not excessive. On the other hand, the award still allows a net return on petitioner's capital which is very near the legal rate of interest. The increases awarded are reasonable and do not deprive petitioner of a fair and reasonable return on its investment. (INSULAR SUGAR REFINING CORP. *vs.* THE CIR and THE INSUREFCO PULP PROJECT WORKERS' UNION, G. R. No. L-4764, Sept. 3, 1952.)

Amendment of a Decision; Sections 7 *and* 17 *of C.A. No.* 103.

FACTS: This case stems from a resolution of the CIR amending its decision of April 3, 1950 which had already become final and executory.

HELD: After the decision of April 3, 1950 had become final, the award was amended because of developments that had later taken place which had the effect of changing the relative situation of the parties. The respondent CIR possesses the power to amend its decision after it has become final and executory in the light of the provisions of sections 7 and 17 of C.A. No. 103, the clear object of these provisions being undoubtedly to give the court a continuing control over the case, in the interest of management and labor, as long as it remains under its control and jurisdiction, in order to accord substantial justice to the parties. (C. E. CHURCH ET ALS. *vs.* LA UNION LABOR UNION ET ALS., G. R. No. L-4393, April 28, 1952.)

Reopening of a decision upon application of any interested party; who may be considered interested parties. Section 17, *C.A. No.* 103.

FACTS: This is an amended motion filed by the National Labor Union (NLU) praying for the reinstatement of one Ortiz on the ground that he was dismissed without just cause and for his union activities in violation of the decision of the CIR in case No. 271-V. The San Miguel Brewery, Inc. (SMB) filed a motion to dismiss, alleging that the case involves only one laborer and therefore does not come within the jurisdiction of the CIR.

HELD: The decision in case No. 271-V provided that there should be no dismissal . . . except for just cause and this pronouncement of course included all the laborers employed in the SMB and then represented by the NLU and the SMB Employees and Laborers Ass'n. One such laborer is Ortiz and said amended motion in essence can be said to be a part of case No. 271-V. At any rate, the CIR may reopen any question involved in a decision at any time during its effectiveness under sec. 17, C.A. No. 103.

The dissolution of the SMB Employees & Laborers Ass'n. (formerly affiliated with the NLU) does not affect the authority of the NLU to represent Ortiz because the NLU, and even Ortiz for that matter, are certainly *interested parties* within the meaning of section 17 of C.A. No. 103. Moreover, the dissolution of the SMB Employees & Laborers Ass'n. should not affect the jurisdiction already acquired by the CIR. (SAN MIGUEL BREWERY, INC. *vs.* THE HON.

COURT OF INDUSTRIAL RELATIONS ET AL., G. R. No. L-4634, April 28, 1952.)

Interested party; modification of an award. Section 17, *C. A. No.* 103.

FACTS: In case No. 397-V of the CIR, Luzon Brokerage Co., petitioner, *vs.* Luzon Labor Union, respondent, the parties submitted a written agreement dated June 7, 1950, defining their capital-labor relations. This agreement was approved by the CIR with a declaration that the proceedings were definitely terminated. No appeal was taken.

Subsequently, FS filed a petition as an incident of case No. 397-V. He alleged that he was dismissed without cause and prayed for reinstatement. Both the Company and the Union opposed the petition.

HELD: Petitioner contends that case No. 397-V had been definitely terminated and could no longer be reopened. In said case, the CIR had acquired jurisdiction over and disposed of the disputes between the Company and the Union. FS was then in the service of the first and a member of the second. He is therefore an *interested party* within the meaning of sec. 17 of C. A. No. 103.

Petitioner argues that FS was ousted from the Union on March, 1950, and the CIR therefore lost jurisdiction over him when he filed his claim on October, 1950. This argument is untenable, because even the dissolution of the Union would not affect the jurisdiction already acquired by the CIR.

Petitioner also insists that the agreement of June 7, 1950 provides that the Union has the right to remove or discipline any of its members in the service of the Company; and the expulsion of FS by the Union was a legitimate exercise by the Union of this right. Any removal either by the Union or the Company must be deemed to be for cause. The removal of FS was without sufficient cause. (LUZON BROKERAGE CO. *vs.* LUZON LABOR UNION (FRANCISCO SALVIO) ET ALS., G. R. No. L-4954, Sept. 29, 1952.)

LABOR CONTRACTS

Laborers have no right to a monopoly of work in any section of the Philippines.

FACTS: The Compañia Maritima and the Manila Steamship Co. contracted with a labor union, the Katubusan sa Mamumuo to handle the stevedoring work on board their vessels at the Cebu and Mindanao ports, and to that end from 40 to 60 members of the union go with the vessels to the different ports of call but they work only aboard ship for the work on the wharf is handled by the local stevedores.

The plaintiff union proposed to all ship agents in the port of Davao that the association handle the stevedoring work on board the vessel while in that port and threatened to carry out this proposal no matter what the answer of the ship agents would be. The respondents shipping companies filed a writ of preliminary injunction to enjoin the association from carrying out its threat.

The court awarded the work on board the vessels to the Davao Stevedores to the exclusion of the stevedores of the Katubusan sa Mamumuo. But this decision was revoked by a resolution of the court *in banc* and so the Davao Stevedores appeals to the Supreme Court for a review.

ISSUE: Is the proposal of the Davao Stevedores legitimate?

The petition of petitioner to compel the respondent shipping company to grant the exclusive labor service on board its vessels, while in the port of Davao, to the members of plaintiff association from Davao is against public policy as it tends to promote sectionalism and disunity and against the freeedom to contract guaranteed by the Constitution. There is no law which grants to the laborers of any section of the Philippines a monopoly over work in that section. (DAVAO STEVEDORES MUTUAL BENEFIT ASSN. *vs.* COMPAÑIA MARITIMA ET AL., G. R. No. L-3871, February 29, 1952.)

Abandonment of Labor Contracts.

FACTS: On Sept. 21, 1948, the parties signed an agreement to be good for five years. The following year, the employees demanded its revision and when the MWD refused to accede they struck. The CIR stepped in, and through its good offices, a temporary arrangement was made on Oct. 20, 1949. With a view to a permanent settlement of the disputes, the CIR held hearings and finally decided the case. The MWD seeks the review of this final decision on the ground that it modifies the said agreement of Sept. 21, 1948 which was to be good for five years and, hence, impairs the obligation of said agreement.

HELD: The agreement of Sept. 21, 1948 was by mutual consent impliedly abandoned and superseded by the temporary one of Oct.

20, 1949 which was to be in force (in the words of the agreement) "until the court fixes the reasonable and just compensation to be received by the strikers."

If there was no stipulation expressly abrogating the said agreement, by the negotiations and agreements entered into after the strike, the parties necessarily had that end in view. (METROPOLITAN WATER DISTRICT *vs.* COURT OF INDUSTRIAL RELATIONS and MWD WORKERS' UNION, G. R. No. L-4471, April 23, 1952.)

A Union will not be permitted to circumvent a contract freely entered into by joining another Union.

FACTS: On May 4, 1950, petitioner company entered into an agreement on working conditions with the United Employees Welfare Association. Said agreement was to last for 1 year. On August 26, 1950, 36 of the 37 members of said employees association tendered their resignation from the same union and joined the local chapter of the respondent National Labor Union. The latter union presented 7 demands to petitioner company and upon failure of the company to accede, they struck. CIR declared strike to be legal.

HELD: The record shows that the local chapter of the respondent union is composed entirely, except one, of members who made up the total membership of the United Employees Welfare Association. The new union sought to present a 7-point demand of the very same employees to petitioner, which in many respects differ from their previous demand. It is evident that the purpose of the transfer is to circumvent the contract entered into between the same employees and the petitioner on or before May 4, 1950, knowing full well that that contract was effective for 1 year and was entered into with the sanction of the CIR. If this move were allowed the result would be a subversion of a contract freely entered into without any valid and justifiable reason. (MANILA ORIENTAL SAWMILL CO. *vs.* NATIONAL LABOR UNION and CIR, G. R. No. L-4330, March 24, 1952.)

Conciliation. Bad Faith.

Where the company called its employees to a conciliatory meeting to explain the state of its business and to air grievances the union's action to prevent said meeting indicates bad faith on its part. (UNION OF PHIL. EDUCATION EMPLOYEES (NLU) *vs.* PHIL. EDUCATION CO., G. R. No. L-4423, March 31, 1952.)

STRIKES

Legality of Strikes. Exhaustion of remedies.

Until all remedies and negotiations for the adjustment or settlement of labor disputes have been exhausted, the law does not look with favor upon resorts to radical measures. (UNION OF PHIL. EDUCATION EMPLOYEES (NLU) *vs.* PHIL. EDUCATION CO., G. R. No. L-4423, March 31, 1952.)

Remedies provided in collective bargaining agreement must be exhausted before declaring strike.

FACTS: Petitioner labor union and respondent company entered into a collective bargaining agreement whereby it was agreed that in case of any grievance, the same shall be first submitted to a grievance committee, then to a committee of the top officials of both the union and the company and later to the Court of Industrial Relations before declaring the strike. A dispute arose regarding the reduction of wages. Petitioner submitted same to the grievance committee which was to be composed of 6 members, 3 to be appointed by the union and 3 by the company. Because of the failure of the company to appoint its three members to the grievance committee, union struck.

HELD: The main purpose of the parties in adopting a procedure in the settlement of their disputes is to prevent a strike. This procedure must be followed in its entirety if it is to achieve its objective. This procedure provides for 3 steps which must be resorted to before any other step may be taken for the redress of a particular grievance. It is true that the management has failed to do its duty in connection of the formation of a grievance committee, but this failure does not give to labor the right to declare a strike outright, for its duty is to exhaust all available means within its reach before resorting to force. There is no use providing for those steps if they can be ignored. Hence strike illegal. (LIBERAL LABOR UNION *vs.* PHIL. CAN CO., G. R. No. L-4834, March 28, 1952.)

SECURITY OF EMPLOYMENT

Right to permanent appointment.

FACTS: MWD Workers' Union sought to have MWD laborers,

who had rendered six months of continuous, faithful service, appointed permanently. MWD refuses on ground that by accepting such request it would be forced to keep workers in the payroll whether or not there was work for them, and thus suffer financial loss. CIR ruled for the Union. MWD appealed, claiming that the lower court's decision was contrary to law because MWD being within scope of the Civil Service Law, the filing and tenure of positions in MWD were subject to said law.

HELD: (1) Union demand is merely that workers rendering six months' service or more be given permanent appointments. Company's objection is only that granting such demand would work financial hardship to MWD. Company does not contend that workers are ineligible under Civil Service Law or that they cannot be appointed permanently under such law. Hence, scope of such law is immaterial here. (2) Union demand seeks merely to assure benefits of government insurance for its laborers. Permanent appointment will not guarantee for them permanent availability of items or appropriations. Thus company will not be obliged to keep workers on payroll whether working or not. Any position in the government service, except perhaps with regard to constitutional officers, whether permanent or temporary, may be abolished for lack of usefulness or funds. But as long as they are in the service and are not shown to be ineligible for permanent appointment because of a civil service requirement, MWD laborers have a right to be secured not only as to permanency of income but also as to the enjoyment of all benefits extended to government personnel. (METROPOLITAN WATER DISTRICT *vs.* COURT OF INDUSTRIAL RELATIONS and METROPOLITAN WATER DISTRICT WORKERS' UNION, G. R. No. L-4488, August 27, 1952.)

Dismissals. Unjust dismissal.

Where union members engaged in an illegal strike, after receiving a suggestion from the court, voluntarily return to work without awaiting an order to that effect, their dismissal would be unjust. (STANDARD VACUUM *vs.* PHIL. LABOR ORGANIZATION, G. R. No. L-4556, March 21, 1952.)

Payment of wages pending dismissal.

The payment of wages to a suspended or discharged employee during suspension or separation without just cause depends upon the sound discretion of court.

Section 17, par. 2, Commonwealth Act 103, as amended by C. A. No. 355 and 559, applied. (UNION OF PHIL. EDUCATION EMPLOYEES (NLU) *vs.* PHIL. EDUCATION CO., G. R. No. L-4423, March 31, 1952.)

Where employees were dismissed with one-month separation pay and such matter was to have been taken up with the court, union strike for this reason was at the employees' risk with respect to wages. (UNION OF PHIL. EDUCATION EMPLOYEES (NLU) *vs.* PHIL. EDUCATION CO., G. R. No. L-4423, March 31, 1952.)

Vacation and Sick Leave Pay. Right of Heirs of Deceased Employee to claim such.

Where an employee's vacation and sick leave has accumulated and upon separation of the employee from the service, he can receive the equivalent of such leave in money, there is no reason why the heirs should not also be entitled to receive the accumulated vacation and sick leave pay of a deceased employee, who, by law, transmits all his rights to such heirs. (MANILA RAILROAD COMPANY *vs.* COURT OF INDUSTRIAL RELATIONS ET AL., G. R. No. L-5628, October 29, 1952.)