

CIVIL AVIATION AUTHORITY OF THE PHILIPPINES EMPLOYEES' UNION (CAAP-EU) FORMERLY AIR TRANSPORTATION EMPLOYEES' UNION (ATEU), PETITIONER, VS. CIVIL AVIATION AUTHORITY OF THE PHILI...

G.R. No. 190120. November 11, 2014

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before this Court is an Amended Petition[1] for Prohibition with prayer for the issuance of a Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction filed by petitioner Civil Aviation Authority of the Philippines Employees' Union (CAAP-EU) formerly Air Transportation Employees' Union (ATEU) (petitioner) – a legitimate union of employees of respondent Civil Aviation Authority of the Philippines (CAAP). Petitioner prays that the Court direct all respondents to desist from promulgating and implementing Authority Orders, Memoranda and all other issuances relating to the filling up of positions within the CAAP whether existing or newly created, and praying that the Court nullify and set aside the following:

- Authority Order No. 77-08;[2]
- Authority Order No. 118-08;[3]
- Authority Order No. 139-08;[4]
- Authority Order No. 163-08;[5]
- Authority Order No. 172-08;[6]
- Authority Order No. 173-08;[7]
- Authority Order No. 181-08;[8]
- Authority Order No. 81-09;[9]
- Authority Order No. 82-09;[10] and
- Authority Order No. 83-09[11]

all issued by respondent Ruben F. Ciron, former Acting Director General of the CAAP allegedly with grave abuse of discretion amounting to lack of or in excess of jurisdiction. Petitioner asserts that such grave abuse of discretion was shown by the issuances of said Authority Orders and Memoranda which resulted in the classification and treatment of the incumbent personnel of the Air Transportation Office (ATO), now of CAAP, into “hold-over” status, thus violating the provisions of Republic Act (R.A.) No. 9497[12] otherwise known as the Civil Aviation Authority Act of 2008 and the security of tenure of government employees guaranteed by the 1987 Constitution and R.A. No. 6656.[13]

A brief historical background of the CAAP is in order.[14]

On November 20, 1931, the Philippine Legislature passed Act No. 3909[15] providing that the Secretary of the Department of Commerce and Communications has the duty, among others, to foster air commerce, encourage the establishment of airports, civil airways and other navigation facilities and investigate causes of air mishaps. As such, said Secretary has the power to administer and enforce air traffic rules, issue or revoke licenses and issue regulations necessary to execute his vested functions.

On December 5, 1932, Act No. 3996[16] amended Act No. 3909 as to matters concerning the licensing of airmen and aircraft, inspection of aircraft, air traffic rules, schedules and rates and enforcement of aviation laws.

On December 9, 1932, Act No. 4033[17] was approved, providing, among others, that no aviation public service, including those of foreign aircrafts, shall operate in the Philippines without having first secured from the Philippine Legislature a franchise to operate an air service.[18]

CAAP narrated that from 1932 to 1936, there were no standard procedures as to the licensing of airmen, registration of aircraft and recording of various aeronautical activities connected with commercial aviation. There were attempts made to register planes and their owners without ascertaining their airworthiness and to record names of pilots, airplane mechanics and other details. It was also narrated that in 1933, the office of Technical Assistant of Aviation Matters was expanded into the Aeronautics Division under the Department of Commerce and Industry, the functions of which were embodied in Administrative Order No. 309, a joint Bulletin issued by the Department of Public Works and Communications and the Department of Finance.[19]

On November 12, 1936, the National Assembly passed Commonwealth Act No. 168,[20] otherwise known as the Civil Aviation Law of the Philippines, creating the Bureau of Aeronautics and organizing the same under the Department of Public Works and Communications.[21] After the liberation of the Philippines in March 1945, the Bureau was reorganized and placed under the Department of National Defense. Among its functions was to promulgate civil aviation regulations.[22]

On October, 1947, Executive Order (E.O.) No. 94 which reorganized the government, transferred the Bureau of Aeronautics to the newly created Department of Commerce and Industry and renamed the same as the Civil Aeronautics Administration (CAA).[23]

On June 5, 1948, R.A. No. 224[24] created the National Airports Corporation, serving as an agency of the Republic of the Philippines for the development, administration, operation and management of government-owned landing fields in the country[25] except for those controlled and/or operated by the Armed Forces.

On November 10, 1950, the National Airports Corporation was abolished by E.O. No. 365[26] and was replaced by the CAA.[27]

On June 20, 1952, R.A. No. 776,[28] otherwise known as the Civil Aeronautics Act of the Philippines, was passed, reorganizing the Civil Aeronautics Board and the CAA, defining their respective powers and duties, making adjustments as to the funds and personnel and regulating civil aeronautics. Under R.A. No. 776, the CAA was charged with the duty of planning, designing, constructing, equipping, expanding, improving, repairing or altering aerodromes or such other structures, improvements or air navigation facilities.[29]

On October 19, 1956, former President Ramon Magsaysay issued E.O. No. 209,[30] transferring in toto the CAA to the Department of Public Works, Transportation and Communications from the Department of Commerce and Industry.[31]

On January 20, 1975, Letter of Instruction No. 244, series of 1975,[32] directed that all funds for the preliminary engineering, construction and maintenance of all national airports appropriated for the fiscal year 1974-75 be transferred and/or released to the Department of Public Highways. The responsibilities related to location, planning design and funding were later returned to the CAA.[33]

On July 23, 1979, former President Ferdinand E. Marcos issued E.O. No. 546,[34] renaming the CAA as the Bureau of Air Transportation (BAT) and placing the same under the Ministry of Transportation and Communications.[35]

Subsequently, BAT, though reorganized, was maintained under E.O. No. 125[36] issued by former President Corazon C. Aquino (President Aquino) on January 30, 1987. Shortly thereafter or on April 13, 1987, President Aquino issued E.O. No. 125-A[37] renaming BAT to ATO which would be headed by the Assistant Secretary of the Office of Air Transportation.[38] Section 12[39] of said E.O. No. 125 which contained the proviso concerning BAT was deleted by Section 2[40] of E.O. No. 125-A.

As duly claimed by petitioner, sometime in the middle of 1995, the Philippine civil aviation safety oversight capability was downgraded by the United States of America (USA) through her Federal Aviation Administration (FAA) International Aviation Safety Assessment (IASA) into a Category 2[41] status. A Category 2 rating means a country either lacks laws or regulations necessary to oversee air carriers in accordance with minimum international standards, or that its civil aviation authority – equivalent to the FAA for aviation safety matters – is deficient in one or more areas, such as technical expertise, trained personnel, record keeping or inspection procedures. Correlatively, a Category 1 rating means a country's civil aviation authority complies with the International Civil Aviation Organization[42] (ICAO) standards, thus, her air carriers can add flights and services to the USA and carry the code of USA carriers.[43] Petitioner attested that sometime in the first quarter of 1997, the Category 1 status was regained by the Philippines as it was successfully initiated by the organic/incumbent personnel of the defunct ATO.

However, sometime in January 2008, the FAA reverted the Philippines to its 1995 air safety rating of Category 2 from Category 1 because of air safety regulations, practices and personnel that fell below the standards of the ICAO.[44]

Thus, on March 4, 2008, R.A. No. 9497 was passed, whereby ATO was replaced by CAAP, to be headed by the Director General of Civil Aviation. Pursuant to Sections 4[45] and 85[46] thereof, the ATO was abolished, and all its powers were transferred to the CAAP. To ensure the smooth transition from ATO to CAAP, Section 86[47] of R.A. No. 9497 directed the Assistant Secretary of the ATO to continue to hold office and assume the powers of the CAAP Director General until his successor shall have been appointed and inducted into office in accordance with said law. Likewise, retirement packages were provided to ATO employees who were willing to retire from the service.

On July 2, 2008, former President Gloria Macapagal-Arroyo appointed Ruben F. Ciron as Acting Director General of the CAAP.[48] Immediately upon assumption of office, Ciron issued orders and memoranda for the active participation of incumbent and organic personnel of the defunct ATO along with his hired consultants in the crafting and formulation of the Implementing Rules and Regulations (IRR) of R.A. No. 9497, the new Organizational Structure and Staffing Pattern (OSSP) and the Qualification Standards (QS) for the proposed new plantilla of positions within the CAAP.

Accordingly, the Board of Directors of CAAP prepared its OSSP and the IRR of R.A. No. 9497, both of which were approved in Board Resolution No. 08-001[49] dated July 30, 2008. Pursuant to Section 90[50] of R.A. No. 9497, the IRR was formulated and was subsequently published in two newspapers of general circulation.[51]

Pertinently, Section 60 (a) of the IRR provides that the incumbent personnel of the former ATO shall continue to hold office in hold-over capacity until such time as the new Staffing Pattern and Manning shall have been approved by the Board and implemented by the CAAP Director General. Thereafter, the management of CAAP endorsed its OSSP for the approval of respondent Department of Budget and Management (DBM) in view of the latter's authority to review reorganization details of government agencies. The OSSP was approved on July 20, 2009.[52] However, petitioner lamented, among others, that the IRR, OSSP and QS approved by the CAAP Board of Directors were different from that agreed upon by the incumbent ATO personnel and Director General Ciron and his consultants.

Subsequently, Senate Concurrent Resolution No. 10[53] and House Concurrent Resolution No. 27[54] were issued, which clarified, among others, the intent of the lawmakers as regards the abolition of ATO; the hold-over status of qualified employees of ATO and the preferential status of the said employees with respect to the filling up of CAAP plantilla positions.

Aggrieved, on November 20, 2009, petitioner filed the Original Petition for Prohibition[55] directly before this Court. Said petition was subsequently amended on November 25, 2009. It assails the aforementioned Authority Orders, Memoranda and other issuances related to the selection and filling up of positions issued by Director General Ciron and seeks the nullification thereof including the IRR of R.A. No. 9497, the OSSP and QS for the employees of CAAP.

Petitioner invokes the following grounds:

I.

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING AND IMPLEMENTING AUTHORITY ORDERS, MEMORANDA AND ALL OTHER ISSUANCES RELATED TO THE SELECTION AND FILLING UP OF POSITIONS IN THE CAAP, WHETHER EXISTING OR NEWLY CREATED, CONSIDERING THE ABSENCE OF POSITIONS, ITEM NUMBERS, QUALIFICATION STANDARDS AND PUBLICATION, WHICH ARE INDISPENSABLE REQUIREMENTS PRIOR TO THE SELECTION AND APPOINTMENT TO ANY GOVERNMENT POST [; AND]

II.

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN EXPANDING THE APPLICABILITY OF THE "HOLD-OVER" STATUS IN THE IMPLEMENTING RULES AND REGULATIONS OF R.A. 9497, THUS VIOLATING THE EXPRESS PROVISIONS OF R.A. 9497 AND THE SECURITY OF TENURE OF GOVERNMENT EMPLOYEES GUARANTEED BY THE 1987 CONSTITUTION AND R.A. 6656.[56]

Petitioner explains that it directly sought recourse from this Court because there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Even if there would be any remedy, petitioner submits that such would be ineffective given the brazenness of respondents' official actions. Petitioner also claims that it sought redress from the different agencies of the government but its actions were an exercise in futility because said agencies failed to act on its grievances. Petitioner further avers that since it represents government employees in an agency which is national in scope and whose function is highly imbued with public interest affecting national security and the economy, it would be paramount that its issues be resolved by this Court.[57]

On the merits, petitioner argues, among others, that respondents committed grave abuse of discretion in the issuance and implementation of the assailed Authority Orders and Memoranda because they placed the tenure of the CAAP personnel in jeopardy in clear violation of the latter's security of tenure which is protected by the 1987 Constitution[58] and R.A. No. 6656. Petitioner points out that while Sections 85 and 86 of R.A. No. 9497 literally

abolished ATO, nevertheless, the tenor of the provisions thereof simply perpetuated and assumed the core of civil aviation regulatory functions, powers, and authority, including all assets of the defunct ATO. Petitioner also invokes the Minutes of the Discussion of the Bicameral Conference Committee on the Disagreeing Provisions of HBN 3156 and the amendments agreed upon on “The Creation of the Civil Aviation Authority,”[59] and asserts that the real intention of R.A. No. 9497 was merely reorganization of the agency and not its entire abolition. Purportedly, abolition of an office cannot have the effect of removing an officer holding it if the office is restored under another name. Petitioner further contends that while Section 86 of R.A. No. 9497 categorically states that “the incumbent Assistant Secretary of the ATO shall continue to hold office and assume the powers of the Director General until his successor shall have been appointed and inducted into office,” the law made no mention of the status of the employment of the personnel of the defunct ATO. The employees’ hold-over status as indicated in the IRR and in the Joint Senate Resolutions is opposed to Section 86 of R.A. No. 9497 which merely limits such status to the incumbent Assistant Secretary of the ATO as acting CAAP Director General. Likewise, petitioner asserts that the IRR expanded and modified the law and that the legislature through the issuance of said Resolutions encroached on the functions of this Court in interpreting the same. All told, petitioner submits that R.A. No. 9497 simply mandated that the selection and appointment of the heads of offices within CAAP are limited to the rank-and-file employees of the concerned or corresponding offices of the defunct ATO and that the personnel of the same, unless they opted to retire, are legally deemed transferred to the newly created CAAP. The hold-over status accorded to the incumbent personnel of the ATO deviated from the law and the same personnel were placed in a disadvantageous situation and were stripped of their security of tenure.[60]

On the other hand, CAAP through the Office of the Government Corporate Counsel (OGCC) counters that the issue regarding the nullification of the assailed Authority Orders has become moot and academic. The OGCC asseverates that when the new CAAP Director General Alfonso G. Cusi (Director General Cusi) assumed office, he issued a Memorandum[61] dated March 12, 2010 which provided that coterminous employees, consultants and job-order employees are deemed not employed under the CAAP unless reappointed or renewed, thus terminating the services of all the personnel appointed by Director General Ciron. The OGCC submits that there being no justiciable controversy, there is nothing for this Court to adjudicate. Moreover, the OGCC advances the view that petitioner failed to establish its right to injunctive relief as its bare and self-serving allegations failed to overthrow the presumption that CAAP regularly performed its official functions in the promulgation and/or implementation of the assailed orders. The OGCC also submits that petitioner disregarded the basic principle of the hierarchy of courts and the doctrine that this Court is not a trier of facts when petitioner directly filed the instant petition before us. The OGCC points out that, despite petitioner’s claim that it sought redress from different government agencies, petitioner failed to substantiate such claim. The selection processes assailed by petitioner, according to the OGCC, constitute triable facts and necessitate the determination and resolution of factual issues. Lastly, the OGCC questions the legal personality of petitioner to file the petition in behalf of the CAAP employees. The OGCC posits that while petitioner was registered as the employees’ union of the now abolished ATO, petitioner was not registered with the CSC.[62]

On this point, respondents DBM and CSC through the Office of the Solicitor General (OSG) opine that DBM acted within the scope of its authority when it approved the OSSP of the CAAP on July 20, 2009 as the same was done in the performance of DBM’s official functions as provided under E.O. No. 165, series of 1987.[63] With its bare and unsubstantiated allegations, petitioner failed to prove that DBM acted with grave abuse of discretion in the approval thereof. Moreover, invoking that ATO was effectively abolished by R.A. No. 9497, the OSG defends the validity of Section 60(a) of the IRR which states that the incumbent personnel of the ATO shall continue to hold office in a “hold[-]over capacity until such time [that a] new [s]taffing [p]attern and [m]anning [is] approved by the Board.” The OSG posits that while it is true that an incumbent employee of the defunct ATO is given

preference in the filling up of a plantilla position, said employee does not automatically qualify to the position he is presently holding. Thus, said employee still has to qualify under the new and approved staffing pattern and the new QS set by the CSC. Such approved QS shall be used as the standard minimum qualification requirements for purposes of appointments per CSC Memorandum Circular No. 03, series of 1991. However, if the incumbent fails to qualify, the affected employee may choose from the retirement packages provided under R.A. No. 9497 itself.[64] The OSG asserts that in this case the employees' right to security of tenure as embodied under Section 2(3),[65] Article IX-B of the 1987 Constitution is not undermined. The OSG avers that the CSC has not yet received any appointments from the CAAP for attestation; hence, to restrain the CSC is premature.[66]

In essence, the issues for our resolution are:

- Whether ATO was abolished under R.A. No. 9497;
- Whether the incumbent ATO employees' constitutional right to security of tenure was impaired; and
- Whether there was grave abuse of discretion when Section 60 of the IRR provided a "hold-over" status for ATO employees, which was not expressly provided for under R.A. No. 9497.

Prefatorily, we rule that petitioner has locus standi. Petitioner impugns the constitutionality of the IRR of R.A. No. 9497 and assails the validity of the abolition of the ATO and respondents' acts in filling up positions within CAAP. Petitioner's members are all employees of the defunct ATO and are actually covered by the law and its IRR. Thus, they have a personal and substantial interest in the case, such that they will sustain direct injury as a result of the enforcement of R.A. No. 9497 and its IRR.[67]

The Court agrees with the postulation of the OGCC that the nullification of the assailed Authority Orders has become moot and academic considering that Director General Cusi already issued a Memorandum[68] dated March 12, 2010, terminating the services of all the personnel appointed by Director General Ciron. An issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[69] The Court will therefore abstain from expressing its opinion in a case where no legal relief is needed or called for.[70]

Nevertheless, despite this moot issue and the presence of some procedural flaws in the instant petition, such as petitioner's disregard of the hierarchy of courts and the non-exhaustion of administrative remedies, we deem it necessary to address the essential issues. It is in the interest of the State that questions relating to the status and existence of a public office be settled without delay.[71]

That being said, we rule that the petition is bereft of merit.

The first issue is resolved in the affirmative.

Well entrenched in this jurisdiction is the rule that the power to abolish a public office is lodged with the legislature. This proceeds from the legal precept that the power to create includes the power to destroy. A public office is created either by the Constitution, by statute, or by authority of law. Thus, except where the office was created by the Constitution itself, it may be abolished by the same legislature that brought it into existence.[72]

Indubitably, this is the case at hand. The legislature through R.A. No. 9497 abolished the ATO as explicitly stated in Sections 4 and 85 thereof, viz:

SEC. 4. Creation of the Authority. – There is hereby created an independent regulatory body with quasi-judicial and quasi-legislative powers and possessing corporate attributes to be known as the Civil Aviation Authority of the Philippines (CAAP), hereinafter referred to as the "Authority", attached to the Department of Transportation and Communications (DOTC) for the purpose of policy coordination. For this

purpose, the existing Air Transportation Office created under the provisions of Republic Act No. 776, as amended, is hereby abolished.

x x x x

SEC. 85. Abolition of the Air Transportation Office. – The Air Transportation Office (ATO) created under Republic Act No. 776, a sectoral office of the Department of Transportation and Communications (DOTC), is hereby abolished.

All powers, duties and rights vested by law and exercised by the ATO is hereby transferred to the Authority.

All assets, real and personal properties, funds and revenues owned by or vested in the different offices of the ATO are transferred to the Authority. All contracts, records and documents relating to the operations of the abolished agency and its offices and branches are likewise transferred to the Authority. Any real property owned by the national government or government-owned corporation or authority which is being used and utilized as office or facility by the ATO shall be transferred and titled in favor of the Authority. (Emphasis supplied)

Verily, the question whether a law abolishes an office is a question of legislative intent. In this case, petitioner tries to raise doubts as to the real intention of Congress. However, there should not be any controversy if there is an explicit declaration of abolition in the law itself.[73] For where a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempt to interpret. *Verba legis non est recedendum, index animi sermo est.* There should be no departure from the words of the statute, for speech is the index of intention.[74] The legislature, through Sections 4 and 85 of R.A. No. 9497, has so clearly provided. As the Court merely interprets the law as it is, we have no discretion to give statutes a meaning detached from the manifest intent and language thereof.[75]

It is worth mentioning that this is not the first time for this Court to rule regarding the abolition of the ATO and the emergence of the CAAP by virtue of R.A. No. 9497. Holding that the CAAP, as the legal successor of the ATO, is liable to respondents therein for obligations incurred by ATO, this Court in *Air Transportation Office v. Ramos*,[76] in no uncertain terms, held that the ATO was abolished by virtue of Sections 4 and 85 of R.A. No. 9497.

Thus, we find petitioner's assertion that the real intention of R.A. No. 9497 was merely the reorganization of the ATO and not its abolition devoid of merit.

Correlatively, we resolve the second issue in the negative.

For the ATO employees' security of tenure to be impaired, the abolition of the ATO must be done in bad faith.

At this juncture, our ruling in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*[77] is instructive, to wit:

A valid order of abolition must not only come from a legitimate body, it must also be made in good faith. An abolition is made in good faith when it is not made for political or personal reasons, or when it does not circumvent the constitutional security of tenure of civil service employees. Abolition of an office may be brought about by reasons of economy, or to remove redundancy of functions, or a clear and explicit constitutional mandate for such termination of employment. Where one office is abolished and replaced with another office vested with similar functions, the abolition is a legal nullity. When there is a void abolition, the incumbent is deemed to have never ceased holding office.

We have also held that, other than the aforesaid reasons of economy, making the bureaucracy more efficient is also indicative of the exercise of good faith in, and a valid purpose for, the abolition of an office.[78]

The purpose for the abolition of the ATO is clearly manifested in Section 2 of R.A. No. 9497:

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to provide safe and efficient air transport and regulatory services in the Philippines by providing for the creation of a civil aviation authority with jurisdiction over the restructuring of the civil aviation system, the promotion, development and regulation of the technical, operational, safety, and aviation security functions under the civil aviation authority. (Emphasis supplied)

It cannot be disregarded that in January 2008, before the enactment of R.A. No. 9497, the Philippines was again downgraded by the FAA to a Category 2 status because of air safety regulations, practices and personnel which fell below the ICAO's standards. Hence, it is but reasonable to state that the purpose for the abolition of the ATO, as posited by petitioner itself, was "to create a much more effective Agency in order to address the problems that go along with the fast emerging developments in the field of the globally-competitive aviation industry." [79]

On the other hand, circumstances evidencing bad faith are enumerated in Section 2 of R.A. No. 6656 which provides:

SEC. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

(a)

Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;

(b)

Where an office is abolished and another performing substantially the same functions is created;

(c)

Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

(d)

Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;

(e)

Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis supplied)

Petitioner posits that abolition of an office cannot have the effect of removing an officer holding it if the office is restored under another name. However, we find no bad faith in the abolition of the ATO as the latter was not simply restored in another name in the person of the CAAP. Thus, we compare the ATO and the CAAP.

ATO was merely a sectoral office of the Department of Transportation and Communications (DOTC) and as such acted within the supervision of the latter and budgeted under it. As Section 2 of E.O. No. 125-A, series of 1987 deleted Section 12[80] of E.O. No. 125, series of 1987 which delineated the functions of the former BAT, we rely

on R.A. No. 776 in citing the functions of the CAA which were succeeded by the ATO through the powers and duties of the CAA Administrator. Section 32 of R.A. No. 776 provides:

SEC. 32. Powers and duties of the Administrator. – Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:

(1) To carry out the purposes and policies established in this Act; to enforce the provisions of, the rules and regulations issued in pursuance to, said Act; and he shall primarily be vested with authority to take charge of the technical and operational phase of civil aviation matters.

(2) To designate and establish civil airways, and to acquire, control, operate and maintain along such airways, air navigation facilities and to chart such airways and arrange for their publication including the aeronautical charts or maps required by the international aeronautical agencies by utilizing the equipment, supplies or assistance of existing agencies of the government as far as practicable.

(3) To issue airman's certificate specifying the capacity in which the holder thereof is authorized to serve as airman in connection with aircraft and shall be issued only upon the finding that the applicant is properly qualified and physically able to perform the duties of the position. The certificate shall contain such terms, conditions and limitations as the Administrator may determine to be necessary to assure safety in air commerce: Provided, however, That the airman's license shall be issued only to qualified persons who are citizens of the Philippines or qualified citizens of countries granting similar rights and privileges to citizens of the Philippines.

(4) To issue airworthiness certificate for aircraft which shall prescribe the duration of such certificate, the type of service for which the aircraft may be used, and such other terms and conditions and limitations as are required.

(5) To issue air carrier operating certificate and to establish minimum safety standards for the operation of the air carrier to whom such certificate is issued. The air carrier operating certificate shall be issued only to aircrafts registered under the provisions of this Act.

(6) To issue type certificate for aircraft, aircraft engine, propellers and appliances.

(7) To inspect, classify and rate any air navigation facilities and aerodromes available for the use of aircraft as to its suitability for such use and to issue a certificate for such air navigation facility and aerodrome; and to determine the suitability of foreign aerodromes, air navigation facilities as well as air routes to be used prior to the operation of Philippine registered aircraft in foreign air transportation and from time to time thereafter as may be required in the interest of safety in air commerce.

(8) To issue certificates of persons or civil aviation schools giving instruction in flying, repair stations, and other air agencies and provide for the examination and rating thereof.

(9) To promulgate rules and regulations as may be necessary in the interest of safety in air commerce pertaining to the issuance of the airman's certificate, including licensing of operating and mechanical personnel, type certificate for aircraft, aircraft engines, propellers and appliances, airworthiness certificate, air carrier operating certificate, air agency certificate, navigation facility and aerodrome certificate; air traffic routes; radio and aeronautical telecommunications and air navigation aids; aircraft accident inquiry; aerodromes, both public and private owned; construction of obstructions to aerodromes; registration of aircraft; search and rescue; facilitation of air transport; operations of aircraft, both for domestic and international, including scheduled and non-scheduled; meteorology in relation to civil aviation; rules of the air; air traffic services; rules for prevention of collision of aircraft; identification of aircraft; rules for safe altitudes of flight; and such other rules, regulations, standards, governing other practices, methods, procedures as the Administrator may find necessary and appropriate to provide adequately for safety, regularity and efficiency in air commerce and air navigation.

(10) To provide for the enforcement of the rules and regulations issued under the provisions of this Act and to conduct investigations for violations thereto. In undertaking such investigation, to require by subpoena or subpoena duces tecum, the attendance and testimony of witness, the production of books, papers, documents, exhibit matters, evidence, or the taking of depositions before any person authorized to administer oath. Refusal to submit to the reasonable requirements of the investigation committee shall be punishable in accordance with the provisions of this Act.

(11) To investigate accidents involving aircraft and report to the Civil Aeronautics Board the facts, conditions and circumstances relating to the accidents and the probable cause thereof; and to make such recommendations to the Civil Aeronautics Board as may tend to prevent similar accidents in the future: Provided, That when any accident has resulted in serious or fatal injury, the Civil Aeronautics Board shall make public such report and recommendations: And provided, further, That no report on any accident or any statement made during any investigation or during hearing relative to such accident may be admitted as evidence or used for any purpose in any civil suit growing out of any matter revealed within any such report, statement, investigation or hearing.

(12) To collect and disseminate information relative to civil aeronautics and the development of air commerce and the aeronautical industry; to exchange with foreign governments, information pertaining to civil aeronautics; and to provide for direct communication all matters relating to the technical or operational phase of aeronautics with international aeronautical agencies.

(13) To acquire and operate such aircraft as may be necessary to execute the duties and functions of the Civil Aeronautics Administration prescribed in this Act.

(14) To plan, design, acquire, establish, construct, operate, improve, maintain, and repair necessary aerodromes and other air navigation facilities.

(15) To impose and fix, except those mentioned in section forty, paragraph twenty-five and hereinafter provided, reasonable charges and fees for the use of government aerodromes or air navigation facilities; for services rendered by the Civil Aeronautics Administration in the rating of any aerodrome or air navigation facilities, civil aviation schools and instructions, aircraft repair stations, and aircraft radio and aeronautical telecommunications stations. To collect and receive charges and fees for the registration of aircraft and for the issuance and/or renewal of licenses or certificates for aircraft, aircraft engines, propellers and appliances, and airmen as provided in this Act.

(16) To fix the reasonable charges to be imposed in the use of privately owned air navigation facilities and aerodromes.

(17) To impose fines and/or civil penalties and make compromises in respect thereto.

(18) To adopt a system for registration of aircraft as hereinafter provided.

(19) To participate actively with the largest possible degree in the development of international standardization of practices in aviation matters important to safe, expeditious, and easy navigation, and to implement as far as practicable the international standards, recommended practices, and policies adopted by appropriate international aeronautical agencies.

(20) To exercise and perform its powers and duties under this Act consistent with any obligation assumed by the Republic of the Philippines in any treaty, convention or agreement on civil aviation matters.

(21) To cooperate, assist and coordinate with any research and technical agency of the Government on matters relating to research and technical studies on design, materials, workmanship, construction, performance, maintenance and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities including aircraft fuel and oil: Provided, That nothing in this Act shall be construed to authorize the duplication of the laboratory research, activities or technical studies of any existing governmental agency.

(22) To designate such prohibited and danger areas, in consonance with the requirements of the international aeronautical agencies and national security.

(23) To issue, deny, cancel or revoke any certificate, permit or license pertaining to aircraft, airmen, and air agencies: Provided, That any order denying, cancelling, revoking the certificate, permit or license may be appealed to the Civil Aeronautics Board, whose decisions shall be final within fifteen days from the date of notification of such denial, cancellation, or revocation.

(24) To administer, operate, manage, control, maintain and develop the Manila International Airport and all government-owned aerodromes except those controlled or operated by the Armed Forces of the Philippines, including such powers and duties as: (a) to plan, design, construct, equip, expand, improve, repair or alter aerodromes or such structures, improvements, or air navigation facilities; (b) to enter into, make and execute contracts of any kind with any person, firm, or public or private corporation or entity; (c) to acquire, hold, purchase, or lease any personal or real property, right of ways, and easements which may be proper or necessary: Provided, That no real property thus acquired and any other real property of the Civil Aeronautics Administration shall be sold without the approval of the President of the Philippines; (d) to grant to any person, such concession or concession rights on space or property within or upon the aerodrome for purposes essential or appropriate to the operation of the aerodrome upon such terms and conditions as the Administrator may deem proper: Provided, however, That the exclusive use of any landing strip or runway within the aerodrome shall not be granted to any person; (e) to determine the types of aircraft that may be allowed to use any of the aerodromes under its management and control in the interest of public safety; (f) to prescribe, adopt, establish and enforce such rules and regulations consistent with existing laws, rules and regulations, as may be necessary for the safety, health and welfare of the public within the aerodrome.

(25) To determine, fix, impose, collect and receive landing fees, parking space fees, royalties on sales or deliveries, direct or indirect, to any aircraft for its use of aviation gasoline, oil and lubricants, spare parts, accessories, and supplies, tools, other royalties, fees or rentals for the use of any of the property under its management and control.

As used in this sub-section:

(1) "Landing fees" refer to all charges for the use of any landing strip or runway by any aircraft landing or taking off at an aerodrome.

(2) "Terminal fees" refer to charges for parking at or near the ramp, terminal area, or building, for the purposes of loading or unloading passengers and/or cargo.

(3) "Royalties" refer to all charges based on gross business or sales, or gross or net profit.

(4) "Supplies" include any and all items of whatever nature or description which may be necessary for, or incidental to, the operation of an aircraft.

(26) To grant permit to civil aircraft or persons to carry instrument or photographic device to be used for aerial photography or taking of pictures by photograph or sketching of any part of the Philippines.

On the other hand, the CAAP is an independent regulatory body with quasi-judicial and quasi-legislative powers and possessing corporate attributes,[81] having an authorized capital stock of fifty billion pesos (P50,000,000,000.00) which shall be fully subscribed by the Republic of the Philippines.[82] It is attached to the DOTC only for the purpose of policy coordination.[83] While the Director General is responsible for the exercise of all powers and the discharge of all duties including the control over all personnel and activities of the CAAP,[84] the latter's corporate powers are vested in its Board of Directors.[85] It enjoys fiscal autonomy to fund its operations.[86] With quasi-judicial powers, the Director General has the power and authority to inspect aviation equipment and also from time to time, for any reason, re-inspect or reexamine the same.[87] If, as a result

of any such re-inspection or reexamination, or if, as a result of any other investigation made by the Director General, he determines that safety in civil aviation or commercial air transport and the public interest requires, the Director General may issue an order amending, modifying, suspending or revoking, in whole or in part, any airworthiness certificate, airman certificate, air operator certificate or certificate for any airport, school, or approved maintenance organization.[88] Possessing quasi-legislative powers, CAAP's Board may authorize the Director General to issue or amend rules of procedures and practice as may be required, or issue and adopt rules and regulations and other issuances of the ICAO.[89] Vested with corporate attributes, said Board, through a resolution, may empower the Director General to enter into, make and execute contracts of any kind with any person, firm, or public or private corporation.[90]

Moreover, notable under R.A. No. 9497 is the establishment of permanent offices like the (a) Air Traffic Service; (b) Air Navigation Service; (c) Aerodrome Development and Management Service; (d) Administrative and Finance Service;[91] (e) the Office of Enforcement and Legal Service;[92] and (f) the Flight Standards Inspectorate Service.[93] The law also mandated the Director General to organize the Aircraft Accident Investigation and Inquiry Board.[94]

Furthermore, R.A. No. 9497 manifested the adherence of the country to, and the adoption of, the Chicago Convention and ICAO standards[95] and other international conventions[96] with respect to matters relating to civil aviation.

After comparing the features and functions of the ATO and the CAAP, we find that CAAP indeed assumed the functions of the ATO. However, the overlap in their functions does not mean there was no valid abolition of the ATO.[97] The CAAP has new and expanded features and functions which are intended to meet the growing needs of a globally competitive civil aviation industry, adherent to internationally recognized standards. Thus, in *National Land Titles and Deeds Registration Administration v. Civil Service Commission*,[98] we held that:

if the newly created office has substantially new, different or additional functions, duties or powers, so that it may be said in fact to create an office different from the one abolished, even though it embraces all or some of the duties of the old office it will be considered as an abolition of one office and the creation of a new or different one. The same is true if one office is abolished and its duties, for reasons of economy are given to an existing officer or office.

To be precise, the case before us deals only with the issue of abolition and not removal. Besides, petitioner has failed to provide in detail any ATO personnel who had been removed from office on account of R.A. No. 9497.

Apropos then is our ruling in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*,[99] to wit:

However, abolition of an office and its related positions is different from removal of an incumbent from his office. Abolition and removal are mutually exclusive concepts. From a legal standpoint, there is no occupant in an abolished office. Where there is no occupant, there is no tenure to speak of. Thus, impairment of the constitutional guarantee of security of tenure does not arise in the abolition of an office. On the other hand, removal implies that the office and its related positions subsist and that the occupants are merely separated from their positions.

Based on the premise that there was a valid abolition of ATO, in the absence of any bad faith, we rule that the ATO employees' right to security of tenure was not violated.

The Court cannot agree to petitioner's supposition that there should be automatic absorption of all ATO employees to the CAAP. Indeed, there is no such thing as a vested interest in a public office, let alone an absolute right to hold it. Except constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office or its salary.[100] Public office is not property but a "public

trust or agency.” While their right to due process may be relied upon by public officials to protect their security of tenure which, in a limited sense, is analogous to property,[101] such fundamental right to security of tenure cannot be invoked against a valid abolition of office effected by the legislature itself.

However, it bears stressing that former ATO employees are not left without succor. Aside from the retirement packages provided for by R.A. No. 9497, the same law mandates that former qualified ATO employees should be accorded preference in filling up CAAP plantilla positions. Section 12 of R.A. No. 9497 provides:

SEC. 12. Personnel. – Qualified existing personnel of the Air Transportation Office (ATO) shall be given preference in the filling up of plantilla positions created in the Authority, subject to existing civil service rules and regulations.

This preference is resonated in Section 59(b), Rule IX of the IRR, which provides:

SECTION 59. Abolition of the Air Transportation Office.

x x x x

- Qualified Air Transportation Office (ATO) personnel shall be given preference in the filling-up of CAAP plantilla positions subject to existing civil service rules and regulations.

Inasmuch as we accorded respect to the mandate of the law in abolishing the ATO, such preference in favor of qualified ATO employees, subject to existing civil service rules and regulations, should likewise be strictly heeded in favor of the said employees. All respondents must abide by this directive. No less than R.A. No. 9497 requires it.

Finally, we resolve the third issue in the negative.

A petition for prohibition will prosper only if grave abuse of discretion is manifested. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[102]

We hold that there is no grave abuse of discretion when Section 60 of the IRR provided for a “hold-over” status on the part of ATO employees.

A careful perusal of Section 86 of R.A. No. 9497 reveals that the transfer of ATO personnel, unless they opted to retire from the service, to the CAAP implies the application of the hold-over principle. There being no express, much less implied prohibition of the application of the hold-over principle in R.A. No. 9497 per se, such proviso in the latter’s IRR does not amount to grave abuse of discretion.

In *Lecaroz v. Sandiganbayan*,[103] we held:

Absent an express or implied constitutional or statutory provision to the contrary, an officer is entitled to stay in office until his successor is appointed or chosen and has qualified. The legislative intent of not allowing holdover must be clearly expressed or at least implied in the legislative enactment, otherwise it is reasonable to assume that the law-making body favors the same.

The reason for the application of the hold-over principle is clearly stated also in *Lecaroz*,[104] to wit:

Indeed, the law abhors a vacuum in public offices, and courts generally indulge in the strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant or unoccupied by one lawfully authorized to exercise

its functions. This is founded on obvious considerations of public policy, for the principle of holdover is specifically intended to prevent public convenience from suffering because of a vacancy and to avoid a hiatus in the performance of government functions.

Indeed, the application of the hold-over principle preserves continuity in the transaction of official business and prevents a hiatus in government. Thus, cases of extreme necessity justify the application of the hold-over principle.[105]

Petitioner itself states and this Court, without doubt, agrees that the CAAP is an agency highly imbued with public interest. It is of rational inference that a hiatus therein would be disastrous not only to the economy, tourism and trade of the country but more so on the safety and security of aircraft passengers, may they be Filipino citizens or foreign nationals.

A final note.

On April 9, 2014, based on a March 2014 FAA review of the CAAP, the FAA opined that the Republic of the Philippines complies with the international safety standards set by the ICAO and has been granted a Category 1 rating.[106] The European Union also lifted the ban on Philippine carriers.[107] Thus, it cannot be ignored that the creation of the CAAP through R.A. No. 9497, in one way or another, helped in upgrading the country's status in the arena of civil aviation. Absent any violation of the Constitution and the other pertinent laws, rules and regulations, this Court would not hinder in the continuous growth and improvement of the civil aviation industry of the country.

WHEREFORE, the present petition for prohibition with prayer for injunctive reliefs is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Carpio, Acting C.J.,[**] Velasco, Jr., Leonardo-De Castro, Brion, Del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, and Jardeleza, JJ., concur.

Sereno, C.J., Peralta, and Bersamin, JJ., on official leave.

Mendoza, J., no part.

[**] Designated Acting Chief Justice per Special Order No. 1860 dated November 4, 2014.

[1] Rollo, pp. 151-9 to 151-60.

[2] Id. at 151-61. Designating the following individuals for the following positions:

- Eduardo G. Batac – Director V, Chief, Flight Standards Inspectorate Service;
- Romeo D. Alamillo – Director IV, Asst. Chief, Flight Standards Inspectorate Service; and
- Teodoro L. Lasmarias – Director III, Chief, Flight Operations Division.

[3] Id. at 151-62. Designating the following individuals for the following positions:

- Hector M. Tarrazona – Head, Internal Audit Service;
- Emmanuel M. Gavino – Management Information System Manager;
- Reynaldo B. Abella – Corporate Business Group Coordinator;

- Ricardito M. Eguna – Corporate Business Group Treasurer;
- Edgar B. Trono – Chief, Corporate Planning and Business Development;
- Atty. Antonio P. Jamon, Jr. – Corporate Board Secretary; and
- Roberto G. Nuqui – Chief, Technical Development Division.

[4] Id. at 151-63. Designating Mrs. Teresita R. Payaoan as Executive Assistant IV to the Deputy Director General for Administration.

[5] Id. at 151-64. Designating Brig. Gen. Oscar Randy S. Daus (Ret.) as Acting Chief, Civil Security and Intelligence Unit of CAAP.

[6] Id. at 151-65. Projecting Ms. Amanda Kristina F. Salcedo to the position of Cabin Crew Examiner.

[7] Id. at 151-66. Designating Mr. Avelino L. Abiol as Acting Chief, Corporate Plan and Business Development and as Acting Treasurer.

[8] Id. at 151-67. Designating the following individuals for the following positions:

1. Mr. Virgilio B. Casio – Assistant Chief, CAAP Security Intelligence; and
2. Mr. Cristopher S. Gonzaga – Director for Administration, CAAP Security Intelligence.

[9] Id. at 151-68. Designating Ms. May B. Sacro as Acting Head Executive Assistant of the Office of the Director General.

[10] Id. at 151-69. Designating Ms. Elizabeth M. Valerio as Administrative Officer (Executive Assistant V) of the Office of the Director General.

[11] Id. at 151-70. Designating Ms. Floramel Joy C. Songsong as Appointment Secretary (Executive Assistant V) to the Director General.

[12] Entitled, AN ACT CREATING THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES, AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR, AND FOR OTHER PURPOSES, enacted on March 4, 2008.

[13] Entitled, AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, enacted on June 10, 1988.

[14] An adaptation and modification of the article “Historical Background” provided under the website of the Civil Aviation Authority of the Philippines. (visited last September 29, 2014).

[15] Entitled, AN ACT CONCERNING THE LICENSING OF AIRMEN AND AIRCRAFT, AND INSPECTION OF THE SAME, CONCERNING AIR TRAFFIC RULES, CONCERNING SCHEDULES AND RATES OF AVIATION COMPANIES AND CONCERNING THE ENFORCEMENT OF THE LAW, approved on November 20, 1931.

[16] Entitled, AN ACT TO AMEND ACT NUMBERED THIRTY-NINE HUNDRED AND NINE CONCERNING THE LICENSING OF AIRMEN AND AIRCRAFT, INSPECTION OF THE SAME, AIR TRAFFIC RULES, SCHEDULES AND RATES OF AVIATION COMPANIES AND THE ENFORCEMENT OF THE LAW, approved on December 5, 1932.

[17] Entitled, AN ACT AMENDING CERTAIN PROVISIONS OF ACT NUMBERED THIRTY-ONE

HUNDRED AND EIGHT, AS AMENDED, ENTITLED, “AN ACT CREATING A PUBLIC UTILITY COMMISSION AND PRESCRIBING ITS DUTIES AND POWERS, AND FOR OTHER PURPOSES,” approved on December 9, 1932.

[18] See Section 2, Act No. 4033.

[19] Supra note 14.

[20] Entitled, AN ACT PROVIDING FOR THE PROMOTION AND DEVELOPMENT OF CIVIL AVIATION IN THE PHILIPPINES, CREATING THE BUREAU OF AERONAUTICS, AND DEFINING ITS POWERS, DUTIES AND FUNCTIONS, approved on November 12, 1936.

[21] See Section 4, Commonwealth Act No. 168.

[22] Supra note 14.

[23] Id.

[24] Entitled, AN ACT TO CREATE A PUBLIC CORPORATION TO BE KNOWN AS THE “NATIONAL AIRPORTS CORPORATION,” TO DEFINE ITS POWERS AND DUTIES, TO APPROPRIATE THE NECESSARY FUNDS THEREFOR, AND FOR OTHER PURPOSES, dated June 5, 1948.

[25] SECTION 1. There is hereby created a public corporation to be known as the “National Airports Corporation,” hereinafter called and designated the Corporation, to serve as an agency of the Republic of the Philippines for the development, administration, operation and management of government-owned landing fields in the Philippines.

[26] Reorganizing the Civil Aeronautics Administration and Abolishing the National Airports Corporation [cited in *Civil Aeronautics Administration v. Court of Appeals*, 249 Phil. 27, 33 (1988)].

[27] *National Airports Corporation v. Teodoro, Sr. and Phil. Airlines Inc.*, 91 Phil. 203, 204 (1952).

[28] Entitled, AN ACT TO REORGANIZE THE CIVIL AERONAUTICS BOARD AND THE CIVIL AERONAUTICS ADMINISTRATION TO PROVIDE FOR THE REGULATION OF CIVIL AERONAUTICS IN THE PHILIPPINES AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR, approved on June 20, 1952.

[29] *Civil Aeronautics Administration v. Court of Appeals*, supra note 26, at 36.

[30] Entitled, PROVIDING FOR THE IMPLEMENTING DETAILS FOR REORGANIZATION PLAN NO. 60 RELATIVE TO PUBLIC UTILITIES REGULATION AND LAND TRANSPORTATION.

[31] See Section 31 of E.O. No. 209, series of 1956.

[32] Addressed to the Secretary of Public Highways, the Director of Civil Aviation, the Budget Commissioner and the Chairman of the Commission on Audit and issued by former President Ferdinand E. Marcos on January 20, 1975.

[33] Supra note 14.

[34] Entitled, CREATING A MINISTRY OF PUBLIC WORKS AND A MINISTRY OF TRANSPORTATION AND COMMUNICATIONS, dated July 23, 1979.

[35] Section 11 of E.O. No. 546 provides,

SEC. 11. Bureau of Air Transportation. – The Civil Aeronautics Administration is hereby renamed Bureau of Air Transportation and shall continue to perform its functions relating to the promotion and development of policies, plans, programs and standards for the construction and maintenance of airports and their facilities including the buildings and runways. The repair and maintenance of these facilities shall be the responsibility of the Bureau: Provided, however, That the construction of runways and the terminal buildings and related structures shall be done by the Ministry of Public Works or Ministry of Public Highways as the case may be, at the instance of the Bureau.

The Director of Air Transportation shall be an ex-officio member of the Civil Aeronautics Board.

[36] Entitled, REORGANIZING THE MINISTRY OF TRANSPORTATION AND COMMUNICATIONS DEFINING ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES, dated January 30, 1987.

[37] Entitled, AMENDING EXECUTIVE ORDER NO. 125, ENTITLED “REORGANIZING THE MINISTRY OF TRANSPORTATION AND COMMUNICATIONS, DEFINING ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES,” dated April 13, 1987.

[38] SEC. 9. Assistant Secretaries and Service Chiefs. – The Secretary shall also be assisted by eight (8) Assistant Secretaries appointed by the President upon the recommendation of the Secretary, each of whom shall respectively be responsible for the following four (4) staff offices composed of eight (8) services and four (4) line offices, and shall report to the respective Undersecretaries assigned by the Secretary, which Undersecretary shall have control and supervision over said respective services and offices:

x x x x

(h) Office of the Assistant Secretary for Air Transportation.

Each of the above-named services shall be headed by a service chief appointed by the President upon the recommendation of the Secretary.

[39] SEC. 12. Bureau of Air Transportation. – The Bureau of Air Transportation, as reorganized herein, shall have the functions of developing, formulating and recommending plans, policies, programs, projects, standards, specifications and guidelines related to air transportation including air space utilization, air traffic control and aeronautics communications and information services, aircraft and air navigational facilities, services, maintenance and operations. For such purposes, it shall, with the approval of the Minister:

- (a) Establish and prescribe rules and regulations for the inspection and registration of aircrafts;
- (b) Establish and prescribe rules and regulations for the issuance of licenses to qualified airmen;
- (c) Establish and prescribe rules and regulations for the enforcement of laws governing air transportation, including the penalties for violations thereof, and for the deputization of appropriate law enforcement agencies in pursuance thereof;
- (d) Determine, fix and/or prescribe charges and/or rates pertinent to the operation of public air utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies or associations recognized by the Philippine Government as the proper arbiter of such charges or rates;
- (e) Administer and operate the Civil Aeronautics Training Center;
- (f) Perform such other functions as may be provided by law.

[40] Also deleted were Sections 13, 15 and 16 of E.O. No. 125.

[41] The FAA has established two ratings for the status of countries at the time of the assessment: does comply

with ICAO standards, and does not comply with ICAO standards.

They are defined as follows:

Category 1, Does Comply with ICAO Standards: A country's civil aviation authority has been assessed by FAA inspectors and has been found to license and oversee air carriers in accordance with ICAO aviation safety standards.

Category 2, Does Not Comply with ICAO Standards: The Federal Aviation Administration assessed this country's civil aviation authority (CAA) and determined that it does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the International Civil Aviation Organization (ICAO).

This rating is applied if one or more of the following deficiencies are identified:

- the country lacks laws or regulations necessary to support the certification and oversight of air carriers in accordance with minimum international standards;
- the CAA lacks the technical expertise, resources, and organization to license or oversee air carrier operations;
- the CAA does not have adequately trained and qualified technical personnel;
- the CAA does not provide adequate inspector guidance to ensure enforcement of, and compliance with, minimum international standards; and
- the CAA has insufficient documentation and records of certification and inadequate continuing oversight and surveillance of air carrier operations. (visited last September 29, 2014.)

[42] The International Civil Aviation Organization (ICAO) is a United Nations (UN) specialized agency, created in 1944 upon the signing of the Convention on International Civil Aviation (Chicago Convention). ICAO works with the Convention's 191 Member States and global aviation organizations to develop international Standards and Recommended Practices (SARPs) which States reference when developing their legally-enforceable national civil aviation regulations. (visited last September 29, 2014.)

[43] (visited last September 29, 2014).

[44] and (last visited on September 29, 2014).

[45] SEC. 4. Creation of the Authority. – There is hereby created an independent regulatory body with quasi-judicial and quasi-legislative powers and possessing corporate attributes to be known as the Civil Aviation Authority of the Philippines (CAAP), hereinafter referred to as the "Authority", attached to the Department of Transportation and Communications (DOTC) for the purpose of policy coordination. For this purpose, the existing Air Transportation Office created under the provisions of Republic Act No. 776, as amended, is hereby abolished.

[46] SEC. 85. Abolition of the Air Transportation Office. – The Air Transportation Office (ATO) created under Republic Act No. 776, a sectoral office of the Department of Transportation and Communications (DOTC), is hereby abolished.

All powers, duties and rights vested by law and exercised by the ATO is hereby transferred to the Authority.

All assets, real and personal properties, funds and revenues owned by or vested in the different offices of the ATO are transferred to the Authority. All contracts, records and documents relating to the operations of the abolished agency and its offices and branches are likewise transferred to the Authority. Any real property owned by the

national government or government-owned corporation or authority which is being used and utilized as office or facility by the ATO shall be transferred and titled in favor of the Authority.

[47] SEC. 86. Transfer of Personnel of Air Transportation Office. – To ensure smooth transition into a corporate structure, the incumbent Assistant Secretary of the ATO shall continue to hold office and assume the powers of the Director General until his successor shall have been appointed and inducted into office in accordance with this Act. However, affected officials and personnel, with appointments attested by the Civil Service Commission, whether hired on a permanent or temporary basis, who would opt to retire or to be separated from the service, and those hired on a casual or contractual basis, if qualified, shall be given the option to avail themselves of any of the following, whichever is beneficial to them:

(a) Retirement gratuity provided under Republic Act No. 1616, as amended, plus the refund of retirement premiums payable by the Government Service Insurance System (GSIS), without the incentive herein provided;

(b) Retirement benefit under Republic Act No. 660 or applicable retirement, separation or unemployment benefit provided under Republic Act No. 8291, if qualified, plus the following applicable incentives:

(1) One half (1/2) month of the present basic salary for every year of government service and a fraction thereof, for those who have rendered twenty (20) years of service and below;

(2) Three-fourth (3/4) month of the present basic salary for every year of government service and a fraction thereof, computed starting from the 1st year, for those who have rendered twenty-one (21) to thirty (30) years of service; and

(3) One (1) month of the present basic salary for every year of government service and a fraction thereof, computed starting from the 1st year, for those who have rendered thirty-one (31) years of service and above: Provided, That the GSIS shall pay, on the day of separation, the retirement/separation/unemployment benefits to which an affected employee may be entitled to under Republic Act No. 660 or Republic Act No. 8291 and whenever there is an option, the one which the affected employee has chosen as the most beneficial to him/her: Provided, further, That for the purpose of complying with the required number of years of service under Republic Act No. 8291, the portability scheme under Republic Act No. 7699 may be applied, subject to existing policies and guidelines; and

(c) Those with less than three (3) years of government service may opt to avail of the separation gratuity under Republic Act No. 6656, plus the appropriate incentive provided under paragraph (b) of this section.

No affected employee who opted for retirement/separation shall receive less than an aggregate of Fifty thousand pesos (Php50,000.00) as his retirement/separation gratuity from both the national government and the GSIS.

[48] Rollo, p. 68.

[49] *Id.* at 277.

[50] SEC. 90. Implementing Rules and Regulations. – The Authority shall adopt rules and regulations to implement the provisions of this Act within sixty (60) days from the date of its approval.

[51] The IRR of R.A. No. 9497 was published in the *The Business Mirror* on October 10, 2008 and in *The Malaya* on October 13, 2008.

[52] Rollo, pp. 279-280.

[53] *Id.* at 151-122 to 151-123.

[54] Id. at 151-140 to 151-142.

[55] Id. at 3-54.

[56] Id. at 151-28. (Emphasis and underscoring omitted)

[57] Id. at 151-13, 507.

[58] Section 18, Article II of the 1987 Constitution provides:

Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Moreover, Section 3, Article XIII of 1987 Constitution provides that “The State shall afford full protection to labor x x x and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to x x x security of tenure x x x.”

[59] Dated January 29, 2008, pp. 73-74, as reproduced in Petitioner’s Memorandum; rollo, pp. 538-541.

[60] Rollo, pp. 498-576.

[61] Id. at 249.

[62] Id. at 449-470.

[63] Entitled, ABOLISHING THE PRESIDENTIAL COMMISSION ON GOVERNMENT REORGANIZATIONS, TRANSFERRING ITS REMAINING FUNCTIONS TO THE DEPARTMENT OF BUDGET AND MANAGEMENT, AND FOR OTHER PURPOSES, dated May 5, 1987.

[64] Supra note 47.

[65] Section 2(3), Article IX-B of the 1987 Constitution provides:

x x x x

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

[66] Rollo, pp. 472-491.

[67] See Bureau of Customs Employees Association (BOCEA) v. Teves, G.R. No. 181704, December 6, 2011, 661 SCRA 589, 604, citing Funa v. Ermita, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 317.

[68] Supra note 61.

[69] Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr., 469 Phil. 79, 85-86 (2004).

[70] Korea Exchange Bank v. Gonzales, 520 Phil. 690, 701 (2006), citing Desaville, Jr. v. Court of Appeals, G.R. No. 128310, August 13, 2004, 436 SCRA 387, 391-392.

[71] Buklod ng Kawaning EIIB v. Zamora, 413 Phil. 281, 289-290 (2001); and Dario v. Mison, 257 Phil. 84, 111 (1989).

[72] Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo, 555 Phil. 629, 637 (2007), citing Buklod ng Kawaning EIIB v. Zamora, id. at 291.

[73] Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin, 553 Phil. 1, 7 (2007).

[74] *Limson v. Wack Wack Condominium Corporation*, G.R. No. 188802, February 14, 2011, 642 SCRA 772, 780.

[75] *Ortega v. People*, 584 Phil. 429, 460 (2008).

[76] G.R. No. 159402, February 23, 2011, 644 SCRA 36, 47-49.

[77] *Supra* note 73, at 8. (Citations omitted; emphasis supplied)

[78] See *Buklod ng Kawaning EIIB v. Zamora*, *supra* note 71, at 295.

[79] *Supra* note 60, at 538.

[80] *Supra* note 39.

[81] Section 4, R.A. No. 9497, *supra* note 45.

[82] SEC. 14. Capitalization. – The Authority shall have an authorized capital stock of Fifty billion pesos (Php50,000,000,000.00) which shall be fully subscribed by the Republic of the Philippines. The subscription of the National Government shall be paid as follows:

(a) The unexpended balances of appropriations in the current General Appropriations Act and other acts in force upon approval hereof, pertaining to, held or used by, the ATO;

(b) The value of existing assets of the ATO, which shall be determined by an independent and qualified appraiser or appraisers within six (6) months from the effectivity of this Act, and after deducting the loans and other liabilities of the ATO at the time of the takeover of the assets and properties; and

(c) Such amounts as may be appropriated from time to time from the funds of the National Treasury, including any outlay from the infrastructure program of the National Government.

[83] *Supra* note 45.

[84] Section 4(b) of R.A. No. 9497 provides:

x x x x

(b) Responsibility of the Director General – The Director General shall be responsible for the exercise of all powers and the discharge of all duties of the Authority and shall have control over all personnel and activities of the Authority.

[85] SEC. 5. Composition of the Board Members. – The corporate powers of the Authority shall be vested in a board, which is composed of seven (7) members:

(a) The Secretary of the Department of Transportation and Communications shall act as chairman ex officio;

(b) The Director General of Civil Aviation (DGCA) shall automatically be the vice chairman of the Board;

(c) The Secretary of Finance;

(d) The Secretary of Foreign Affairs;

(e) The Secretary of Justice;

(f) The Secretary of the Interior and Local Government; and

(g) The Secretary of the Department of Labor and Employment.

The Directors listed under subsections (a) to (g) shall be ex officio members of the Board of Directors: Provided, That, in the absence of the Director appointed in subsections (c) to (g), the Director concerned shall designate the officer next in rank to him in his department or office to act on his behalf as a Director.

[86] SEC. 15. Fiscal Autonomy. – The Authority shall enjoy fiscal autonomy. All moneys earned by the Authority from the collection/levy of any and all such fees, charges, dues, assessments and fines it is empowered to collect/levy under this Act shall be used solely to fund the operations of the Authority.

The utilization of any funds coming from the collection and/or levy of the Authority shall be subject to the examination of the Congressional Oversight Committee.

[87] SEC. 70. Authority to Inspect. – (a) Authority to Inspect Equipment – The Director General shall have the power and duty to:

(1) Make such inspections of aircraft, aircraft engines, propellers and appliances used by an operator of civil aircraft as may be necessary to determine that the operators are maintaining the safe condition for the operation in which they are used; and

(2) Advise each operator in the inspection and maintenance of these items.

(b) Unsafe Aircraft, Engines, Propellers and Appliances – When the Director General finds that any aircraft, aircraft engine, propeller or appliance, used or intended to be used by any operator in civil aviation, is not in a condition for safe operation, the Director General shall notify the operator. Such aircraft, aircraft engine, propeller or appliance then shall not be used in civil aviation or in such manner also to endanger civil aviation, unless found by the Director General to be in a condition for safe operation.

SEC. 71. Amendment, Modification, Suspension and Revocation of Certificates. – (a) Reinspection and Reexamination – The Director General may, from time to time, for any reason, re-inspect or reexamine any civil aircraft, aircraft engine, propeller, appliance, air operator, school, with approved maintenance organization, or any civil airman holding a certificate issued under this Act.

[88] Section 71(b), R.A. No. 9497.

[89] Section 27, R.A. No. 9497.

[90] Section 35(u), R.A. No. 9497.

[91] SEC. 33. Organizational Structure of the Authority. – Within fifteen (15) days from the appointment of and acceptance by all members of the Board and the Director General of their respective appointments, the Board, in consultation with the Director General, shall meet to draw-up the Authority's organizational structure. The Board shall agree on the Authority's final organizational structure not later than six (6) months from the date of the effectivity of this Act.

In addition to the offices created under Sections 36 and 40 of this Act, the Board shall establish the following permanent offices:

- (a) Air Traffic Service;
- (b) Air Navigation Service;
- (c) Aerodrome Development and Management Service; and
- (d) Administrative and Finance Service.

The Board may agree for the viability for the creation of additional offices and the finalization of the organizational structure not later than six (6) months from the date of the effectivity of this Act.

Notwithstanding the qualification standards as may be prescribed by the Board and the Civil Service Commission, the selection and appointment of the heads of the foregoing offices shall be limited from the rank and file employees of the concerned services.

[92] SEC. 36. The Office of Enforcement and Legal Service. – To effectively implement the civil aviation regulatory, supervisory and administrative mandates of the Director General under this Act, a permanent office within the Authority to be known as the Enforcement and Legal Service, to be composed of in-house counsels of the Authority and its necessary support staff shall be established by the Board.

This office shall provide adequate legal assistance and support to the Director General and to the Authority, as a whole, in the exercise of quasi-legislative and quasi-judicial power as provided for under this Act.

The exercise of the function by the Director General to issue subpoena ad testificandum, subpoena duces tecum and the imposition of any administrative sanction shall be within the exclusive determination and recommendation of the Enforcement and Legal Service.

[93] SEC. 40. Creation of Flight Standards Inspectorate Service. – (a) The Board, other than the offices it shall create in furtherance of this Act, shall establish a permanent office known as the Flight Standards Inspectorate Service (FSIS) that will assist the Director General in carrying out the responsibilities of his office for certification and ongoing inspections of aircraft, airmen and air operators.

The FSIS shall perform the following functions:

- (1) Airworthiness inspection;
- (2) Flight operations inspection and evaluation; and
- (3) Personnel licensing.

Furthermore, the Board shall create, but not limited to, the following offices which will provide support to the functions of the FSIS, namely: Aircraft Registration, Aircraft Engineering and Standards, Airmen Examination Board and Office of the Flight Surgeon.

[94] SEC. 42. Aircraft Accident Investigation and Inquiry Board. – Pending the establishment of an independent and separate government agency created to conduct investigation of accidents on land, air and water, the Director General shall organize an Aircraft Accident Investigation and Inquiry Board (AAIIB), to be composed of personnel of the Authority specialized in the various disciplines of civil aviation. The Board shall appoint the head of the AAIIB.

[95] SEC. 24. Powers of the Board. – The Board shall have the following general powers:

(r) Formulate rules and regulations concerning compliance of the carrier and the public for the safe transport of goods and materials by air pursuant to international standards or Annexes to the Chicago Convention; and

x x x x

SEC. 25. Issuance of Rules and Regulations. – The Board, in consultation with the Director General, shall issue and provide for the enforcement of such orders, rules and regulations as may be necessary to give effect to the provisions of this Act. All rules and regulations issued in accordance with the provisions of this Act shall be formally promulgated and periodically reviewed and updated in accordance with the requirements of the Administrative Code of the Philippines or any amendment or successor thereto and the International Civil Aviation Organization Standards and Recommended Practices. Pending the promulgation of such new rules and regulations, the current rules and regulations of the ATO shall continue to apply.

x x x x

SEC. 27. Issuance of Rules of Procedure and Practice. – The Board may authorize the Director General to issue or amend rules of procedures and practice as may be required to be issued pursuant to the provisions of this Act or

issue and adopt rules and regulations and other issuances of the ICAO. Pending the promulgation of such new rules of procedures and practice, current rules of procedures and practices of the ATO shall continue to apply.

x x x x

SEC. 38. Right of Access for Inspection. – (a) The Director General or his authorized representative shall be authorized access to civil aircraft, including aerodromes, without restriction wherever they are operated within the Philippines for purposes of ensuring that those aircraft are airworthy and being operated in accordance with this Act, regulations issued under this Act, and applicable ICAO Annexes.

x x x x

SEC. 41. Validation. – The Director General is authorized, in the discharge of his certification and inspection responsibilities, to validate the actions of the civil authority of another State in lieu of taking the specific action, with the following restrictions:

(a) For actions on airman or airworthiness certificates, the other State must be a signatory to the Chicago Convention and be fulfilling its obligations under the Chicago Convention with respect to the issuance and currency of these certificates; and

(b) For actions applicable to air operators, the Director General must exercise discretion and require supporting documents. The Director General should ensure that, when validation is based on the actions of another civil aviation authority, there is no information to indicate that the State does not meet its obligations under the Chicago Convention regarding certification and ongoing validation of its air operators.

x x x x

SEC. 55. General Powers and Functions. – (a) Promoting Safety – The Director General shall have the power and duty to promote safety of flight of civil aircraft in civil aviation by prescribing and revising from time to time as necessary:

(1) Reasonable rules and regulations implementing, at minimum, all standards of the Annexes to the Chicago Convention; and

x x x x

SEC. 69. Duties and Operations of Airmen. – It shall be the duty of:

x x x x

(e) Every person who offers or accepts shipments, cargo or baggage in air commerce to offer or accept such shipments, cargo or baggage in accordance with the provisions of Annex 18 of the Chicago Convention and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air.

x x x x

SEC. 76. Regulation of Building Heights. – The Board shall have the power to regulate the height of buildings, towers, antennae, and other edifices, situated within the vicinity of or in close proximity to airports estimated to endanger the flight of aircrafts. It shall also have the power to prohibit or regulate the establishment and operations of electrical, electronics, sound, magnetic, laser, or other electronic gadgets, equipment or installations which will tend to interfere with or impair air navigation in accordance with the international standards and recommended practices on airports, as recommended by the ICAO.

SEC. 77. Authority Respecting the Transportation of Dangerous Goods by Air. – The Director General shall monitor and enforce compliance of the rules and regulations concerning the carriage of goods by air in relation to Annex 18 of the Chicago Convention and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air.

SEC. 78. Development of New Airports. – The Board shall be responsible for the planning, development, construction, operation, maintenance, or the expansion of airports. In planning and developing new airports, the Board shall consider:

x x x x

(g) ICAO best practices and recommendations concerning the development of airports; and

x x x x

SEC. 81. Penalties. – x x x

x x x x

(b) The following penalties may only be imposed by a court of competent jurisdiction after the filing of a proper criminal complaint therein by the Director General and a finding of guilt:

x x x x

(14) Any person who willfully delivers or causes to be delivered to an air carrier for air transport, or if that person recklessly causes the transportation in air transport, of any shipment, cargo, baggage or other property in violation of the provisions of Annex 18 of the Chicago Convention and the ICAO Technical Instruction for the Safe Transport of Dangerous Goods by Air, or the corresponding rules and regulations issued by the Authority shall be subjected to imprisonment from one (1) year to three (3) years or a fine of not less than One hundred thousand pesos (Php100,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00), or both, as determined by the court. (Emphasis supplied.)

[96] SEC. 81. Penalties. x x x

x x x x

(b) The following penalties may only be imposed by a court of competent jurisdiction after the filing of a proper criminal complaint therein by the Director General and a finding of guilt:

x x x x

(7) Any person who destroys or damages air navigation facilities or interferes with their operation shall be subjected to imprisonment from one (1) year to three (3) years or a fine of not less than Fifty thousand pesos (Php50,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00), or both, as determined by the court. If such act endangers the safety of air navigation, the court may impose an increased penalty of imprisonment from three (3) years to six (6) years or a fine ranging from Five hundred thousand pesos (Php500,000.00) to One million pesos (Php1,000,000.00) [Convention for Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal, 23 September 1971, Art. 1(d)];

(8) Any person who, whether on board or on the ground, communicates false information to an aircraft and thereby endangering the safety of an aircraft in flight shall be subjected to imprisonment from one (1) year to three (3) years or a fine of not less than Fifty thousand pesos (Php50,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00), or both, as determined by the court. [Convention for Suppression of Unlawful

Acts Against the Safety of Civil Aviation, signed at Montreal, 23 September 1971, Art. 1(e));

x x x x

(11) Any person who imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made to do an act which would be a crime prohibited by clauses (8), (9) and (10) of this section, shall be subjected to imprisonment from one (1) year to three (3) years or a fine of not less than Fifty thousand pesos (Php50,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00), or both, as determined by the court. [Convention for Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal, 23 September 1971, Art. 1(e)];

(12) Any person who, while on board an aircraft, commits any other act not otherwise expressly covered under clauses (8), (9), (10) and (11) above which jeopardizes the safety of the aircraft or of persons or property therein, or which jeopardizes good order and discipline on board such aircraft shall be subjected to imprisonment from six (6) months to three (3) years or a fine of not less than Fifty thousand pesos (Php50,000.00) but not exceeding Five hundred thousand pesos (Php500,000.00), or both, as determined by the court. [Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo, 14 September 1963, Art. 1(b)]; (Emphasis supplied)

[97] See *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*, supra note 73, at 21.

[98] G.R. No. 84301, April 7, 1993, 221 SCRA 145, 150.

[99] Supra note 73, at 7-8. (Emphasis supplied)

[100] *J/Sr. Engaño v. Court of Appeals*, 526 Phil. 291, 298 (2006), citing *National Land Titles and Deeds Registration Administration v. Civil Service Commission*, supra note 99, at 150-151.

[101] *Carabeo v. Court of Appeals*, G.R. Nos. 178000 & 178003, December 4, 2009, 607 SCRA 394, 409. Citations omitted.

[102] *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

[103] 364 Phil. 890, 903 (1999). (Citations omitted; emphasis supplied)

[104] *Id.* (Citations omitted; emphasis supplied)

[105] *Sambarani v. COMELEC*, 481 Phil. 661, 675-676 (2004), citing *Topacio Nueno v. Angeles*, 76 Phil. 12 (1946).

[106] FAA Announces the Republic of the Philippines' Aviation Safety Rating (visited last September 29, 2014).

[107] EU Announces Lifting of the Air ban for Philippines Airlines (visited last September 29, 2014).

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