CONCLUSION

When a legal provision decrees a mode of human behaviour, it should not lose sight of the fact that the objects of regulation are people, not supermen. To require extraordinary diligence even under ordinary circumstances may prove too taxing even for the most conscientious carrier. The law should recognize the vagaries of luck and life to which commerce is subject. Plainly stated, the law should be reasonable not only in its conception but, more importantly, in its appreciation of the realities of commercial existence.

THE CONSCIENTIOUS OBJECTOR UNDER THE NEW LABOR CODE

CESAR L. VILLANUEVA LI. B. '81

PREFATORY STATEMENTS

The Constitution guarantees the right to worship: "x x x The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. "[1] In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person.[2]

The constitution also guarantees "(t)he right to form associations or societies for purposes not contrary to law."[3] All it means is that the right to form associations shall not be impaired without due process of law. It is therefore an aspect of freedom of contract, and in so far as associations may have for their object the advancement of beliefs and ideas, freedom of association is an aspect of freedom of expression and of belief.[4]

---

[1] Section 8, Article IV, Bill of Rights, 1973 Constitution.

[2] Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc., 51 SCRA 189, citing American Com. v. Douds, 339 U.S. 382, 421.

[3] Section 7, Article IV, Bill of Rights, 1973 Constitution.

[4] Bernas, The 1973 Philippine Constitution, Notes and Cases, 1974 Edition, p. 330.

The Constitution recognizes a hierarchy of values.[5] Hence, the degree of protection an association enjoys depends on the position which the association's objective or activity occupies in the constitutional hierarchy of values, i.e., whether it is a contractual association or an association for the advancement of ideas and beliefs. Thus, it will be seen that the importance given to the right of association is based on an intimate link with one or other of the fundamental rights under the Constitution.[6]

As will be discussed, both the Industrial Peace Act[7] and the New Labor Code[8] allow, as an exception to the individual worker's right to join or to refrain from joining a labor union, the employer and the labor union to enter into a closed-shop agreement. The purpose of allowing closed-shop agreements is to promote and encourage trade unionism. The right of workers to self-organization as an aspect of the freedom of association is contractual in nature and is designed for their mutual aid and protection. Therefore, the freedom of worship occupies a superior position to that of the right to self-organization in the hierarchy of values under the Bill of Rights of the Constitution.

The Industrial Peace Act

Paragraph (4), subsection (a), Section 4 of the Industrial Peace Act, as amended by Republic Act No. 3350, provides:

> "SEC. 4. UNFAIR LABOR PRACTICE.—
>
> (a) It shall be unfair labor practice for an employer:
>
> "x x x
>
> "(4) To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this act or in any other act or statute of the Republic of the Philippines shall preclude an employer from making an agreement **with a labor organization to require as a condition of employment** membership therein, if such labor organization is the representative of the employees as provided in section twelve, **but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization.**" (underscoring supplied).

Subsection (a) (4), Section 4 of the Industrial Peace Act, quoted above, recognizes the legality of the so-called closed-shop (and the union shop) agreement. A closed-shop agreement is one whereby "an employer binds himself to hire only members of the contracting union who must continue to remain in good standing to keep their jobs."[9] Closely akin to the closed-shop agreement is the union shop agreement. Under the union shop agreement, non-members may be hired; but to retain employment, they must become union members after a certain period. Both "union shop" and "closed-shop" fall under the generic term "union security." Their validity has been repeatedly upheld by the Supreme Court.[10]

"The closed-shop contract is the most prized achievement of unionism. It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed-shop, it welds solidarity."[11]

However, since a closed-shop or union shop agreement necessarily involves the surrender of a portion of a worker's individual freedom, and the loss of his employment, the terms thereof should be construed strictly, and doubts resolved against its existence.[12]

---

5 Philippine Blooming Mills Employees v. Philippine Blooming Mills, 51 SCRA 189.

6 Bernas, The 1973 Philippine Constitution, Notes and Cases, 1974 Edition, supra.

7 Republic Act No. 875.

8 P. D. No. 442

9 Montemayor, Labor, Agrarian and Social Legislation, 1964 Ed., p. 715, citing Confederated Sons of Labor v. Anakan Lumber Co., L-12503, April 29, 1960, citing NLU v. Aguinaldo's Echague, 51 O.G. No. 6, 2899; and Bacolod-Murcia Milling Co. v. National Employees-Workers Security Union, 53 O.G. 615, Freeman Workers Security Union, 53 O.G. 615, Freeman Shirt Mfg. Co. v. CIR, L-16561, January 28, 1961.

10 Montemayor, supra, citing Tolentino v. Angeles, L-8150, May 30, 1956, 52 O.G. 4262; NLU v. Aguinaldo's Echague, 51 O.G. 2899; and Malayang Manggagawa nang Ang Tibay, Enterprises v. Ang Tibay, L-8259, Dec. 23, 1957, 54 O.G. 3796; Bacolod-Murcia Milling Co. v. National Employees Workers' Security Union, 53 O.G. 615; Confederated Sons of Labor v. Anakan Lumber Co., L-12503, April 29, 1960, Freeman Shirt Mfg. Co. v. CIR, January 28, 1961.

11 Handler, Notes, 48 Yale Law Journal, 1053, 1059, Francisco, Labor Law, p. 186, cited in National Labor Union v. Aguinaldo's Echague, L-7358, May 31, 1955, 51 O.G. 2899.

12 Confederated Sons of Labor v. Anakan Lumber Co., 107 Phil. 915; San Carlos Milling Co. v. CIR, 1 SCRA 734.

The phrase "but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization," was added to Sec. 4(a)(4) of the Industrial Peact Act, by Republic Act No. 3350.

The constitutionality of this amendatory provision of Republic Act No. 3350 was first tested in the case of Victoriano v. Elizalde Rope Workers' Union.[13] In that case, Benjamin Victoriano, a member of the religious sect known as the "Iglesia ni Cristo," had been in the employ of the Elizalde Rope Factory, Inc. since 1958, and, as such employee, he was a member of the Elizalde Rope Workers' Union which had a collective bargaining agreement with the Company containing a closed-shop provision which read as follows: "Membership in the Union shall be required as a condition of employment for all permanent employees workers covered by this Agreement." After the passage of Republic Act No. 3350 which excluded from the coverage of a closed-shop agreement members of any religious sects which prohibit affiliation of their members in any such labor organization, Victoriano, whose religious sect prohibits the affiliation of its members with any labor organization, presented his resignation to the Union.

When the company threatened to terminate his employment upon demand of the Union based on the "union security clause" in the CBA, Victoriano filed an action for injunction in court seeking to enjoin the company and the Union from dismissing him. When the lower Court ruled in his favor, the Union appealed directly to the Supreme Court on purely question of law, contending that Republic Act No. 3350 was unconstitutional on the ground, among others,[14] "that the Act infringes on the fundamental right to form lawful association; that 'the very phraseology of said Republic Act 3350, that membership in a labor organization is banned to all those belonging to such religious sect prohibiting affiliation with any labor organization, prohibits all the members of a given religious sect from joining any labor union if such sect prohibits affiliation of their members thereto ; and, consequently, deprives said members of their

[13] 59 SCRA 54, September 12, 1974.

[14] The other grounds were: that R. A. No. 3350 impaired the obligation of contracts, that it discriminatorily favored religious sects which ban their members from joining unions in violation of the constitutional provision which provides that "no law shall be made respecting an establishment of and worship without discrimination or preference, shall forever be allowed." That it violated the constitutional provision that "no religious test shall be required for the exercise of civil right"; that it violated the equal protection clause, and that it violated the constitutional provision regarding promotion of social justice.

constitutional right to form or join lawful associations or organizations guaranteed by the Bill of Rights x x x."

The Supreme Court dismissed the above contention (as well as all other contentions of the Union). It held: "It is clear, therefore, that the assailed Act, far from infringing the constitutional provision on freedom of association, upholds and reinforces it. It does not prohibit the members of said religious sects from affiliation with labor unions. It still leaves to said members the liberty and the power to affiliate or not to affiliate, with labor unions. If, notwithstanding their religious beliefs, the members of said religious sects prefer to sign up with the labor union they can do so. If in deference and fealty to their religious faith, they refuse to sign up, they can do so; the law does not coerce them to join. Republic Act No. 3350, therefore, does not violate the constitutional provision on freedom of association."[15]

In that decision, the Supreme Court, through Justice Zaldivar, stressed that the right to form or join an association guaranteed by the Constitution and the Industrial Peace Act "comprehends two broad notions, namely: first, liberty or freedom, i.e., the absence of legal restraint, whereby an employee may act for himself without being prevented by law; and, second, power whereby an employee may, as he pleases, join or refrain from joining an association. It is therefore, the employee who should decide for himself whether he should join or not an association; and should he choose to join, he himself makes up his mind as to which association he would join; and even after he has joined, he still retains the liberty and the power to leave and cancel his membership with the said organization at any time. It is clear, therefore, that the right to join the union includes the right to abstain from joining any union . . . . The right to refrain from joining labor organizations recognized in Section 3 of the Industrial Peace Act[16] is however limited. The legal protection granted to such right to refrain from joining is withdrawn by operation of law, where a labor union and an employer have agreed to a closed-shop, by virtue of which the employer may employ only members of the collective bargaining union, and the employees must continue to be members of the union for the duration of the contract to keep their jobs." This was the situation provided

[15] G. R. No. L-25246, September 12, 1974, 59 SCRA 54, 68.

[16] Sec. 3, Industrial Peace Act: Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection.

for in Sec. 4(a)(4) of the Industrial Peace Act before its amendment by Republic Act No. 3350.

Succintly, the Supreme Court held: "To that all embracing coverage of the closed-shop arrangement, Republic Act No. 3350 introduced an exception, when it added to Sec. 4(a)(4) of the Industrial Peace Act the following provision: 'but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization.' Republic Act No. 3350 merely excludes **ipso jure** from the application and coverage of the closed-shop agreement the employees belonging to any religious sects which prohibit affiliation of their members with any labor organization. What the exeption provides, therefore, is that members of said religious sects cannot be compelled or coerced to join labor unions even when said unions have a closed-shop agreement with the employers; that in spite of any closed-shop agreement, members of said religious sects cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union." Thus, a "conscientious objector clause" was provided for by Republic Act No. 3350.

The purpose that Republic Act No. 3350 sought to achieve "was to insure freedom of belief and religion, and to promote the general welfare by preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural, statutory and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life (sic) of their dependents. It cannot be gainsaid that the purpose is legitimate."

Finally, in relation to the contention of the Union that Republic Act No. 3350 violated the non-impairment clause of the Constitution, the Supreme Court asserted: "It may not be amiss to point out here that the free exercise of religious profession or belief is superior to contract rights. In case of conflict, the latter, must, therefore, yield to the former. The Supreme Court of the United States has also declared on several occasions that the rights in the First Amendment, which include freedom of religion, enjoy a preferred position in the constitutional system.[17] Religious freedom, although not unlimited,

[17] Jones v. Opelika, 316 U.S. 584, 86 L. ed. 1691, 62 S. Ct. 717; Follet v. McCormick, 321 U.S. 147, 161, 84 L. ed. 155, 164, 60 S. Ct. 146.

is a fundamental personal right and liberty, and has a preferred position in the hierarchy of values. Contractual rights, therefore, must yield to freedom of religion. It is only where unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid damage.

A couple of months after deciding the **Victoriano case**, the Supreme Court promulgated its decision in the case of **Base v. Federacion Obrera De La Industria Tabaquera y Otros Trabajadores de Filipinas,**[18] which again involved union members who were members of the "Iglesia ni Cristo" who resigned from their union which had a closed-shop agreement with the company in which they were employed. The Supreme Court, in determining the constitutionality of Republic Act No. 3350, upheld its decision in the Victoriano case, quoting extensively from the latter.

The latest decision of the Supreme Court on the subject matter is the case **Anucension v. National Labor Union,**[19] which was decided on November 29, 1977. It upheld the validity of Republic Act No. 3350, with the Supreme Court again quoting extensively its decision in the Victoriano case.

The New Labor Code

The counterpart of Sec. 4(a)(4) of the Industrial Peace Act in the New Labor Code is Art. 248(e), which reads as follows:

> "Art. 248. Unfair Labor Practices of Employers.—
>
> "It shall be unfair labor practice for employer:
>
> "x x x
>
> "(e) To discriminate in regard to wages, hours or work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement x x x."

[18] 61 SCRA 93, November 19, 1974.

[19] 80 SCRA 350.

It should be noted that the amendment to Sec. 4(a)(4) of the Industrial Peace Act, added by Republic Act No. 3350, with regard to the exemption from coverage of a closed-shop agreement of members whose religious sects prohibit affiliation with labor organization was not adopted by the New Labor Code.

On the contrary, Art. 247 of the Labor Code provides:

> "Notwithstanding any provision of law to the contrary, the right to self-organization shall not be abridged on religious or any other similar grounds."

Reading Art. 248(e) very carefully, one notes that "x x x those employees who are already members of another union at the time of signing of the collective bargaining agreement" are the only ones exempted from the coverage of a closed-shop agreement and no mention is made of conscientious objectors.

At this point, the following questions crop up:

> First. Is Sec. 4(a)(4) of the Industrial Peace Act, as amended by Republic Act No. 3350, still in force even after the enactment of the New Labor Code?[20]
>
> Second. Is the doctrine laid down by the Supreme Court in the Victoriano case, as upheld in the Basa and Anucension cases, applicable under the New Labor Code?
>
> Third. What are the rights of a conscientious objector under the New Labor Code?

First Query Discussed

There are some who hold the view that Sec. 4(a)(4) of the Industrial Peace Act is still in force and effect.

But it seems that the entire Industrial Peace Act (R. A. No. 870) has been repealed by the New Labor Code, which provides under Art. 303: "All labor laws not adopted as part of this Code either directly or by reference are hereby repealed. All provisions of existing laws, orders, decrees, rules and regulations inconsistent herewith are likewise repealed." Of course, Art. 303 is actually nothing more than a repealing clause by implication and implied repeals are not favored in this jurisprudence. But then, Sec. 1(p), Rule III (Laws Repealed) of Book VII of the Rules and Regulations Implementing the Labor Code states: "Pursuant to the repealing clause of Article 303 of the [Labor] Code, the following labor laws are deemed repealed by the Code: x x x (p) Republic Act No. 875, as amended, or the Industrial Peace Act; x x x." Rules and Regulations issued by the Ministry of Labor in the implementation of the Labor Code have the force and effect of law.

Also, "[t]he specific provision on non-abridgment of the right to self-organization on religious grounds (under Art. 247 of the Labor Code), which appears to be designed to expressly repeal Republic Act No. 3350 (1961) x x x"[21] seems to corroborate such a conclusion that Sec. 4(a)(4) of the Industrial Peace Act has been repealed and no longer applicable.

If such a conclusion be upheld, then, as the labor laws of our country now stand, there is no specific statutory exemption from the coverage of any closed-shop or union shop agreements of any worker who belongs to a church or religious sect which prohibits membership in a union.

Second Query Discussed

If Sec. 4(a)(4) of the Industrial Peace Act is no longer in force, then would the **Victoriano, Basa** and **Anucension** cases still be considered as controlling under the Labor Code?

The answer could be in the negative: First, all three cases interpreted Sec. 4(a)(4) of the Industrial Peace Act, as amended by Republic Act No. 3350, which seems to have been repealed by the Labor Code. Second, Art. 247 of the Labor Code itself seems to negate any other conclusion.

It may be true that the **Basa** and the **Anucension** cases were decided after the date of effectivity of the Labor Code (November 1, 1974). But then those cases dealt with the validity of Sec. 4(a)(4) of the Industrial Peace Act and not any provision of the Labor Code and those cases were actually initiated before the New Labor Code took effect (in 1964). It cannot be safely concluded that those cases overruled Art. 247 of the Labor Code because said article was never in issue.

[20] The New Labor Code (P.D. No. 442) came into effect on November 1, 1974, except the provisions on Compensation which took effect on January 1, 1975.

[21] Cruz, Union Security Clauses and Agency Provisions, Labor Relations Law Under the Labor Code, 1975, UPLC.

But then the answer could well be in the affirmative: That the three cited cases are controlling even under the New Labor Code. This will be considered along with the discussion of the third query.

Third Query Discussed

A comparison of the Industrial Peace Act and the New Labor makes one thing clear: That under the former, conscientious objectors had the **statutory** right to refuse to join a union in spite of the existence of a closed-shop agreement and still keep their jobs; whereas, under the latter, no such statutory right is granted, and, on the contrary, its Art. 247 seems to expressly deny such right.

But one thing is also certain: That under both the Industrial Peace Act and the Labor Code, workers have the **constitutional** freedom of worship. Therefore, Republic Act No. 3350 actually gave conscientious objectors no new right because this was already guaranteed under the 1935 Constitution. What Republic Act No. 3350 achieved was to express such right in clear terms vis-a-vis the right of a representative bargaining union to enter into a closed-shop agreement with the employer. Hence, even without the statutory right granted by Republic Act No. 3350, and bearing in mind the **ratio decidendi** of the **Victoriano** case and as reiterated in the **Basa** and **Anucension** cases, the Supreme Court would have decided said cases in basically the same way, upholding the superior position of the right to worship to that of the right to self-organization of workers. If that is true under the Industrial Peace Act, then it is also true under the New Labor Code which has no "conscientious objector clause" because the 1973 Constitution also guarantees the freedom of worship. Thus, it is safe to conclude the **Victoriano, Basa** and **Anucension** cases are controlling even under the New Labor Code.

What about Art. 247 of the Labor Code? Art. 247 is a statutory device designed to strengthen trade unionism in our country. The language it is couched in are general and uncertain, and susceptible of various interpretation. If Art. 247 were designed to expressly repeal Republic Act No. 3350, the wording of its provisions could have been made clearer.

Be that as it may, under the New Labor Code, a conscientious objector, though he may not have the statutory right to be exempt from the coverage of a closed-shop agreement, he may still claim such right under the Constitution and find support in the rulings of the Supreme Court in the three cited cases because in the scales of values, the individual's freedom of religion must be given more weight than the policy **desideratum** of promoting trade unionism.[22]

Agency Fee

Art. 248(e) provides that "employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by the members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement; Provided, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent."

It is clear under the above provision that the agency fees can be compelled by check-off, for as long as the dues are included in the CBA, then the check-off will take place regardless of the wishes of the non-union members from whom the agency fee is being exacted. They cannot refuse. Supposing members of a religious group refuse to pay their dues and invoke that provision of the Labor Code that gives any individual the right to bring their own grievance to the Ministry of Labor? Could they refuse on the ground of violation of constitutional right? The proper forum for the determination of the legality or constitutionality of such an exaction is the Supreme Court.[23]

---

[22] Cruz, supra, p. 125.

[23] Cruz, see Open Forum, supra, p. 138.