

**PABLO ARIZALA, SERGIO MARIBAO, LEONARDO JOVEN, AND
FELINO BULANDUS, PETITIONERS, VS. THE COURT OF APPEALS AND
THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. Nos. L-43633-34. September 14, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Under the Industrial Peace Act,[1] government-owned or controlled corporations had the duty to bargain collectively and were otherwise subject to the obligations and duties of employers in the private sector.[2] The Act also prohibited supervisors to become, or continue to be, members of labor organizations composed of rank--and-file employees,[3] and prescribed criminal sanctions for breach of the prohibition.[4]

It was under the regime of said Industrial Peace Act that the Government Service Insurance System (GSIS, for short) became bound by a collective bargaining agreement executed between it and the labor organization representing the majority of its employees, the GSIS Employees Association. The agreement contained a "maintenance-of-membership" clause,[5] i.e., that all employees who, at the time of the execution of said agreement, were members of the union or became members thereafter, were obliged to maintain their union membership in good standing for the duration of the agreement as a condition for their continued employment in the GSIS.

There appears to be no dispute that at that time, the petitioners occupied supervisory positions in the GSIS. Pablo Arizala and Sergio Maribao were, respectively, the Chief of the Accounting Division, and the Chief of the Billing Section of said Division, in the Central Visayas Regional Office of the GSIS. Leonardo Joven and Felino Bulandus were, respectively, the Assistant Chief of the Accounting Division (sometimes Acting Chief in the absence of the Chief) and the Assistant Chief of the Field Service and Non-Life Insurance Division (and Acting Division Chief in the absence of the Chief), of the same Central Visayas Regional Office of the GSIS. Demands were made on all four of them to resign from the GSIS Employees Association, in view of their supervisory positions. They refused to do so. Consequently, two (2) criminal cases for violation of the Industrial Peace Act were lodged against them in the City Court of Cebu: one involving Arizala and Maribao,[6] and the other, Joven and Bulandus.[7]

Both criminal actions resulted in the conviction of the accused in separate decisions.[8] They were each sentenced "to pay a fine of P500.00 or to suffer subsidiary imprisonment in case of insolvency." They appealed to the Court of Appeals.[9] Arizala's and Maribao's appeal was docketed as CA-G.R. No. 14724-CR; that of Joven and Bulandus, as CA-G.R. No. 14856-CR.

The appeals were consolidated on motion of the appellants, and eventuated in a judgment promulgated on January 29, 1976 affirming the convictions of all four appellants. The appellants moved for reconsideration. They argued that when the so called "1973 Constitution" took effect on January 17, 1973 pursuant to Proclamation No. 1104, the case of Arizala and Maribao was still pending in the Court of Appeals and that of Joven and Bulandus,

pending decision in the City Court of Cebu; that since the provisions of that constitution -- and of the Labor Code subsequently promulgated (eff., November 1, 1974), repealing the Industrial Peace Act -- placed employees of all categories in government-owned or controlled corporations without distinction within the Civil Service, and provided that the terms and conditions of their employment were to be "governed by the Civil Service Law, rules and regulations" and hence, no longer subject of collective bargaining, the appellants ceased to fall within the coverage of the Industrial Peace Act and should thus no longer continue to be prosecuted and exposed to punishment for a violation thereof. They pointed out further that the criminal sanction in the Industrial Peace Act no longer appeared in the Labor Code. The Appellate Court denied their plea for reconsideration.

Hence, the present petition for review on certiorari.

The crucial issue obviously is whether or not the petitioners' criminal liability for a violation of the Industrial Peace Act may be deemed to have been obliterated in virtue of subsequent legislation and the provisions of the 1973 and 1987 Constitutions.

The petitioners' contention that their liability had been erased is made to rest upon the following premises:

1. Section 1, Article XII-B of the 1973 Constitution does indeed provide that the "Civil Service embraces every branch, agency, subdivision and instrumentality of the government, including government-owned or controlled corporations, ** administered by an independent Civil Service Commission."
2. Article 292 of the Labor Code repealed such parts and provisions of the Industrial Peace Act as were "not adopted as part" of said Code "either directly or by reference." The Code did not adopt the provision of the Industrial Peace Act conferring on employees of government-owned or controlled corporations the right of self-organization and collective bargaining; in fact it made known that the "terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations," would thenceforth no longer be fixed by collective bargaining but "be governed by the Civil Service Law, rules and regulations." [10]
3. The specific penalty for violation of the prohibition on supervisors being members in a labor organization of employees under their supervision has disappeared.
4. The Code also modified the concept of unfair labor practice, decreeing that thenceforth, "it shall be considered merely as an administrative offense rather than a criminal offense (and that) (u)nfair labor practice complaints shall ** be processed like any ordinary labor disputes." [11]

On the other hand, in justification of the Appellate Tribunal's affirmance of the petitioners' convictions of violations of the Industrial Peace Act, the People -?

1. advert to the fact that said Labor Code also states that "all actions or claims accruing prior to ** (its) effectivity ** shall be determined in accordance with the laws in force at the time of their accrual;" and
2. argue that the legislature cannot generally intervene and vacate the judgment of the courts, either directly or indirectly, by the repeal of the statute under which said judgment has been rendered.

The legal principles governing the rights of self-organization and collective bargaining of rank-and-file employees in the government -- particularly as regards supervisory, and high level or managerial employees -- have undergone alterations through the years.

Republic Act No. 875

As already intimated, under RA 875 (the Industrial Peace Act), [12] persons "employed in proprietary functions of

the Government, including but not limited to governmental corporations," had the right of self-organization and collective bargaining, including the right to engage in concerted activities to attain their objectives, e.g., strikes.

But those "employed in governmental functions" were forbidden to "strike for the purpose of securing changes or modification in their terms and conditions of employment" or join labor organizations which imposed on their members the duty to strike. The reason obviously was that the terms and conditions of their employment were "governed by law" and hence could not be fixed, altered or otherwise modified by collective bargaining.

Supervisory employees were forbidden to join labor organizations composed of employees under them, but could form their own unions. Considered "supervisors" were those "having authority in the interest of an employer to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline other employees, or responsibly to direct them, and to adjust their grievance or effectively to recommend such acts if, in connection with the foregoing, the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment." [13]

Republic Act No. 2260

Similar provisions were found in R.A. No. 2260, the Civil Service Act of 1959. This Act declared that the "Philippine Civil Service ** (embraced) all branches, subdivisions and instrumentalities of the government including government-owned and controlled corporations." [14]

It prohibited such civil service employees who were "employed in governmental functions" to belong to any labor organization which imposed on their members "the obligation to strike or to join strikes." And one of the first issuances of the President after the proclamation of martial law in September, 1972, was General Orders No. 5 which inter alia banned "strikes in vital industries," as well as "all rallies, demonstrations and other forms of group actions." [15]

Not so prohibited, however, were those "employed in proprietary functions of the Government including, but not limited to, governmental corporations." [16] The Act also penalized any person who "violates, refuses or neglects to comply with any ** provisions (of the Act) or rules (thereunder promulgated) ** by a fine not exceeding one thousand pesos or by imprisonment not exceeding six months or both such fine and imprisonment in the discretion of the court." [17]

The 1973 Constitution

The 1973 Constitution laid down the broad principle that "(t)he State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work," [18] and directed that the "National Assembly shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, the positions concerned." [19]

PD 442, The Labor Code

The Labor Code of the Philippines, Presidential Decree No. 442, enacted within a year from effectivity of the 1973 Constitution, [20] incorporated the proposition that the "terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations ** (are) governed by the Civil Service Law, rules and regulations." [21] It incorporated, too, the constitutional mandate that the salaries of said employees "shall be standardized by the National Assembly."

The Labor Code, [22] however "exempted" government employees from the right to self-organization for purposes of collective bargaining. While the Code contained provisions acknowledging the right of "all persons

employed in commercial, industrial and agricultural enterprises, including religious, medical or educational institutions operating for profit" to "self-organization and to form, join or assist labor organizations for purposes of collective bargaining," they "exempted from the foregoing provisions:

- a) security guards;
- b) government employees, including employees of government-owned and/or controlled corporations;
- c) managerial employees; and
- d) employees of religious, charitable, medical and educational institutions not operating for profit, provided the latter do not have existing collective agreements or recognized unions at the time of the effectivity of the code or have voluntarily waived their exemption."^[23]

The reason for denying to government employees the right to "self-organization and to form, join or assist labor organizations for purposes of collective bargaining" is presumably the same as that under the Industrial Peace Act, i.e., that the terms and conditions of government employment are fixed by law and not by collective bargaining.

Some inconsistency appears to have arisen between the Labor Code and the Civil Service Act of 1959. Under the Civil Service Act, persons "employed in proprietary functions of the government including, but not limited to, governmental corporations" -- not being within "the policy of the Government that the employees therein shall not strike for the purpose of securing changes in their terms and conditions of employment" -- could legitimately bargain with their respective employers through their labor organizations, and corollarily engage in strikes and other concerted activities in an attempt to bring about changes in the conditions of their work. They could not however do so under the Labor Code and its Implementing Rules and Regulations; these provided that "government employees, including employees of government-owned and/or controlled corporations," without distinction as to function, were "exempted" (excluded is the better term) from "the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining," and by implication, excluded as well from the right to engage in concerted activities, such as strikes, as coercive measures against their employers.

Members of supervisory unions who were not managerial employees, were declared by the Labor Code to be "eligible to join or assist the rank and file labor organization, and if none exists, to form or assist in the forming of such rank and file organization."^[24] Managerial employees, on the other hand, were pronounced as "not eligible to join, assist or form any labor organization."^[25] A "managerial employee" was defined as one vested with power or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions."^[26]

Presidential Decree No. 807

Clarification of the matter seems to have been very shortly attempted by the Civil Service Decree of the Philippines, Presidential Decree No. 807 (eff., Oct. 6, 1975) which superseded the Civil Service Law of 1959 (RA 2260)^[27] and repealed or modified "all laws, rules and regulations or parts thereof inconsistent with the provisions" thereof. The Decree categorically described the scope and coverage of the "Civil Service" as embracing "every branch, agency, subdivision, and instrumentality of the government, including every government owned or controlled corporation whether performing governmental or proprietary function."^[28] The effect was seemingly to prohibit government employees (including those "employed in proprietary functions of the Government") to "strike for the purpose of securing changes of their terms and conditions of employment,"^[29] something which, as aforesaid, they were allowed to do under the Civil Service Act of 1959.^[30]

Be this as it may, it seems clear that PD 807 (the Civil Service Decree) did not modify the declared ineligibility of

"managerial employees" from joining, assisting or forming any labor organization.

Executive Order No. III

Executive Order No. 111, issued by President Corazon C. Aquino on December 24, 1986 in the exercise of legislative powers under the Freedom Constitution, modified the general disqualification above mentioned of "government employees, including employees of government-owned and/or controlled corporations" from "the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining." It granted to employees "of government corporations established under the Corporation Code ** the right to organize and to bargain collectively with their respective employers." [31] To all "other employees in the civil service, ** (it granted merely) the right to form associations for purposes not contrary to law," [32] not for "purposes of collective bargaining."

The 1987 Constitution

The provisions of the present Constitution on the matter appear to be somewhat more extensive. They declare that the "right to self organization shall not be denied to government employees;" [33] that the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law;" and that said workers "shall be entitled to security of tenure, humane conditions of work, and a living wage, ** (and) also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law." [34]

CSC Memorandum Circular No. 6

Memorandum Circular No. 6, of the Civil Service Commission, issued on April 21, 1987 enjoined strikes by government officials and employees, to wit : [35]

" * * prior to the enactment by Congress of applicable laws concerning strike by government employees, and considering that there are existing laws which prohibit government officials and employees from resorting to strike, the Commission enjoins, under pain of administrative sanctions, all government officers and employees from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass action which will result in temporary stoppage or disruption of public services. To allow otherwise is to undermine or prejudice the government system."

Executive Order No. 180

The scope of the constitutional right to self-organization of "government employees" above mentioned, was defined and delineated in Executive Order No. 180 (eff. June 1, 1987). According to this Executive Order, the right of self-organization does indeed pertain to all "employees of all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters;" [36] such employees "shall not be discriminated against in respect of their employment by reason of their membership in employees' organizations or participation in the normal activities of their organization ** (and their) employment shall not be subject to the condition that they shall not join or shall relinquish their membership in the employees' organizations." [37]

However, the concept of the government employees' right of self-organization differs significantly from that of employees in the private sector. The latter's right of self-organization, i.e., "to form, join or assist labor organizations for purposes of collective bargaining," admittedly includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment and also, to engage in concerted activities for the attainment of their objectives, such as strikes, picketing, boycotts. But the right of government employees to "form, join or assist employees organizations of their own choosing" under Executive Order No.

180 is not regarded as existing or available for "purposes of collective bargaining," but simply "for the furtherance and protection of their interests." [38]

In other words, the right of Government employees to deal and negotiate with their respective employers is not quite as extensive as that of private employees. Excluded from negotiation by government employees are the "terms and conditions of employment ** that are fixed by law," it being only those terms and conditions not otherwise fixed by law that "may be subject of negotiation between the duly recognized employees' organizations and appropriate government authorities." [39] And while EO No. 180 concedes to government employees, like their counterparts in the private sector, the right to engage in concerted activities, including the right to strike, the executive order is quick to add that those activities must be exercised in accordance with law, i.e., are subject both to "Civil Service Law and rules" and "any legislation that may be enacted by Congress," [40] that "the resolution of complaints, grievances and cases involving government employees" is not ordinarily left to collective bargaining or other related concerted activities, but to "Civil Service Law and labor laws and procedures whenever applicable;" and that in case "any dispute remains unresolved after exhausting all available remedies under existing laws and procedures, the parties may jointly refer the dispute to the (Public Sector Labor-Management) Council for appropriate action." [41] What is more, the Rules and Regulations implementing Executive Order No. 180 explicitly provide that since the "terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law, the employees therein shall not strike for the purpose of securing changes thereof." [42]

On the matter of limitations on membership in labor unions of government employees, Executive Order No. 180 declares that "high level employees whose functions are normally considered as policy making or managerial, or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees." [43] A "high level employee" is one "whose functions are normally considered policy determining, managerial or one whose duties are highly confidential in nature. A managerial function refers to the exercise of powers such as: 1. To effectively recommend such managerial actions; 2. To formulate or execute management policies and decisions; or 3. To hire, transfer, suspend, lay off, recall, dismiss, assign or discipline employees." [44]

Republic Act No. 6715

The rule regarding membership in labor organizations of managerial and supervisory employees just adverted to, was clarified and refined by Republic Act No. 6715, effective on March 21, 1989, further amending the Labor Code.

Under RA 6715 labor unions are regarded as organized either (a) "for purposes of negotiation," or (b) "for furtherance and protection" of the members' rights. Membership in unions organized "for purposes of negotiation" is open only to rank-and-file employees. "Supervisory employees" are ineligible "for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own," i.e., one organized "for furtherance and protection" of their rights and interests. However, according to the Rules implementing RA 6715, "supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715 shall remain in that unit ** ." Supervisory employees are "those who, in the interest of the employer, effectively recommend such managerial actions [45] if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment." [46]

Membership in employees' organizations formed for purposes of negotiation are open to rank-and-file employees only, as above mentioned, and not to high level employees. [47] Indeed, "managerial employees" or "high level

employees" are, to repeat, "not eligible to join, assist or form any labor organization" at all."[48] A managerial employee is defined as "one who is vested with powers or prerogatives to lay down and execute, management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees."[49]

This is how the law now stands, particularly with respect to supervisory employees vis a vis labor organizations of employees under them.

Now, the GSIS performs proprietary functions. It is a non-stock corporation, managed by a Board of Trustees exercising the "usual corporate powers." [50] In other words, it exercises all the powers of a corporation under the Corporation Law in so far as they are not otherwise inconsistent with other applicable law. [51] It is engaged essentially in insurance, a business that "is not inherently or exclusively a governmental function, ** (but) is on the contrary, in essence and practice, of a private nature and interest." [52]

1. The petitioners contend that the right of self-organization and collective bargaining had been withdrawn by the Labor Code from government employees -- including those in government-owned and controlled corporations -- chiefly for the reason that the terms and conditions of government employment, all embraced in civil service, may not be modified by collective bargaining because set by law. It is therefore immaterial, they say, whether supervisors are members of rank-and-file unions or not; after all, the possibility of the employer's control of the members of the union thru supervisors thus rendering collective bargaining illusory, which is the main reason for the prohibition, is no longer of any consequence.

This was true, for a time. As already discussed, both under the Labor Code and PD 807, government employees, including those in government-owned or controlled corporations, were indeed precluded from bargaining as regards terms and conditions of employment because these were set by law and hence could not possibly be altered by negotiation.

But EO 111 restored the right to organize and to negotiate and bargain of employees of "government corporations established under the Corporation Code." And EO 180, and apparently RA 6715, too, granted to all government employees the right of collective bargaining or negotiation except as regards those terms of their employment which were fixed by law; and as to said terms fixed by law, they were prohibited to strike to obtain changes thereof.

2. The petitioners appear to be correct in their view of the disappearance from the law of the prohibition on supervisors being members of labor organizations composed of employees under their supervision. The Labor Code (PD 442) allowed supervisors (if not managerial) to join rank-and-file unions. And under the Implementing Rules of RA 6715, supervisors who were members of existing labor organizations on the effectivity of said RA 6715 were explicitly authorized to "remain therein."

3. The correctness of the petitioners' theory that unfair labor practices ceased to be crimes and were deemed merely administrative offenses in virtue of the Labor Code, cannot be gainsaid. Article 250 of the Labor Code did provide as follows:

"ART. 250. Concept of unfair labor practice. - The concept of unfair labor practice is hereby modified. Henceforth, it shall be considered merely as an administrative offense rather than a criminal offense. Unfair labor practice complaints shall, therefore, be processed like any ordinary labor disputes."

But unfair labor practices were declared to be crimes again by later amendments of the Labor Code effected by Batas Pambansa Blg. 70, approved on May 1, 1980. As thus amended, the Code now pertinently reads as follows:

"ART. 248. Concept of unfair labor practice and procedure for prosecution thereof. - Unfair labor practices violate the constitutional right of workers and employees to self organization, are inimical to the legitimate

interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided.

*** **

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code.

No criminal prosecution under this title may be instituted without a final judgment, finding that an unfair labor practice was committed having been first obtained in the preceding paragraph. * * * . "

The decisive consideration is that at present, supervisors who were already members of a rank-and-file labor organization at the time of the effectivity of R.A. No. 6715, are authorized to "remain therein." It seems plain, in other words, that the maintenance by supervisors of membership in a rank-and-file labor organization even after the enactment of a statute imposing a prohibition on such membership, is not only not a crime, but is explicitly allowed, under present law.

Now, in a case decided as early as 1935, *People v. Tamayo*,^[53] where the appellants had appealed from a judgment convicting them of a violation of a municipal ordinance, and while their appeal was pending, the ordinance was repealed such that the act complained of ceased to be a criminal act but became legal, this Court dismissed the criminal proceedings, pronouncing the effects of the repeal to be as follows:

"In the leading case of the United States vs. Cuna (12 Phil. 241), and *Wing vs. United States* (218 U.S. 272), the doctrine was clearly established that in the Philippines repeal of a criminal act by its reenactment, even without a saving clause would not destroy criminal liability. But not a single sentence in either decision indicates that there was any desire to hold that a person could be prosecuted, convicted, and punished for acts no longer criminal.

There is no question that at common law and in America a much more favorable attitude towards the accused exists relative to statutes that have been repealed than has been adopted here. Our rule is more in conformity with the Spanish doctrine, but even in Spain, where the offense ceased to be criminal, prosecution cannot be had (1 Pacheco, Commentaries, 296).

The repeal here was absolute, and not a reenactment and repeal by implication. Nor was there any saving clause. The legislative intent as shown by the action of the municipal council is that such conduct, formerly denounced, is no longer deemed criminal, and it would be illogical for this court to attempt to sentence appellant for the offense that no longer exists.

We are therefore of the opinion that the proceedings against appellant must be dismissed."

To the same effect and in even more unmistakable language is *People v. Almuete*,^[54] where the defendants-appellees were charged criminally under section 39 of Republic Act No. 1199, as amended (the Agricultural Land Tenancy Law of 1954) which penalized pre-threshing by either agricultural tenant or his landlord. They sought and secured a dismissal on the ground, among others, that there was no law punishing the act charged - a reference to the fact that Republic Act No. 1199 had already been superseded by the Agricultural Land Reform Code of 1963 which instituted the leasehold system and abolished share tenancy subject to certain conditions. On appeal by the Government, this Court upheld the dismissal, saying:

"The legislative intent not to punish anymore the tenant's act of pre-reaping and pre-threshing without notice to

the landlord is inferable from the fact that, as already noted, the Code of Agrarian Reforms did not reenact section 39 of the Agricultural Tenancy Law and that it abolished share tenancy which is the basis for penalizing clandestine pre-reaping and pre-threshing.

"As held in the Adillo case,[55] the act of pre-reaping and pre-threshing without notice to the landlord, which is an offense under the Agricultural Tenancy Law, had ceased to be an offense under the subsequent law, the Code of Agrarian Reforms. To prosecute it as an offense when the Code of Agrarian Reforms is already in force would be repugnant or abhorrent to the policy and spirit of that Code and would subvert the manifest legislative intent not to punish anymore pre-reaping and pre-threshing without notice to the landholder.

"The repeal of a penal law deprives the courts of jurisdiction to punish persons charged with a violation of the old penal law prior to its repeal (People vs. Tamayo, 61 Phil. 225; People vs. Sindiong and Pastor, 77 Phil. 1000; People vs. Binuya, 61 Phil. 208; U.S. vs. Reyes, 10 Phil. 423; U.S. vs. Academia, 10 Phil. 431. See dissent in Lagrimas vs. Director of Prisons, 57 Phil. 247, 252, 254)."

The foregoing precedents dictate absolution of the appellants of the offenses imputed to them.

WHEREFORE, the judgments of conviction in CA-G.R. No. 14724-CR and CA-G.R. No. 14856-CR, subject of the appeal, as well as those in Crim. Case No. 5275-R and Crim. Case No. 4130-R rendered by the Trial Court, are REVERSED and the accused-appellants ACQUITTED of the charges against them, with costs de officio.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Republic Act No. 875, eff. JAN. 17, 1953

[2] RA 875, Sec. 11: "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 modification in 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 the 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." (Emphasis supplied)

[3] RA 875, Sec. 3, reading: "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 own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own." (Emphasis supplied)

[4] Id., Sec. 25, reading: "Any person who violates the provisions of section three of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment of not less than one month nor more than one year, or by both such fine and imprisonment, in the discretion of the Court. **."

[5] SEE Manila Cordage Co. v. CIR, 78 SCRA 408

[6] Crim. Case No. 5275-R

[7] Crim. Case No. 4130-R

[8] Judgment of conviction in Crim. Case No. 5275-R, against Arizala and Maribao, was rendered by City Judge Romulo R. Senining; that in Crim. Case No. 4130-R, against Joven and Bulandus, by City Judge Eliseo Ynclino.

[9] At that time, appeals from the City Court directly to the Court of Appeals were allowed, in view of the concurrence of criminal jurisdiction between the City Court and the Court of First Instance (Sec. 44 [f] and Sec. 87 [b] of RA 296, the Judiciary Act of 1948; see *Peo. v. Nazareno*, 70 SCRA 531 [1976]). Under BP Blg. 129 (Sec. 20 in relation to Sec. 32), appeals of this sort are no longer authorized; appeals from Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts may be taken only to the proper Regional Trial Court (Sec. 22; SEE Par. 21, Interim Rules Re Implementation of BP Blg. 129: Resolution of the Supreme Court en banc dated Jan. 11, 1983).

[10] ART. 266, Labor Code, *supra*

[11] ART. 249, *id.*

[12] Footnote 2, p. 1, and footnote 4, p. 2, *supra*

[13] Sec. 2 (k), RA 875

[14] Sec. 3

[15] Issued on Sept. 22, 1972;

[16] Sec. 28 (c)

[17] Sec. 4. The penalty under the Industrial Peace Act was a fine of not less than one hundred pesos nor more than one thousand pesos, or imprisonment of not less than one month nor more than one year, or by both such fine and imprisonment, in the discretion of the Court (SEE footnote 4, *supra*).

[18] Sec. 9, ART. II

[19] Sec. 6, ART. XII, B

[20] The Labor Code became effective on Nov. 1, 1974

[21] ART. 314

[22] ART. 243; SEE Implementing Rules and Regulations issued on Jan. 19, 1975, eff. Feb. 3, 1975

[23] Sec. 1, Rule 11, Book V, Implementing Rules; italics supplied

[24] Sec. 11, Rule II, Book V, Rules Implementing the Labor Code

[25] ART. 246, Labor Code, emphasis supplied

[26] ART. 260 (k), cf, footnote 13 re supervisory employees

[27] P. 5, *supra*

[28] Sec. 4, ART. IV

[29] SEE footnote 12, *supra*

[30] SEE footnote 14, *supra*

[31] ART. 244; also, SEC. 1, Rule 11, Book V of the Rules Implementing the Labor Code, as amended by Sec. 3 of the Implementing Rules of EO 111; emphasis supplied

[32] ART. 244, italics supplied

[33] SEC. 2 (5), ART. IX-B (re Constitutional Commissions)

[34] Sec. 3, ART. XIII (Social Justice and Human Rights), italics supplied

[35] See footnote 15 and related text, *supra*

[36] Sec. 1, EO 180. Excepted from the application of the executive order, however, are "members of the Armed Forces of the Philippines, including police officers, policemen, firemen and jail guards" (Sec. 4).

[37] SEC. 5, Rule II. A further safeguard is that "Government authorities shall not interfere in the establishment, functioning or administration of government employees' organizations through acts designed to place such organizations under the control of government authority." (Sec. 6)

[38] Sec. 2, *id.*; see footnote 12 and related text

[39] Sec. 13, *id.* Declared to be "not negotiable" are matters "that require appropriation of funds;" e.g., increase in salary emoluments and other allowances, car plan, special hospitalization, medical and dental services, increase in retirement benefits (Sec. 3, Rule VIII), and those "that involve the exercise of management prerogatives;" e.g., appointment, promotion, assignment/detail, penalties as a result of disciplinary actions, etc. (Sec. 4, *id.*) Considered negotiable are such matters as schedule of vacation and other leaves, work assignment of pregnant women; recreational, social, athletic, and cultural activities and facilities, etc. (Sec. 2, *id.*).

[40] Sec. 14, *id.*

[41] Sec. 16, *id.* The Council shall implement and administer the provisions of the Executive Order and for this purpose may promulgate the necessary rules and regulations. It is composed of the Chairman of the Civil Service Commission, as Chairman; the Secretary of the Department of Labor & Employment, as Vice-Chairman; and as members, the Secretary of Finance, the Secretary of Justice, and the Secretary of Budget & Management. (SEC. 15)

[42] Sec. 4, Rule III, Rules Implementing EO 180; italics supplied

[43] Sec. 3, *id.*

[44] Sec. 1 (1), Rule I, Rules Implementing EO 180

[45] *Infra*, footnotes 46 and 49

[46] ART. 212 (m), Labor Code as amended by RA 6715. A "supervisor" is defined in the old law (RA 875) as "any person having authority in the interest of an employer to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline other employees, or responsibly to direct them, and to adjust their grievance or effectively to recommend such acts if, in connection with the foregoing, the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment."

[47] Sec. 2, Rule II

[48]ART. 245.

[49] ART. 212 (m), Labor Code, as amended by Sec. 4, RA 6715; cf, footnote 41, supra, and ART. 260 (k) of the original Labor Code (PD 442)

[50] C.A. No. 186, as amended by R.A. No. 660

[51] Sec. 4, Executive Order No. 339, the Uniform Charter for Government Corporations

[52] GSIS v. Castillo, et al., 98 Phil. 876, 878-879; Boy Scouts of the Philippines v. Araos, 107 Phil. 1080 [1960]; GSIS Employees Association [GSISEU], et al. v. Alvendia, et al., 108 Phil, 505 [1960]; Alliance of Government Workers v. Minister of Labor and Employment, 124 SCRA 1 [1983]; GSIS v. GSIS Supervisors' Union, et al., 85 SCRA 90 [1978]

[53] 61 Phil. 225, 226-227.

[54] 69 SCRA 410, 413-414 (Feb. 27, 1976)

[55] L-23785, November 27, 1975; 68 SCRA 90

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