

**DEPARTMENT OF PUBLIC SERVICES LABOR UNION, PETITIONER, VS.
THE COURT OF INDUSTRIAL RELATIONS, HON. ARSENIO H. LACSON
AND THE MUNICIPAL BOARD OF THE CITY OF MANILA,
RESPONDENTS.**

G.R. No. L-15458. January 28, 1961

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is a petition for the enforcement of Republic Act 1880, which amended section 562 of the Revised Administrative Code, fixing, except in certain cases, the legal number of hours of labor in every branch of the Government service as well as in government-owned and controlled corporations at 8 hours a day, for five days a week, or a total of 40 hours a week. The petition, which also prays for the recovery of overtime compensation, was filed with the Court of Industrial Relations by the Department of Public Services Labor Union against the Mayor and the Municipal Board of the City of Manila.

Instead of answering, the respondents filed a motion to dismiss the petition on the grounds that the Court of Industrial Relations has no jurisdiction over the subject-matter of the case and that the petition states no cause of action. The union opposed the motion, but the trial Judge, after hearing, sustained the motion and on February 25, 1959 issued an order dismissing the petition. Reconsideration of this order having been denied by the court en banc, the complaining union filed the present petition for review.

We find the petition to have been properly dismissed by the court below.

The petitioning union is composed of employees and laborers of the Department of Public Services of the city of Manila. The principal duties and functions of said department as defined in section 80 of the city's Revised Charter (Republic Act No. 409, as amended), are as follows:

"(a) * * * care, custody and cleaning of all public buildings including, markets and slaughterhouses and buildings rented for city purposes; public toilets; collection and disposal of garbage, refuse, contents of toilets and cesspools, and all other offensive and dangerous substances within the city."

It is obvious from the nature of the duties imposed upon, and performed by, the Department of Public Services that the City of Manila, through that department, is not functioning in its proprietary or private capacity, but rather in its governmental or public character. As was held in the case of *Curry vs. City of Highland Park* (242 Mich. 614, 219 N. W. 745), "The collection and disposal of garbage and acting in conserving the public health is governmental wherein the municipality acts for the state." This must be so, for, surely, in the collection and disposal of garbage, the City of Manila does not obtain any special corporate "benefit or pecuniary profit, but acts in the interest of health, safety and the advancement of the public good or welfare as affecting the public generally. Such being the case, it follows that the Industrial Court has no jurisdiction to take cognizance of the case. The rule is settled that in the performance of its governmental functions, a municipal corporation, like the

City of Manila, acts as an agent of the State, and as such, is immune from suit unless consent thereto has been given. Such consent must be expressed in unequivocal language and here no consent of the Government has been shown. (See *Metran vs. Paredes, et al.*, 79 Phil., 819; 45 Off. Gaz. [7] 2835.)

In addition, it should be stated that the present petition is mainly for the reduction of the working days of those employed in the Department of Public Services to 5 days a week as prescribed by Republic Act No. 1880 amending section 562 of the Revised Administrative Code, instead of 7 days as required in view of the exigencies of the service. Said section 562 of the Revised Administrative Code, as amended, provides that the legal number of hours in every branch of the Government service as well as in government-owned and controlled corporations shall be 8 hours a day, for 5 days a week, or a total of 40 hours a week, except those "for schools, courts, hospitals and health clinics or where the exigencies of the service so require." The law was implemented by Executive Order No. 251 promulgated by the President on June 26, 1957, with the proviso that "when the interest of the public service so require, the head of any department, bureau, or office may extend the daily hours of labor for any or all of the employees under him, and may likewise require any or all of them to do overtime work not only on work days but also on holidays." This is in accordance with section 566 of the Revised Administrative Code. It is to be observed that there is nothing in the law in question or in the implementing order that imposes upon the respondent Mayor or Municipal Board of Manila the duty to apply the benefit of said law to all employees and laborers of the city government. On the contrary, the law gives to the respondent Mayor ample authority and discretion to extend their work schedule beyond the prescribed number of days and hours of labor. If the members of the petitioning union are required to work seven days a week, as before the enactment of Republic Act No. 1880, it must be because their work is demanded by the "exigencies of the service." Indeed, if the number of their work days is reduced, or if they are given days-off on Saturdays and Sundays, including holidays, public health and sanitation would be undermined and endangered by the non-collection of garbage and other refuse matters, not to mention the foul odor that would fill the city atmosphere in those two or more days.

Regarding petitioner's claim for overtime compensation, section 259 of the Revised Administrative Code provides:

"SEC. 259. Inhibition against payment of extra compensation.— In the absence of special provision, persons regularly and permanently appointed under the Civil Service Law or whose salary, wages, or emoluments are fixed by law or regulation shall not, for any service rendered or labor done by them on holidays or for other overtime work, receive or be paid any additional compensation; nor, in the absence of special provision, shall any officer or employee in any branch of the Government Service receive additional compensation on account of the discharge of duties pertaining to the position of another or for the performance of any public service whatever, whether such service is rendered voluntary or is exacted of him under authority."

The above quoted legal provision has not been amended or modified in any way by Republic Act No. 1880. Applying the same to the present case, it follows that since the members of the petitioner are government employees appointed under the Civil Service Law and their salaries, wages, or emoluments are fixed by law or ordinance, they have no right to overtime compensation for work required of them in the interest of the service beyond the number of days and hours prescribed by Republic Act No. 1880. The city government may, of course, grant its employees overtime compensation for extra hours of work, but the granting of such compensation is, at best, a matter of administrative policy that is discretionary and dependent upon the city's financial conditions. At any rate, the Eight-Hour Labor Law applies only to employment in industry or occupation performed for profit or gain. (*Marcelo, et al. vs. Philippine National Red Cross, et al.*, 101 Phil., 544; *Boy Scouts of the Philippines vs. Araos*, 102 Phil., 1080.) As already seen, the City of Manila in the collection and disposal of garbage and other refuse matters thru the Department of Public Services, is not engaged in an industry or occupation for profit, but exercises governmental function and, consequently, acts as an agent of the state.

Wherefore, the order of dismissal sought to be reviewed is affirmed, with costs against the petitioning union.

Bengzon, Labrador, Paredes, and Dizon, JJ., concur.

Bautista Angelo and Barrera, JJ., concur in the result.

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