OPINIONS OF THE SECRETARY OF JUSTICE

Opinion No. 46, s. 1958

Comment is requested on the provisions of Article I of the attached "Convention Concerning The Abolition Of Forced Labor," adopted in Geneva by the International Labour Conference, on June 25, 1957, which reads:

"Article I

"Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour —

"(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

"(b) as a method of mobilizing and using labour for purposes of economic developments;

"(c) as a means of labour discipline;

"(d) as a punishment for having participated in strikes;

"(e) as a means of racial, social, national or religious discrimination."

Article III, Section 1, Clause 13 of the Constitution provides that,

"No involuntary servitude in any form shall exists except as a punishment for crime whereof the party shall have been duly convicted,"

and Section 1727 of the Revised Administrative Code, states:

"Liability of prisoners to labor. — All convicted able-bodied, male prisoners not over sixty years of age, may be compelled to work in and about prisons, jails, public buildings, grounds, roads, and other public works of the National Government, the provinces, or the municipalities, under general regulations to be prescribed by the Director of Prisons, with the approval of the Department Head. Persons detained on civil process or confined for contempt of court and persons detained pending a determination of their appeals may be compelled to police their cells and to perform such other labor as may be deemed necessary for hygienic or sanitary reasons."

In connection with subdivision (a) of the quoted article, it may be mentioned that, under Republic Act No. 1700, one who knowingly, wilfully and by overt acts *affiliates* himself with, becomes, or remains a member of the Communist Party of the Philippines and/or its successor or of any sub-

versive association or one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means for the purpose of placing such Government or political subdivision under the control and domination of any alien power may be held criminally liable therefor and sentenced to serve a term of imprisonment. As a prisoner, he may, under the quoted provision of the Revised Administrative Code, be required to perform manual labor.

With respect to subdivisions (c) and (d), Section 19 of Commonwealth Act No. 103, as amended, reads as follows:

"**Implied condition in every contract of employment.** — In every contract of employment, whether verbal or written, it is an implied condition that when any dispute between the employer and the employee or laborer has been submitted to the Court of Industrial Relations for settlement or arbitration pursuant to the provisions of this Act or when the President of the Philippines has ordered an investigation in accordance with section five of this Act with a view to determining the necessity and fairness of fixing and adopting a minimum wage of laborers, and pending award or decision by the Court of such dispute or during the pendency of the investigation above referred to, the employee or laborer shall not strike or walk out of his employment when so enjoined by the Court after hearing and when public interest so requires, and if he has already done so, that he shall forthwith return to it, upon order of the Court, which shall be issued only after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled; and if the employees or laborers fail to return to work, the Court may authorize the employer to accept other employees or laborers. x x x A violation by the employer or by the employee or laborer of such an order or the implied contractual condition set forth in this section shall constitute contempt of the Court of Industrial Relations and shall be punished by the Court itself in the same manner with the same penalties as in the case of contempt of a Court of First Instance. x x x."

The validity of the provision just quoted was upheld by the Supreme Court of the Philippines in the case of *Kaisahan ng mga Manggagawa sa Kahoy v. Gotamco Sawmill*, 45 O.G., Supp. to No. 9147. The Court, in part, said:

"We agree with the Court of Industrial Relations that Section 19 of Commonwealth Act No. 103 is constitutional. **It does not offend against the constitutional inhibition prescribing involuntary servitude.** An employee entering into a contract of employment after said law went into effect, voluntarily accepts among other conditions those prescribed in section 19, x x x. The voluntariness of the employee's entering into such a contract of employment — he has a free choice between entering into such a contract of employment — with such an implied condition, negatives the possibility of involuntary servitude ensuing. x x x." (Bold letters supplied.)

Regarding subdivisions (b) and (c), the only comment this Office can offer is that they do not seem to be in conflict with any existing Philippine law or statute on the subject.

(SGD.) JESUS G. BARRERA
Secretary of Justice

Opinion No. 199, s. 1958

Opinion is requested on "whether Saturdays are included for purposes of computing the contract time in projects undertaken by contract, where the contract time expressed is 'working days' and not 'calendar days', in the light of the provisions of Republic Act 1880, which reduced the weekly working days of government employees from six days to five days".

Implementing Republic Act 1880, Executive Order No. 251, series of 1957, provides in part that

"x x x the office hours of all bureaus and offices of the government including government-owned or controlled corporations, but except schools, courts, hospitals and health clinics, shall be from eight o'clock in the morning to twelve o'clock noon, and from one o'clock to five o'clock in the afternoon, from Monday to Friday."

The above provision fixes the working schedule of officers and employees in all branches of the government service including government-owned or controlled corporations. It does not apply to employees employed in private industries or private entities. In other words, while Saturday has become a statutory non-working day in government offices, subject to some exceptions, the same is not true with respect to private entities.

Employees and laborers engaged in government projects under contract with private contractors are unquestionably employees of their respective contractors. Consequently, in the execution of contracts with private contractors for the construction of government projects, Saturday could not be considered as non-working day inasmuch as laborers engaged by said contractors are not employed in any branch of the government service.

The query, in my opinion, should therefore be answered in the affirmative. However, in order to avoid any question in any future contract, a statement that Saturdays are included should be made.

(SGD.) JESUS G. BARRERA
Secretary of Justice

Opinion No. 256, s. 1958

Opinion is requested on whether or not the employees and workers of Social Welfare Administration may legally form themselves into a labor union and, if in the affirmative, whether or not due course may be given to the following proposals to wit: "(1) Recognition of the SWA EMPLOYEES AND WORKERS UNION-CUGC as the sole and exclusive bargaining agency for all the employees and workers of the Social Welfare Administration; (2) Payment of 15 days vacation leave and 15 days sick leave; (3) Free hospitalization, medical and dental care; (4) Payment of maternity leave as provided for by law; (5) Job security; (6) Application of the 40 hours a week law effective July 1, 1957; (7) Creation of a grievance committee; (8) All employees with a service of two years or more should enjoy the benefit of insurance with the GSIS; (9) Employees who render service from 6:00 p.m. to 6:00 a.m. should receive the compensation for night work; (10) Civil Service eligibles should enjoy wage and position classification; (11) Check-off of union dues; and (12) No lay off of personnel, no dismissals."

Republic Act No. 875, otherwise known as the "Industrial Peace Act" in its Section 11 provides:

"Prohibition Against Strikes in the Government — The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modifications in the their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or join in strike. **Provided, however,** That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to governmental corporations."

The law is clear in that, if the said labor union, "SWA EMPLOYEES AND WORKERS UNION", does not impose upon its members the obligation to strike or to join in strike, then the employees and workers in your Administration are free to join it. An examination therefore of the conditions of membership to the said union is necessary and determinative of their rights.

The above provision prohibits government employees from striking for the purpose of securing changes or modifications in their terms and conditions or employment, which are governed by law. In answer therefore to the query, it would be safe to say that some of those proposals should be given due course not by reason of their representations as a labor union, but because they are so provided for by law.

These are Rule XVI, Civil Service Rules, Sections 267-295 of the Revised Administrative Code, as amended by Commonwealth Acts No. 220 and 490, Republic Acts Nos. 218, 611, 674 and 1021, with respect their leave privileges; Commonwealth Act No. 647, as amended by Republic Act No. 270, with respect Maternity Leave granted to women employees of the government; Sections 699 and 700 of the Revised Administrative

Code, as amended by Republic Acts Nos. 673 and 1282, with respect their allowance for disability and hospitalization; and Republic Act No. 1880 as implemented by Executive Order No. 251, series of 1957, with respect their hours of work. These privileges, no doubt, should be extended to the regular officials and employees of Social Welfare Administration.

(SGD.) JESUS G. BARRERA
Secretary of Justice

CASE DIGEST

SUPREME COURT

CIVIL LAW — COMMON CARRIERS — THE CARRIER ALTHOUGH NOT AN INSURER OF THE SAFETY OF PASSENGERS, IS NEVERTHELESS ANSWERABLE FOR THE FLAWS OR DEFECTS IN THE EQUIPMENT HE IS USING SO LONG AS SUCH DEFECTS ARE, WITH THE EXERCISE OF EXTRAORDINARY DILIGENCE, DISCOVERABLE.—Severina Garces was drowned and her son Precillano Necesito was injured as a result of the fall into a river of truck No. 199 of the Philippine Rabbit, in which they were riding. It was found out that the cause of the accident was a defective steering knuckle of the truck, which steering knuckle was subjected to a regular 30-day visual inspection by the bus company. The heirs of Severina Garces and Precillano Necesito brought these actions **ex contractu** against the Philippine Rabbit. The lower court dismissed both actions on the ground that the accident was exclusively due to fortuitous event. The first question presented was whether or not the carrier was liable for the manufacturing defect of the steering knuckle. **Held,** the carrier, while not an insurer of the safety of his passengers, should nevertheless be held to answer for the flaws of his equipment, if such flaws were at all discoverable. NECESITO *v.* PARAS, G.R. No. L-10605-6, June 30, 1958.

CIVIL LAW — COMMON CARRIERS — IF THE INJURY TO THE PASSENGER HAS BEEN PROXIMATELY CAUSED BY HIS OWN NEGLIGENCE, THE CARRIER CANNOT BE HELD LIABLE FOR DAMAGES. — For a period of 6-days, upon instruction of his chief, the deceased, an inspector of the Bureau of Forestry in Davao, was on defendant's lumber concession in Cotabato, classifying the logs which were ready to be exported and loaded on ship. But, he contracted malaria and for that reason he desired to return immediately to Davao. Since there was no bus available for Davao, he requested defendant if the latter could take him in his pick-up. Defendant agreed; others tagged along. No fee was charged for the service. It was their understanding that at barrio Samoay, they would alight and transfer to a bus that regularly makes the trip to Davao, but unfortunately none was available. And so with the exception of one, the same passengers including the deceased, again requested defendant to drive them to Davao. Defendant accommodated them and upon reaching Km. 96, barrio Catidtuan, deceased accidentally fell, suffering fatal injuries. So this action for damages was brought against the defendant. The lower court found for the plaintiffs. Hence, the appeal. **Held,** the accident was due to lack of care of the deceased considering that the pick-up was open and he was then in a crouching position. Article 1761 of the New Civil Code provides that "a passenger must observe the diligence of a good father of a family to avoid injury to himself" which means that if the injury to the passenger has been proximately caused by his own neg-