COLLECTIVE BARGAINING[1] FOR GOVERNMENT EMPLOYEES: A CONSTITUTIONAL REFLECTION

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"The modern world is complex. We find ourselves in the grip of forces we do not, or cannot, control. In every field of activity, we find competition, conflict, and struggle. Rapid changes confront us at every turn. We are beset by uncertainty, by frustration, by confusion. By himself, the individual is helpless. He simply cannot cope with the pressure of nature and society. To make his environment manageable, he needs the collaborative efforts of others. To attain an effective control over events, or if not over events, over their effects, there must be cooperation and group action."[2]

This article will show that because the government employee[3] finds "competition, conflict, struggle, and rapid changes at every turn," he needs the collaborative efforts of others to achieve the "minimum levels of a civilized life." We will try to show that the civil servant needs collective bargaining rights in order that his right to "just and humane conditions of work" may be assured. We will try to show that the 1973 Constitution does intend, as it really intends, to give collective bargaining rights to government employees.

[1]Collective bargaining, as used in this article, is the process of establishing terms and conditions of employment in a written agreement between the government and a labor union as the sole representative of all the employees in a bargaining unit. (83 Yale Law Journal 156, 1974).

[2]Edgardo J. Angara, "Fundamental Rights of Self-Organization, Negotiation, and Collective Action" -- Sponsorship Speech in Favor of the Report on the Committee on Labor, 1971 Constitutional Convention. In this sponsorship speech, Delegate Angara advocated for the adoption of collective bargaining for civil servants.

[3]The term 'government employee' is used here to refer to employees in the government, including government owned and/or controlled corporations. It is used interchangeably with public employees civil servants, public servants, and the like.

PUBLIC SECTOR BARGAINING IN THE PHILIPPINES

The Civil Service Law[4] and the Labor Code[5] of the Philippines contain no provision which entitles the government employee to collective bargaining rights. In fact, the Labor Code expressly exempts government employees from the right to self-organization, and to form, join, or assist labor organizations for purposes of collective bargaining.[6] In *Angat Irrigation System vs. Angat River Workers' Union (PLUM),*[7] the Supreme Court also ruled:

> We believe that if it were the intent of the law to relegate the government to the position of an ordinary employer and equally impose on the same, the duty to enter into collective bargaining agreements with its employees, there would be no reason for the statement in Section 11 of the Industrial Peace Act to the effect that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law", instead of leaving them to be subjects of proper bargaining contracts. Evidently, in making the declaration and pronouncement that it would be the policy of said Act to prohibit strike against the government for the purpose of securing changes and modifications in their terms and conditions of employment, Republic Act 875 exempts the government from the operation of its provision on collective bargaining because conditions of employment in the government service can no longer be subject of agreements or contracts between the employer and employee.

In this case, therefore, the Supreme Court relied on the provisions that the "terms and conditions of employment in the Government governed by law"[8] and that government employees "shall not strike for the purpose of securing changes and modifications in their terms and conditions of employment"[9] in ruling out collective bargaining rights for the public sector.

In this connection, it must be pointed out that said provisions of law still exist under our present system of laws. Republic Act 2260,[10] as amended, provides:

[4]Republic Act 2260, as amended.

[5]Presidential Decree 442, as amended.

[6]Section 1, Rule II, Book V, Revised Rules and Regulations Implementing the Labor Code, as amended.

[7]No. L-10943-44, December 28, 1957.

[8]Section 28, R.A. 2260, as amended.

[9]Id.

[10]See also Section 16, Civil Service Rule XVIII.

Section 28.

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(c) *Limitation on the Right to Strike* — 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 a policy of the State that the employees therein shall not strike for the purpose of securing changes and modifications in their terms and conditions of labor. Such employees, however, may belong to any labor organization which do not impose the obligation to strike or join a strike . . .[11]

P.D. 442, as amended,[12] likewise provides:

Section 277. *Government Employees* — The terms and conditions of employment in the Government, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules, and regulations. Their salary shall be standardized by the National Assembly as provided for in the Constitution. However, there shall be no reduction of existing wages and other terms and conditions of employment being enjoyed by them at the time of the adoption of the Code.

It is, therefore, clear that the terms and conditions of government employment, including employment in government-owned and controlled corporations, are governed by the Civil Service Law, rules, and regulations which do not allow collective bargaining.[13] Status-wise, therefore, the public employee is still without collective bargaining rights.

[11]The last sentence in Section 28, R.A. 2260 which reads: " . . . Provided, 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, government corporations" is deemed abrogated by Art. 277, PD 442, as amended.

[12]Also known as the Labor Code of the Philippines.

[13]Among the reasons advanced in denying collective bargaining rights to government employees are the sovereignty of the public employer; the fact that the government is established by and run for all the people and not for the benefit of any person or group; that the profit system is lacking in public employment; that public employees owe undivided allegiance to the public employer; and that the continued operation of public employment is indispensable to public interest (31 ALR 2d 1152).

OBSERVATIONS

The New Constitution,[14] in its Declaration of Principles,[15] provides:

> Section 9. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race, or creed and regulate the relations between workers and employers. The State shall assure the right of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.[16]

The above provision makes it a fundamental policy of our government to "afford protection to labor" and "assure the right of workers to collective bargaining." The State shall also "ensure equal work opportunities" and the "right of workers to just and humane conditions of work."

Given this fundamental policy underlying our system of government, can it be validly argued that the Constitution contemplates only private-sector employees when it decreed that (t)he shall afford protection to labor"?

We submit not.

No less than the Constitutional Convention itself observed that "(w)hile the state has responded to its duty to 'afford protection to labor,' this has been done with uneven and unequal hand."[17] "Discrimantion against specific workers," the Convention said, "is so potent in its face that it constitutes denial of 'equal protection of laws."[18] On account of government discrimination against its own employees, "these sectors," the Convention continued, "are thus subject to the unending torment of personal frustration and privation."[19] While government employees have the "will and the capacity to help themselves, the law forbids them from availing of their strength." They are thus "torn between the imperatives of economic necessity which propel them to self-help, and the imperatives of the law which exact obedience through threats of coercive sanctions."[20] "The result for each perceptive and conscientious worker," says Delegate Angara, "is the agony of unending conflict, anxiety over the future, distress, unrest, and turmoil of spirit."[21]

[14]1973 Constitution of the Philippines. Ratified on 13 January 1973.

[15]Section 9, Article II, 1973 Constitution.

[16]The counterpart of this provision in the 1935 Constitution reads: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations of landowner and tenant, and between labor and capital in industry and in agriculture, (Sec. 6, Art. XIV, 1935 Constitution).

[17]Supra, note 2 at page 7.

[18]Id.

[19]Id.

[20]Id.

[21]Id.

Again, how can the state "ensure equal work opportunities" and "assure the right of workers to just and humane conditions of work" when it denies its own employees the right to collective bargaining? Can there be "qual work opportunity" when the private sector is given that basic right while the public sector is deprived thereof? Was it the intent of the Constitution to exclude government personnel from collective bargaining simply because they are employed in agencies held by the courts to be performing government functions?

We believe not.

While we are not unaware of the differences existing between the public and private employer, we submit that the "similarities far outweigh the differences, and that existing differences are too insignificant to justify disparate treatment regarding bargaining rights.[22] As Allan Weisenfeld puts it:

> Government employees, like their counterparts in the private sector, are subject to the same vicissitudes of insecurity of employment, rising prices, accident, illness, and old age. Everywhere, from the remotest corners of the earth to the most sophisticated, people seek to assert a measure of control over the conditions in which they live. The public employee, no less than his private counterpart, labors under the same apprehension and frustrations and seeks the same measure of fulfillment from his daily chores.[23]

Can it also be argued that the Constitution excludes government personnel from collective bargaining rights for fear that governmental operations might be dislocated?

We submit not.

We submit that because "opportunities for material advancement and self-realization are virtually non-existent in the civil service" on account of the "constraints on self help imposed by law," the government is "disadvantageiously positioned in the competition of talent, skill, and industry." The government must, therefore, satisfy itself with the "less talented, less skilled, less educated, and less dedicated." The net result is that the government is plagued by an efficient civil service which, ultimately, results into serious governmental dislocations. Criticizing the governmental policies on labor, the Constitutional Convention stated:

> We all know that labor, like any other commodity, responds to the prevailing market price. Sellers will sell to the highest bidders. The more competent and skilled, therefore, avoid these sectors of employment, so long as opportunities in industry are available. Even when they do work with the government, or with non-profit entities, the stint is temporary. As opportunity arises, they move to industry. The long-run effect is that both the government and non-profit entities must satisfy themselves with the less talented, less skilled, less educated, and less dedicated.

[22]63 Cornell Law Review 421, March 1978. In this connection, it is observed that many governmental functions are not uniquely governmental; in fact, well over half of public employees engage in activities with significant private-sector counterparts, such as hospitals, education, communications, recreation, and environmental activities. (13 Har. J. Legis. 479, 1976)

[23]16 Labor Law Journal 685, November 1965.

> At this point, the irony underlying our present labor policy becomes manifest. In terms of national destiny, no one can question the importance to our society of those sovereign functions discharged by the regular departments of our government. Yet, through the law, we condemn those departments to be satisfied with those who may have joined the government because they cannot qualify in industrial and commercial firms . . . The stand reflected in our present labor policy is that, the more worthy and elevated functions to be performed, the less worthy should the persons be hired to do them. The unflattering inference which, I believe, is amply justified by our labor laws is that our society gives *second-class* status to personnel in the civil service . . .[24]

Thus, we submit that collective bargaining for the public sector would, in the long run, improve the quality of our civil service. As Anderson puts it: "(t)he collective bargaining mechanism, especially for the public sector, has great potential in improving the quality, quantity, and efficiency in the civil service."[25]

Can it also be inferred that the Constitution contemplates only private-sector employers when it decreed that the states shall "regulate the relations between workers and employers"?

We believe not.

The Constitutional Convention itself noted that the "government is the worst employer for it possesses the power to dictate onerous terms and conditions under the guise of exercise of sovereign authority which, after all, emanates from the people."[26]

Parenthetically, it may be stated that the Constitution was drafted at an "age of activism" when both "private and public employees were aware and conscious of their rights." It was drafted at a time when "government employees were no longer the meek flock of public servants who could be taken for granted and whose devotion to public service could be abused and exploited in the name of love of country."[27]

Such was the socio-political atmosphere of the period.

The framers then had to meet the "problems and difficulties that confronted them and endeavour to crystallize the political, social, and economic propositions of their age."[28] The necessary inference, we believe, is that the Constitution did have in mind the government when it decreed that the state shall "regulate the relations between workers and employers." This must be so because the fundamental law of the land was "to bring about the needed social and economic equilibrium between the component elements of society"[29] made necessary by the

[24]Supra, Note 2

[25]Wisconsin Law Review, vol. 1973, 1023-24.

[26]Position Paper by the Committee on Labor, 1971 Constitutional Convention.

[27]Resolution No. 1479, 1971 Constitutional Convention.

[28]Antamok Goldfields V. Court of Industrial Relations, 70 Phil. 340.

[29]Id.

irresistible momentum of new social and economic forces that then developed."[30] After all, no government can in good faith evade an obligation which it imposes upon its constituents. As the American Bar Association puts it:

> A government which imposes upon private employees certain obligations in dealing with their employees may not in good faith refuse to deal with its own public servants on a reasonably similar basis, modified of course to meet the exigencies of the public service.[31]

CONCLUSION

The foregoing discussion has shown that the 1973 Constitution intends to give collective bargaining rights to government employees. Such constitutional intent should inspire our lawmakers to give serious thought on the matter. After all, there exists a need for public sector bargaining as evidenced by the manifest disparity between the private and government sectors, in so far as terms and conditions of employment are concerned. The disparity, to our mind, relegates our government personnel into a status of *second-class* citizens. It subverts the democratic ideals of human equality. It is pernicious in its practical consequences. Realizing the need to remedy the situation, the 1971 Constitutional Convention thus said:

> Of necessity, there lies the need by the employees of entering into collective bargaining, including the right to negotiate agreements. There are many occupational groups in the various departments of our government . . . which could act in concert to promote their collective interest such as those affecting their working environment, work shifts, tours of duty and procedures to be adopted on their grievances and promotions. x x x As of today, we have other definite groups of equal or stronger force, if given the right to collective bargaining, including the right to negotiate agreements with the management agency, to effectuate a better and stronger Philippine Civil Service and thus redound to an efficient administration of government and welfare and well-being of the entire Filipino people.[32]

The New Society which allegedly is centered on "man" should then pause a while and reflect on the possibility of granting collective bargaining rights to the government man.

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[30] Ang Tibay v. Agrarian Relations, 69 Phil. 635.

[31] American Bar Association, "Second Report to the Committee on Labor Relations of Government Employees," 1955.

[32] Delegate Arsenio Martirez, "Freedom of Association and Collective Bargaining in the Public Sector," Committee on Labor, 1971 Constitutional Convention.

SUPREME COURT DOCTRINES

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CIVIL LAW

Applicability of Article 144 N.C.; Liability for damages of non-registered owner

The issues thus to be resolved are as follows: (1) Whether or not Article 144 of the Civil Code is applicable in a case where one of the parties in a common-law relationship is incapacitated to marry, and (2) Whether or not Rosalia who is not a registered owner of the Jeepney can be held jointly and severally liable for damages with the registered owner of the same.

It has been consistently ruled by this Court that the co-Ownership contemplated in Article 144 of the Civil Code requires that the man and the woman living together must not in any way be incapacitated to contract marriage. Since Eugenio Jose is legally married to Socorro Ramos, there is an impediment for him to contract marriage with Rosalia Arroyo. Under the aforecited provision of the C.C., Arroyo cannot be a co-owner of the Jeepney. The Jeepney belongs to the conjugal partnership of Jose and his legal wife. There is therefore no basis for the liability of Arroyo for damages arising from the death of, and physical injuries suffered by, the passengers of the Jeepney which figured in the colision.

Rosalia Arroyo, who is not the registered owner of the Jeepney, can neither be liable for damages caused by its operation. It is settled in our jurisprudence that only the registered owner of a public service vehicle is responsible for damages that may arise from consequences incident to its operation, or may be caused to any of the passengers therein. (Juaniza V. Jose G.R. No. 50127-28, March 30, 1979)

CHANGE OF NAME

It appears from respondent's Exhibit 3-A and 3-B that the name Li Kan Wa was given in the title, and the name John Sotto was not mentioned. Omission in the title of the petition of the name asked for is fatal, and the court did not acquire jurisdiction over the case. Non-compliance with the rules did not vest the court with authority to act on the petition and therefore, the questioned decision is null and void. (Republic v. Aquino G.R. No. L-32779, May 25, 1979)

CONTINGENT FEE FOR COUNSEL

A contract for a contingent fee is not covered by Article 1491 because the transfer or assignment of the property in litigation takes effect only after the finality of a favorable judgment. In the instant case, attorney's fee of Atty. Fernandez, consisting of one-half (1/2) of whatever Maximino Abarquez might recover from his share in the lots in question, is contingent upn the success of the appeal. Hence, the payment of the attorney's fees, that is, the transfer or the assignment of one-half (1/2) of the property in litigation will take place only if the appeal prospers. Therefore, the transfer actually takes effect after the finality of a favorable judgement rendered on appeal and not during the pendency of the litigation involving the property in question. Consequently, the contract for a contingent fee is not covered by Article 1491. (Director of Lands Vs. Ababa, G. R. No. L-26096, February 27, 1979).

CREDIBLE WITNESS TO A WILL

Under the law, there is no mandatory requirement that the witness testify initially or at any time during the trial as to his good standing in the community, his reputation for trustworthiness and reliableness, his honesty and uprightness in order that his testimony may be believed and accepted by the trial court. It is enough that the qualifications enumerated in Article 820 of the Civil Code are complied with, such that the soundness of his mind can be shown by or deduced from his answers to the questions propounded to him, that his age (18 years or more) is shown from his appearance, testimony, or competently proved otherwise, as well as the fact that he is not blind, deaf or dumb and that he is able to read and write to the satisfaction of the Court,and that he has none of the disqualifications under Article 821 of the Civil Code. We reject petitioner's contentions that it must first be established in the record the good standing of the witness in the community, his reputation for trustworthiness and reliableness, his honesty and uprightness because such attributes are presumed of the witness unless the contrary is proved otherwise by the opposing party. (Gonzales V. C.A. G.R. No. L-37453, May 25, 1979)

PAYMENT OF INTEREST; ESTOPPEL

In Robles vs. Rimario (107 Phil 80), the court ruled that it is beyond the power of the courts to issue a writ of execution for the payment of the principal obligation with interest thereon, when the judgment contains no provision on the interest to be paid on the

judgment credit. Considering that in the instant case the order of December 4, 1974, ordering the payment of ₱108,000.00 to the private respondent, did not provide for the collection of interest on the said amount, the order of April 3, 1975, directing the issuance of a writ of execution against the petitioner for the amount of ₱108,000.00 plus legal interest thereon on December 4, 1974, was clearly made without or in excess of jurisdiction.

The plea of estoppel is without merit, for estoppel cannot validate a void order, issued without jurisdiction since jurisdiction exists as a matter of law, and may not be conferred by the consent of the parties or by estoppel. Besides, it cannot be said for certain that petitioner had acquiesced to the payment of interest on the amount of ₱108,000.00 in view of the petitioner's claim for the refund of the amount collected by private respondent in excess of the amount of ₱108,000.00 (Villamayor vs. Hon. Leonor Ines Luciano, et al G.R. No. L-44886, January 31, 1979)

RIGHT OF A THIRD PERSON TO ASSAIL A CONTRACT

As a rule, a contract cannot be assailed by one who is not a party thereto. However, when a contract prejudices the rights of a third person, he may file an action to annul the contract. In this case, the plaintiffs-appellees were prejudiced in their rights by the execution of the chattel mortgage over the properties of the partnership "Isabela Sawmill" in favor of Margarita G. Saldajeno by the remaining partners, Leon Garibay and Timoteo Tubungbanua.

Hence, said appelles have a right to file the action to nullify the chattel mortgage in question. (Singson v. Isabela Sawmill, G.R. No. L-27343, February 28, 1979)

CRIMINAL LAW

RAPE

Nor can there be any weight accorded to the observation made in the brief that complainant apparently failed to manifest any resistence to the sexual abuse committed on her person. Thus in People vs. dela Cruz, this court, through Justice Aquino, stated: "Appellant's attempt to discredit complainant's story by observing that she had made no outcry during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below twelve years of age, force or intimidation need not be present." Again, through the same ponente, there is this holding in the subsequent case of People vs. Gonzales. The crime committed by Gonzales is simple-rape without the attendance of any of the qualifying circumstances mentioned in Article 335 of the RCP. Its basic element is the carnal knowledge of a girl twelve years of age.

In providing for the statutory crime of rape, where the victim is a young girl of tender years, consent on her part, is not a defense. The law is a reflection of the deep concern of the state for the well-being of the child.

In the last two cases, People vs. Baylon and People vs. Cawili, it was noted that the obligation of the state embraced in the concept of "parens patria" justifies such an approach in its penal laws. (People vs. Conchada, G.R. Nol. L-39367-69, February 28, 1979)

ROBBERY WITH HOMICIDE

Although the killing of Evaristo Ruvera was perpetrated after the consummation of the robbery and after the robbers had left the victim's house, the homicide is still integrated with the robbery or is regarded as having, been committed "by reason or an occasion" thereof, as contemplated in Article 294 (1) of the Revised Penal Code.

There is robo con homicido even if the victim killed was an innocent bystander and not the person robbed. The law does not require that the victim of the robbery be also the victim of the homicide.

In the instant case, the robbery spawned a fight between the robbers and the neighbors of Lazaro, the robbery victim. The killing of Evaristo Tuvera resulted from that fight. Hence, it was connected with the robbery. (People vs. Barut G.R. No. L-42666, March 13, 1979)

COMMERCIAL LAW

BINDING DEPOSIT RECEIPT, PERFECTION OF INSURANCE CONTRACT, CONCEALMENT

'Clearly implied from the aforesaid conditions is that the binding deposit receipt in question is merely an acknowledgment, on behalf of the company, that the latter's branch office had received from the applicant the insurance premium and accepted the insurance company, and that the latter will either approve or reject the same on the basis of whether or not the applicant is "insurable on standard rates". Since petitioner Pacific Life disapproved the insurance application of respondent NGO HING, the binding deposit receipt in question had never become in force at any time.

It bears repeating that through the intra-company communication of April 30, 1957, Pacific Life disapproved the insurance application on the ground that it is not offering the twenty-year endowment insurance policy to children less than seven years of age. What it offered instead is another plan known as the Juvenile Type Action, which private respondent failed to accept. In the absence of a meeting of the minds between petitioner and private respondent and with the non-compliance of the conditions stated in the disputed binding deposit receipt, there could have been no insurance contract duly perfected between them.

Private respondent had deliberately concealed the state of health and physical condition of his daughter Helen Go. When private respondent supplied the required essential data for the insurance application form, he has fully aware that his one-year old daughter is typically a mongoloid child. Such a congenital physical defect could never be

ensconced nor disguised, nonetheless, private respondent, in apparent bad faith, withheld the fact material to the risk to be assumed by the insurance company. (GREPALIFE vs. C.A., G.R. No. L-31845, April 30, 1979).

RIGHT OF A CORPORATION TO DISQUALIFY A PERSON FROM BECOMING A MEMBER OF THE BOARD OF DIRECTORS

1. It is an accepted rule of procedure that the Supreme Court should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. It is settled that the doctrine of primary jurisdiction has no application where only a question of law is involved. (In the instant case, whether or not the amended by-laws of the respondent corporation are valid is purely a legal question, which public interest requires no resolve).

2. The validity or reasonableness of a by-law of a corporation is purely a question of law. Whether the by-law is in conflict with the law of the land, or with the charter of the corporation, or is in a legal sense unreasonable and therefore unlawful is a question of law. This rule is subject, however, to the limitation that where the reasonableness of a by-law is a mere matter of judgment, and one upon which reasonable minds must necessarily differ, a court would not be warranted in substituting its judgment instead of the judgment of those who are authorized to make by-laws who have exercised their authority.

3. It is recognized by all authorities that "every corporation has the inherent power to adopt by-laws for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs". In this jurisdiction, under Section 21 of the Corporation law, a corporation may prescribe in its by-laws "the qualifications, duties and compensation of directors, officers and employees".

4. Under Section 22 of the same law, the owners of the majority of the subscribed capital stock may amend or repeal any by-law or adopt new by-laws. It cannot be said, therefore, that petitioner has a vested right to be elected director, in the face of the fact that the law at the time such right as stockholder was acquired contained the prescription that the corporate charter and the by-law shall be subject to amendment, alteration, and modifications.

5. Although in the strict and technical sense, directors of a private corporation are not regarded as trustees, there cannot be any doubt that their character is that of fiduciary in so far as the corporation and the stockholders as a body are concerned as agents entrusted with the management of the corporation for the collective benefit of the stockholders "they occupy a fiduciary relation, and for this sense the relation is one of trust."

6. It is a settled state law in the United States, according to Fletcher, that corporations have the power to make by-laws declaring a person employed in the service of a rival company to be ineligible for the corporation's Board of Directors. An amendment which renders ineligible, or if elected, subjects to removal, a director if he also be

director in a corporation whose business is in competition with, or is antagonistic to the other corporation is valid. This is based upon the principle that where the director is so employed in the service of a rival company, he cannot serve both, but must betray one or the other. Such amendment "advances the benefit of the corporation and is good."

7. In the case at bar, considering that the foreign subsidiary (San Miguel International, Inc.) is wholly owned by respondent San Miguel Corporation and, therefore, under its control it would be more in accord with equity, good faith and fair dealing to construe the statutory right of petitioner as Stockholder to inspect the books and records of the corporation as extending to books and records of such wholly owned subsidiary which are in respondent corporation's possession and control.

8. Our corporation law allows a corporation to invest its funds in any other corporation or business or for any purpose other than the main purpose for which it was organized provided that its Board of Directors has been so authorized by the affirmative vote of stockholders holding shares entitling them to exercise at least two thirds of the voting power. If the investment is made in pursuance of the corporate purpose it does not need the approval of the stockholders. It is only when the purchase of shares is done solely for investment and not to accomplish the purpose of its incorporation that the vote of approval of the stockholders holding shares entitling them to exercise at least two-thirds of the voting power is necessary (Gokongwei, Jr. vs. Securities and Exchange Commission, G.R. No. L-45911, April 11, 1979)

LABOR LAW

COLLECTION OF ATTORNEY'S FEES FROM NON-UNION MEMBERS

In affirming the grant of attorney's fee against the non-union members, this court considered it pertinent that "the general policy of the law is to encourage unionism to enable employees to bargain with the employer upon a more or less equal footing." The court has the view that exemption of the non-union members who benefitted from the award would run counter to this policy because it tends to encourage a substantial portion of the employee force of any corporation not to affiliate with the union that has a CBA with the company, and sit idly while the union members are fighting to secure benefits that are later extended not only to them but also to all other empooyees of the company. This rationale does not apply in the case at hand where the employees sought to be taxed with attorney's fees are all supervisors, junior executives, and confidential employees, and therefore, would never become members of the union who originally obtained benefits. (Pascual vs. Court of Industrial Relations, G.R. No. L-27856-57, February 28, 1979)

CONTRACT BAR RULE

"The only issue to be determined in the instant case is whether or not the renewed CBA forged between the respondent company and petitioner union constitutes a bar to the holding of a certification election. The record shows that the old CBA of petitioner ATU-KILUSAN with respondent Synthetic Marketing and Industrial Corporation was to expire on October 31, 1977. However, five months and twenty-one (21) days before its expiry date or on May 10, 1977, ATU-KILUSAN renewed the same with the consent and collaboration of the management. The renewed CBA was then submitted to the Bureau of Labor Relations for certification of July 8, 1977, or approximately three (3) months prior to the expiration of the outgoing CBA. In the meantime, on September 13, 1977, (48 days before the expiration of the old CBA on October 31, 1977) a petition for certification election was filed by respondent under the Federation of Free Workers. Meanwhile, the renewed CBA between petitioner ATU-KILUSAN and respondent company was certified on October 3, 1977 or twenty-eight (28) days before their old CBA was to expire. From the foregoing facts, it is quite obvious that the renewed CBA cannot constitute a bar to the instant petition for certification election. In the first place, the said CBA was certified after the instant petition for certification had been filed by herein respondent union, and its certification was conditioned upon the fact that there was no pending petition for certification election with the Bureau of Labor Relations. In the second place, the new CBA was entered into during the lifetime of the old CBA which was to expire on October 31, 1979. Hence, said new CBA was to become effective on November 1, 1977, and this, if no representation issue had arisen in the meantime, which is not the case. Clearly, therefore, the contract-bar rule does not apply to the case at the bar. Finally, it is indubitably clear from the facts heretofore unfolded that management and petitioner herein proceeded with such indecent haste in renewing their CBA way ahead of the "sixty-day freedom period" in their obvious desire to frustrate the will of the rank-and-file empooyees in selecting their collective bargaining representative. To countenance the actuation of the company and the petitioner herein would be violative of the employees constitutional right to self-organization. (ASSOCIATED TRADE UNIONS vs. Hon. Carmelo Noriel, G.R. No. L-48367, January 16, 1979) etc., et al.

CONTROL TEST

While this court upholds the control test under which an employer-employee relationship exists "where the person for who the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end," it finds no merit in petitioner's arguments as stated above. It should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work , not the actual exercise of the right. Considering the finding of the hearing examiner that the establishment of Dy Keh Beng is "engaged in the manufacture of baskets known as

Kaing" it is natural to expect that those working under Dy would have to observe, among others, Dy's requirements of size and quality of the Kaing. Some control would necessarily be exercised by Dy as the making of the Kaing would be subject to Dy's specifications Parenthetically, since the work on the basket is done at its establishments, it can be inferred that the proprietor Dy could easily exercise control on the men he employed.

As to the contention that Solano was not an employee because he worked on piece basis, this court agrees with the Hearing Examiner that "circumstances must be construed to determine indeed if payment by the piece is just a method of compensation and does not define the essence of the relation. Units of time, and units of work are, in the establishments like respondent's (sic) just yardsticks whereby to determine rate or compensation, to be applied whenever agreed upon. We cannot construe payment by the piece where work is done in such an establishment so as to put the worker completely at liberty to turn him out and take in another at pleasure." (Dy Keh Beng vs. International Labor and Marine Union of the Phils., G.R. No. L-32245, May 25, 1979)

DISMISSAL OF EMPLOYEES

While respondent company, under the maintenance of membership provision of the CBA, is bound to dismiss any employee expelled by PAFLU for disloyalty, upon its written request, this undertaking should not be done hastily and summarily. The company acted in bad faith in dismissing petitioners workers without giving them the benefit of a hearing. It did not even bother to inquire from the workers concerned and from the PAFLU itself about cause of the expulsion of the petitioner workers. Instead, the company immediately dismissed the workers on May 30, 1964 after its receipt of the request of PAFLU on May 29, 1964 — in a span of only one day — stating that it had no alternative but to comply with its obligation under the security agreement in the CBA thereby disregarding the right of the workers to due process, self organization, and security of labor. (Liberty Cotton Mills, Inc., G.R. No. L-33987, May 31, 1979)

STRIKE

It is admitted by petitioner that it accepted the invitation of Baylon for a grievance conference on October 5, 1962. Yet, two hours after it accepted the letter or invitation, it dismissed Baylon without prior notice and/or investigation. Such dismissal is undoubtedly an unfair labor practice committed by the company. Under the facts and circumstances, Baylon and members of the union had valid reasons to ignore the scheduled grievance conference and declare a strike. When the union declared a strike in the belief that the dismissal of Baylon was due to union activities, said strike was not illegal. It is not even required that there be in fact an unfair labor practice committed by the employer. It suffices if such a belief in good faith is entertained by labor. The strike declared by the Union in this case cannot be considered a violation of the "no strike" clause of the Collective Bargaining

Agreement because it was due to the unfair labor practice of the employer. Moreover, a no strike clause prohibition in a Collective Bargaining Agreement is applicable only to economic strikes.

The strike cannot be declared as illegal for lack of notice. In strikes arising out of and against a company's unfair labor practice, a strike notice is not necessary in view of the strike being founded on urgent necessity and directed against practices condemned by public policy, such notice being legally required only in cases of economic strikes. (Philippine Metal Foundries, Inc. vs. Court of Industrial Relations, G.R. Nos. L-34948-49, May 15, 1979)

LAND TITLES & DEEDS

ANNULMENT OF TITLES

The acquittal of the private respondents in the criminal case for falsification is not a bar to the civil cases to cancel their titles. The only issue in the criminal cases for falsification was whether there was evidence beyond reasonable doubt that the private respondents had committed the acts of falsification alleged in the information. The factual issues of whether or not the lands in question are timber or mineral lands and whether or not private respondents are entitled to the benefits of R.A. 3872 were not in issue in the criminal cases. (Lepanto Consolidated Milling Co. vs. Dumyung, G.R. No. L-31666 April 30, 1970)

POWER OF THE LAND REGISTRATION COURT

The jurisdiction of the lower court as a land registration court to adjudicate the land for purposes of registration cannot, as petitioners try to do, be questioned. The applicants and oppositors both claim rights to the land by virtue of their relationship to the original owner, the late Vicente Montoya. The court is thus necessarily impelled to determine the truth of their alleged relationships, and on the basis thereof, to adjudicate the land to them as the law has prescribed to be their successional rights. The law does not require the heirs to go to the probate court first before applying for the registration of the land, for a declaration of heirship. This would be a very cumbersome procedure, unnecessarily expensive and unreasonably inconvenient, clearly adverse to the rule against multiplicity of suits. (Belamide vs. C.A., G.R. No. L-34007, May 25, 1979)

POLITICAL LAW

APPOINTMENT

It is well settled that the determination of the kind of appointment to be extended lies in the official vested by law with the appointing power and not the Civil Service Commission. The Commissioner of Civil Service is not empowered to determine the kind or nature of the

appointment extended by the appointing officer. When the appointed is qualified, as in this case, the commissioner of Civil Service has no choice but to attest the appointment. Under the Civil Serivce Law, P.D. No. 807, the Commissioner is not authorized to curtail the discretion of the appointing official on the nature or kind of the appointment to be extended. (Re: Appointment of Elvira C. Arcega as Deputy Clerk of Court, CFI of Bulacan, Branch VII Adm. Matter No. 2993-CFI April 10, 1979)

REMEDIAL LAW

CHANGING DESIGNATION OF AN INFORMATION

It is not disputed that herein respondent, after conducting a preliminary investigation in criminal case No. 684, motu proprio and over the objection of the prosecution changed the designation of the crime charged from Grave Slander to Slight Slander. Respondent judge justified his action by insisting that he is possessed with such power and that the same was done for the speedy administration of justice. This Court, however, is not prepared to sustain this view for Sec. 13, Rule 110, Rules of Court is clear that the matter of changing designation of the appropriate crime in an information or complaint is vested in the prosecution and not in the trial judge, and in the instant case, the change may be done by the prosecution even without leave of court since the defendant or accused has not as yet entered his plea. The law providing that the information or complaint may be amended in substance of form without leave of court at any time before defendant pleads lodges a discretionary power in the prosecuting officer. So, the person authorized to amend the complaint or information is only the prosecuting officer and not the trial judge. The contention of the respondent judge that he had the right to amend the designation of the crime in a preliminary investigation which is not the trial is untenable. The purpose of the preliminary investigation is primarily to determine whether there is a reasonable ground to believe that an offense has been committed and accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial. It is not within the purview of the preliminary investigation to give the judge the right to amend, motu propio, the designation of the crime. When the crime comes within its jurisdiction, he shall try the case, and only after trial may he convict for a lesser offense. In a case coming within the original jurisdiction of the CFI, he should elevate the case as it is, even if in his opinion, the crime is less than that charged. (Bais Vs. Hon. Mariano C. Tugaoen A.M. No. 1294-MJ, March 23, 1979)

DEATH OF A PARTY

The need for substitution is based on the right of a party to due process. Since Rule 3, Section 17, Revised Rules of Court uses the word "shall", one infers that substitution is indeed a mandatory requirement in actions surviving the deceased. It has been held that in "statutes relating to procedure . . . every act which is jurisdictional or of the essence of the proceeding, or is prescribed for the protection or benefit of the party affected, is mandatory." (Vda. de la Cruz vs. Court of Appeals, G.R. No. L-41107, February 28, 1979)

FILING OF NEW INFORMATION

With the resolution of this petition, it should be clear to all and sundry that the provisional dismissal of a criminal case does not call for the filing of a new information, if, as in this case, the parties are clearly made aware in such order of provisional dismissal, that it is lacking the impress of finality and therefore could be revived and reinstated. (La Uchengco vs. Hon. Jose P. Alejandro, G.R. No. L-49034, January 31, 1979)

INFORMATION

The issue is whether Lontok, over his objection, can be tried by the municipal court on an information charging the complex crime of damage to property in the sum of ₱780 and lesiones leves through reckless imprudence.

We hold that he should be tried only for damage to property through reckless imprudence, which, being punished by a maximum fine of ₱2,340, a correctional penalty, is a less grave felony. As such it cannot be complexed with the light offense of lesiones leves through reckless imprudence which, as correctly contended by Lontok, had already prescribed since the crime prescribed in sixty days. (Lontok, Jr. vs. Hon. Alfredo Gorgonio, G.R. No. L-37396, April 30, 1979)

JURISDICTION

It is contended by the appellants that the Court of First Instance of Negros Occidental had no "jurisdiction over Civil Case No. 5343 because the plaintiff sought to collect sums of money, the biggest amount which was less than ₱2,000.00 and therefore, within the jurisdiction of the municipal court.

This contention is devoid of merit because all the plaintiffs also asked for the nullity of assignment of right with chattel mortgage entered into by and between Margarita G. Saldajeño and her former partners Leon Garibay and Timoteo Tubungbanua. This cause of action is not capable of pecuniary estimation and falls under exclusive jurisdiction of the CFI. Where the basic issue is something more than the right to recover a sum of money and where the money claim is purely incidental to or consequence of the principal relief sought, the action is not capable of pecuniary estimation and is cognizable exclusively by the CFI.

In determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of First Instance

would depend upon the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by the Court of First Instance. (Singson vs. Isabela Sawmill, G.R. No. L-27354 February 28, 1979)

LIABILITY OF SURETY

We hold that the trial court has jurisdiction to pass upon Fernando's application for the recovery of damages on the surety's replevin bond. The reason is that Fernando seasonably filed his application for damages in the Court of Appeals. It was not his fault that the damages claimed by him against the surety, were not included in the judgment of the C.A. affirming the trial court's award of damages to Fernando payable by the principal in the replevin bond. The peculiar factual situation of this case makes it an exception to the settled rule that the surety's liability for damages should be included in the final judgment to prevent duplicity of suits or proceedings. (Sec. 20 Rule 57) (Malayan Insurance Co., Inc. vs. Salas G.R. No. 48820, May 25, 1979)

MOTION FOR RECONSIDERATION

In the case at bar, the petitioners alleged in their motion for reconsideration that the issues raised in the pleading were not passed upon, considered and determined in the decision; that the decision does not conform to the pleadings and proofs; and that the said decision is not in accordance with the law. They failed, however, to point out specifically the findings and conclusions of law in the decision which are not supported by the evidence or which are contrary to law. A motion for reconsideration which does not specify the findings or conclusions in the decision, which are not supported by the evidence or which are contrary to law, is pro forma, intended merely to delay the proceedings, and as such, it is a mere scrap of paper that cannot stay the period for taking an appeal. (Dineros vs. Roque, G.R. No. L-38837, February 27, 1979)

PRE-TRIAL CONFERENCE

As will be seen, pre-trial is mandatory and the Court has uniformly ruled that the parties, as well as their counsel, who are required to appear thereat, must be notified of the same. The records of this case however, show that the defendants were not properly notified of the pre-trial conference since the notice of pre-trial were sent to their counsel and not upon them so that the order declaring them in default for non-appearance at the pre-trial conference is null and void. The only instance wherein the parties were notified separately of the holding of a pre-trial conference was on July 8, 1975. This notice, however, cannot be considered to have fully satisfied the requirements of the law because the said notice of pre-trial conference was issued before the last

pleading had been filed. Construing the term "Last Pleading", the court in a case said: "under the rules of pleading and practice, the answer is the last pleading, but when the defendant's answer contains a counterclaim, plaintiff's answer to it is the last pleading. When the defendant's answer has a cross claim, the answer of the cross-defendant to it is the last pleading. Where the plaintiff's answer to a counterclaim contains a counterclaim against the opposing party or a cross claim against a co-defendant, the answer of the co-defendant to the crossclaim is the last pleading. And where the plaintiff files a reply alleging facts in denial or avoidance of one matter by way of defense in the answer such reply constitutes the last pleading. (Francisco The Revised Rules of Court, Vol. II pp. 2-3) Following this rule, the "Last Pleading" is the answer to the counterclaim of the defendant Luis T. Peggy on September 16, 1976. Obviously, the calling of a pre-trial conference on August 8, 1975 was premature. (Peggy vs. Hon Lauro L. Tapucar, G.R. No. L-45270 February 28, 1979)

SERVICE OF SUMMONS

In the case at bar, the summons were served by registered mail, which is not among the modes of service under Rule 14 of the RRC. Besides, under Sec. 5 of aforesaid rule, the summons "may be served by the sheriff or the proper office with the province in which the service is to be made, or for reasons by any person especially authorized by the judge of the court issuing the summons." The postmaster of Bato, Leyte, not being a sheriff or court officer, or a person authorized by the court to serve the summon cannot validly serve the summons. The petitioners, therefore, were not duly served with the summons in Civil Case No. L-674. (Olar V. Cura G.R. No. L-47935, May 5, 1979)

WRIT OF PRELIMINARY MANDATORY INJUNCTION

The last remaining issue is whether the order of the city court requiring either petitioner Martha Feranil or Primitivo Villegas to remove whatever improvements introduced in the premises after the issuance of the writ of preliminary mandatory injunction but before trial of the main action is proper.

The effect of the preliminary mandatory injunction is to restore the plaintiffs to the possession of the lot in question after the defendants have allegedly forcibly entered into it. The possession, once restored, entitles them to the full enjoyment thereof, in the same manner and to the same extent as they had before the possession had been disturbed by the defendants. The recognition of such right as was in existence in favor of the plaintiffs, or at least in favor of Feranil, to the exercise of which the aforementioned injunction restored them, is perfectly in accordance with the acknowledged legal effect of an injunction which naturally varies, depending on whether the injunction is prohibitory or