Supreme Court E-Library

now allowed to continue in public office despite her having been found guilty of dishonesty.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the resolutions dated September 5, 2002, January 8, 2003, and June 5, 2003, all issued in CA-G.R. SP No. 72555.

Costs of suit to be paid by the petitioner.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 164301. August 10, 2010]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **BPI EMPLOYEES UNION-DAVAO CHAPTER-FEDERATION OF UNIONS IN BPI UNIBANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSES; EXPLAINED. — "Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees,

Supreme Court E-Library

who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part. x x x In other words, the purpose of a union shop or other union security arrangement is to guarantee the continued existence of the union through enforced membership for the benefit of the workers.

2. ID.; ID.; ID.; ID.; UNION SHOP CLAUSE; EMPLOYEES EXEMPTED FROM THE COVERAGE THEREOF; FIRST THREE EXCEPTIONS NOT APPLICABLE TO CASE AT BAR. — All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. **However, under law and jurisprudence, the following kinds of employees are exempted from its coverage**, namely, employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds; **employees already in the service and already members of a union other than the majority at the time the union shop agreement took effect**; confidential employees who are excluded from the rank and file bargaining unit; and **employees excluded from the union shop by express terms of the agreement**. x x x Indeed, the situation of the former FEBTC employees in this case clearly does not fall within the first three exceptions to the application of the Union Shop Clause discussed earlier. No allegation or evidence of religious exemption or prior membership in another union or engagement as a confidential employee was presented by both parties.

3. ID.; ID.; ID.; ID.; ID.; NOT A RESTRICTION OF THE RIGHT OF FREEDOM OF ASSOCIATION GUARANTEED BY THE CONSTITUTION.— When certain employees are obliged

Supreme Court E-Library

to join a particular union as a requisite for continued employment, as in the case of Union Security Clauses, this condition is a valid restriction of the freedom or right not to join any labor organization because it is in favor of unionism. This Court, on occasion, has even held that a union security clause in a CBA is not a restriction of the right of freedom of association guaranteed by the Constitution.

4. ID.; ID.; ID.; ID.; CLOSED SHOP AGREEMENT; DEFINED. — Moreover, a closed shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "**the most prized achievement of unionism**." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed shop, **it wields group solidarity**.

5. COMMERCIAL LAW; CORPORATION LAW; MERGER; ABSORPTION OF THE EMPLOYEES OF THE NON-SURVIVING ENTITY OF THE MERGER IS NOT MANDATORY ON THE SURVIVING CORPORATION. — In legal parlance, however, human beings are never embraced in the term "assets and liabilities." Moreover, BPI's absorption of former FEBTC employees was neither by operation of law nor by legal consequence of contract. There was no government regulation or law that compelled the merger of the two banks or the absorption of the employees of the dissolved corporation by the surviving corporation. Had there been such law or regulation, the absorption of employees of the non-surviving entities of the merger would have been mandatory on the surviving corporation. In the present case, the merger was voluntarily entered into by both banks presumably for some mutually acceptable consideration. **In fact, the Corporation Code does not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger**.

6. ID.; ID.; ID.; UNLESS EXPRESSLY ASSUMED, EMPLOYMENT CONTRACTS AND COLLECTIVE BARGAINING AGREEMENTS ARE NOT ENFORCEABLE AGAINST A TRANSFEREE OF AN ENTERPRISE; RATIONALE. — Significantly, too, the Articles of Merger and Plan of Merger dated April 7, 2000 did **not** contain any specific stipulation with respect to the employment contracts of existing personnel of

Supreme Court E-Library

the non-surviving entity which is FEBTC. Unlike the Voluntary Arbitrator, this Court cannot uphold the reasoning that the general stipulation regarding transfer of FEBTC assets and liabilities to BPI as set forth in the Articles of Merger necessarily includes the transfer of all FEBTC employees into the employ of BPI and neither BPI nor the FEBTC employees allegedly could do anything about it. **Even if it is so, it does not follow that the absorbed employees should not be subject to the terms and conditions of employment obtaining in the surviving corporation**. The rule is that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties. A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties. This conclusion draws its force from the right of an employer to select his employees and to decide when to engage them as protected under our Constitution, and the same can only be restricted by law through the exercise of the police power.

7. ID.; ID.; ID.; ABSORBED EMPLOYEES ARE NEITHER ASSETS NOR LIABILITIES OF THE DISSOLVED CORPORATION; EXPLAINED. — [T]his Court believes that it is contrary to public policy to declare the former FEBTC employees as forming part of the assets or liabilities of FEBTC that were transferred and absorbed by BPI in the Articles of Merger. Assets and liabilities, in this instance, should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel. A corporation cannot unilaterally transfer its employees to another employer like chattel. Certainly, if BPI as an employer had the right to choose who to retain among FEBTC's employees, FEBTC employees had the concomitant right to choose not to be absorbed by BPI. Even though FEBTC employees had no choice or control over the merger of their employer with BPI, they had a choice whether or not they would allow themselves to be absorbed by BPI. Certainly nothing prevented the FEBTC's employees from resigning or retiring and seeking employment elsewhere instead of going along with the proposed absorption.

Supreme Court E-Library

8. ID.; ID.; ID.; ABSENT AN EXPRESS PROVISION IN THE ARTICLES OF MERGER, THE SURVIVING CORPORATION HAS THE PREROGATIVE TO WHETHER OR NOT EMPLOY THE EMPLOYEES OF THE DISSOLVED ENTITY AND THE LATTER RETAINED THE PREROGATIVE TO ALLOW THEMSELVES TO BE ABSORBED OR NOT. — Employment is a personal consensual contract and absorption by BPI of a former FEBTC employee without the consent of the employee is in violation of an individual's freedom to contract. It would have been a different matter if there was an express provision in the articles of merger that as a condition for the merger, BPI was being required to assume all the employment contracts of all existing FEBTC employees with the conformity of the employees. In the absence of such a provision in the articles of merger, then BPI clearly had the business management decision as to whether or not employ FEBTC's employees. FEBTC employees likewise retained the prerogative to allow themselves to be absorbed or not; otherwise, that would be tantamount to involuntary servitude.

9. ID.; ID.; ID.; THE SURVIVING CORPORATION IS LIABLE FOR THE PAYMENT OF SEPARATION PAY, RETIREMENT PAY OR OTHER BENEFITS TO THE EMPLOYEES OF THE DISSOLVED ENTITY WHO CHOSE NOT TO BE ABSORBED. — There appears to be no dispute that with respect to FEBTC employees that BPI chose not to employ or FEBTC employees who chose to retire or be separated from employment instead of "being absorbed," **BPI's assumed liability** to these employees pursuant to the merger is FEBTC's liability to them in terms of separation pay, retirement pay or other benefits that may be due them depending on the circumstances.

10. ID.; ID.; ID.; ID.; CONSEQUENCES OF VOLUNTARY MERGERS ON THE RIGHT TO EMPLOYMENT AND SENIORITY RIGHTS; APPLICATION IN THE CASE AT BAR. — The lack of a provision in the plan of merger regarding the transfer of employment contracts to the surviving corporation could have very well been deliberate on the part of the parties to the merger, in order to grant the surviving corporation the freedom to choose who among the dissolved corporation's employees to retain, in accordance with the surviving

Supreme Court E-Library

corporation's business needs. If terminations, for instance due to redundancy or labor-saving devices or to prevent losses, are done in good faith, they would be valid. The surviving corporation too is duty-bound to protect the rights of its own employees who may be affected by the merger in terms of seniority and other conditions of their employment due to the merger. Thus, we are not convinced that in the absence of a stipulation in the merger plan the surviving corporation was compelled, or may be judicially compelled, to absorb all employees under the same terms and conditions obtaining in the dissolved corporation as the surviving corporation should also take into consideration the state of its business and its obligations to its own employees, and to their certified collective bargaining agent or labor union.

11. ID.; ID.; ID.; EMPLOYMENT CONTRACTS ARE NOT AUTOMATICALLY TRANSFERABLE FROM ONE ENTITY TO ANOTHER. — For the employee to be "absorbed" by BPI, it requires the employees' implied or express consent. It is because of this human element in employment contracts and the personal, consensual nature thereof that we cannot agree that, in a merger situation, employment contracts are automatically transferable from one entity to another in the same manner that a contract pertaining to purely proprietary rights – such as a promissory note or a deed of sale of property – is perfectly and automatically transferable to the surviving corporation.

12. ID.; ID.; ID.; EFFECT OF MERGER IN THE EMPLOYMENT CONDITION OF THE EMPLOYEES ABSORBED BY THE SURVIVING CORPORATION; DISCUSSED. — That BPI is the same entity as FEBTC after the merger is but a legal fiction intended as a tool to adjudicate rights and obligations between and among the merged corporations and the persons that deal with them. Although in a merger it is as if there is no change in the personality of the employer, there is in reality a change in the situation of the employee. Once an FEBTC employee is absorbed, there are presumably changes in his condition of employment even if his previous tenure and salary rate is recognized by BPI. It is reasonable to assume that BPI would have different rules and regulations and company practices than FEBTC and it is incumbent upon the former FEBTC employees to obey these new rules and adapt to their new

Supreme Court E-Library

environment. Not the least of the changes in employment condition that the absorbed FEBTC employees must face is the fact that prior to the merger they were employees of an unorganized establishment and after the merger they became employees of a unionized company that had an existing collective bargaining agreement with the certified union. This presupposes that the union who is party to the collective bargaining agreement is the certified union that has, in the appropriate certification election, been shown to represent a majority of the members of the bargaining unit. Likewise, with respect to FEBTC employees that BPI chose to employ and who also chose to be absorbed, then due to BPI's blanket assumption of liabilities and obligations under the articles of merger, BPI was bound to respect the years of service of these FEBTC employees and to pay the same, or commensurate salaries and other benefits that these employees previously enjoyed with FEBTC. As the Union likewise pointed out in its pleadings, **there were benefits under the CBA that the former FEBTC employees did not enjoy with their previous employer**. As BPI employees, they will enjoy all these CBA benefits upon their "absorption." Thus, although in a sense BPI is continuing FEBTC's employment of these absorbed employees, BPI's employment of these absorbed employees was not under exactly the same terms and conditions as stated in the latter's employment contracts with FEBTC. This further strengthens the view that BPI and the former FEBTC employees voluntarily contracted with each other for their employment in the surviving corporation.

13. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; COLLECTIVE BARGAINING AGREEMENT; UNION SHOP CLAUSE; TERM "NEW EMPLOYEES," CONSTRUED; APPLICATION TO THE CASE AT BAR. — In any event, it is of no moment that the former FEBTC employees retained the regular status that they possessed while working for their former employer upon their absorption by petitioner. This fact would not remove them from the scope of the phrase "new employees" as contemplated in the Union Shop Clause of the CBA, contrary to petitioner's insistence that the term "new employees" only refers to those who are initially hired as **non-regular** employees for possible regular employment. The Union Shop Clause in the CBA simply states that "new employees" who during the effectivity of the CBA

Supreme Court E-Library

"may be regularly employed" by the Bank must join the union within thirty (30) days from their regularization. There is nothing in the said clause that limits its application to only **new employees who possess non-regular status,** meaning probationary status, at the start of their employment. Petitioner likewise failed to point to any provision in the CBA expressly excluding from the Union Shop Clause new employees who are "absorbed" as regular employees from the beginning of their employment. What is indubitable from the Union Shop Clause is that upon the effectivity of the CBA, petitioner's new regular employees (**regardless of the manner by which they became employees of BPI**) are required to join the Union as a condition of their continued employment. x x x [T]he Court should not uphold an interpretation of the term "new employee" based on the general and extraneous provisions of the Corporation Code on merger that would defeat, rather than fulfill, the purpose of the union shop clause. **To reiterate, the provision of the Article 248(e) of the Labor Code in point mandates that nothing in the said Code or any other law should stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment.**

14. COMMERCIAL LAW; CORPORATION LAW; MERGER, BECOMES EFFECTIVE ONLY UPON THE APPROVAL BY THE SECURITIES AND EXCHANGE COMMISSION OF THE ARTICLES OF MERGER. — By law and jurisprudence, a merger only becomes effective upon approval by the Securities and Exchange Commission (SEC) of the articles of merger. xxx [E]ven though BPI steps into the shoes of FEBTC as the surviving corporation, BPI does so at a particular point in time, *i.e.*, the effectivity of the merger upon the SEC's issuance of a certificate of merger. In fact, the articles of merger themselves provided that both BPI and FEBTC will continue their respective business operations until the SEC issues the certificate of merger and in the event SEC does not issue such a certificate, they agree to hold each other blameless for the non-consummation of the merger.

15. ID.; ID.; ID.; ID.; THE SURVIVING CORPORATION BECAME THE EMPLOYER OF THE ABSORBED EMPLOYEES ONLY AFTER THE EFFECTIVITY OF THE MERGER, NOTWITHSTANDING THAT THE LATTER'S YEARS OF SERVICE WITH THE DISSOLVED CORPORATION WERE

Supreme Court E-Library

VOLUNTARILY RECOGNIZED BY THE SURVIVING CORPORATION. — BPI could have only become the employer of the FEBTC employees it absorbed after the approval by the SEC of the merger. If the SEC did not approve the merger, BPI would not be in the position to absorb the employees of FEBTC at all. Indeed, there is evidence on record that BPI made the assignments of its absorbed employees in BPI effective April 10, 2000, or after the SEC's approval of the merger. In other words, BPI became the employer of the absorbed employees only at some point **after the effectivity of the merger**, notwithstanding the fact that the absorbed employees' years of service with FEBTC were voluntarily recognized by BPI. Even assuming for the sake of argument that we consider the absorbed FEBTC employees as "old employees" of BPI who are not members of any union (***i.e.*, it is their date of hiring by FEBTC and not the date of their absorption that is considered**), this does not necessarily exclude them from the union security clause in the CBA. The CBA subject of this case was effective from April 1, 1996 until March 31, 2001. Based on the allegations of the former FEBTC employees themselves, there were former FEBTC employees who were **hired by FEBTC after April 1, 1996** and if their date of hiring by FEBTC is considered as their date of hiring by BPI, they would undeniably be considered "new employees" of BPI within the contemplation of the Union Shop Clause of the said CBA. Otherwise, it would lead to the absurd situation that we would discriminate not only between new BPI employees (hired during the life of the CBA) and former FEBTC employees (absorbed during the life of the CBA) but also among the former FEBTC employees themselves. In other words, we would be treating employees who are exactly similarly situated (*i.e.*, the group of absorbed FEBTC employees) differently. This hardly satisfies the demands of equality and justice.

16. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; COLLECTIVE BARGAINING AGREEMENT; UNION SHOP CLAUSE; APPLIES TO REGULAR EMPLOYEES HIRED AFTER PROBATIONARY STATUS AND REGULAR EMPLOYEES HIRED AFTER THE MERGER. — Petitioner limited itself to the argument that its absorbed employees do not fall within the term "new employees"

Supreme Court E-Library

contemplated under the Union Shop Clause with the apparent objective of excluding all, and not just some, of the former FEBTC employees from the application of the Union Shop Clause. However, in law or even under the express terms of the CBA, there is no special class of employees called "absorbed employees." In order for the Court to apply or not apply the Union Shop Clause, we can only classify the former FEBTC employees as either "old" or "new." If they are not "old" employees, they are necessarily "new" employees. If they are new employees, the Union Shop Clause did not distinguish between new employees who are *non-regular* at their hiring but who subsequently become regular and new employees who are "absorbed" as regular and permanent from the beginning of their employment. The Union Shop Clause did not so distinguish, and so neither must we. Verily, we agree with the Court of Appeals that there are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a merger, for purposes of applying the Union Shop Clause. Both employees were hired/employed only after the CBA was signed. At the time they are being required to join the Union, they are both already regular rank and file employees of BPI. They belong to the same bargaining unit being represented by the Union. They both enjoy benefits that the Union was able to secure for them under the CBA. When they both entered the employ of BPI, the CBA and the Union Shop Clause therein were already in effect and neither of them had the opportunity to express their preference for unionism or not. We see no cogent reason why the Union Shop Clause should not be applied equally to these two types of new employees, for they are undeniably similarly situated.

17. ID.; ID.; ID.; ID.; ID.; NOT VIOLATIVE OF THE "ABSORBED" EMPLOYEES' FREEDOM OF ASSOCIATION. — The effect or consequence of BPI's so-called "absorption" of former FEBTC employees should be limited to what they actually agreed to, *i.e.* recognition of the FEBTC employees' years of service, salary rate and other benefits with their previous employer. The effect should not be stretched so far as to **exempt** former FEBTC employees from the existing CBA terms, company policies and rules which apply to employees similarly situated. If the Union Shop Clause is valid as to other new regular BPI

Supreme Court E-Library

employees, there is no reason why the same clause would be a violation of the "absorbed" employees' freedom of association.

18. ID.; ID.; ID.; ID.; ID.; SIMILARLY SITUATED EMPLOYEES WHO ENJOY THE SAME PRIVILEGES OF CBA SHOULD BE LIKEWISE SUBJECT TO THE SAME OBLIGATIONS THE CBA IMPOSES UPON THEM; NON-APPLICATION THEREOF IN CASE AT BAR IS CONTRARY TO THE POLICY OF THE LABOR CODE AND INIMICAL TO INDUSTRIAL PEACE. — It is but fair that similarly situated employees who enjoy the same privileges of a CBA should be likewise subject to the same obligations the CBA imposes upon them. A contrary interpretation of the Union Shop Clause will be inimical to industrial peace and workers' solidarity. This unfavorable situation will not be sufficiently addressed by asking the former FEBTC employees to simply pay agency fees to the Union in lieu of union membership x x x. The fact remains that other new regular employees, to whom the "absorbed employees" should be compared, do not have the option to simply pay the agency fees and they must join the Union or face termination. Petitioner's restrictive reading of the Union Shop Clause could also inadvertently open an avenue, which an employer could readily use, in order to dilute the membership base of the certified union in the collective bargaining unit (CBU). By entering into a voluntary merger with a non-unionized company that employs more workers, an employer could get rid of its existing union by the simple expedient of arguing that the "absorbed employees" are **not** new employees, as are commonly understood to be covered by a CBA's union security clause. This could then lead to a new majority within the CBU that could potentially threaten the majority status of the existing union and, ultimately, spell its demise as the CBU's bargaining representative. Such a dreaded but not entirely far-fetched scenario is no different from the ingenious and creative "union-busting" schemes that corporations have fomented throughout the years, which this Court has foiled time and again in order to preserve and protect the valued place of labor in this jurisdiction consistent with the Constitution's mandate of insuring social justice.

19. ID.; ID.; ID.; ID.; ID.; AN EMPLOYER MAY CONFER UPON A NEW EMPLOYEE THE STATUS OF REGULAR

Supreme Court E-Library

EMPLOYMENT EVEN AT THE ONSET OF HIS ENGAGEMENT. — There is nothing in the Labor Code and other applicable laws or the CBA provision at issue that requires that a new employee has to be of probationary or non-regular status at the beginning of the employment relationship. An employer may confer upon a new employee the status of regular employment even at the onset of his engagement. Moreover, no law prohibits an employer from voluntarily recognizing the length of service of a new employee with a previous employer in relation to computation of benefits or seniority but it should not unduly be interpreted to exclude them from the coverage of the CBA which is a binding contractual obligation of the employer and employees.

20. ID.; ID.; ID.; ID.; ID.; PURPOSE THEREOF. — Indeed, a union security clause in a CBA should be interpreted to give meaning and effect to its purpose, which is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit. The union shop clause offers protection to the certified bargaining agent by ensuring that future regular employees who (a) enter the employ of the company during the life of the CBA; (b) are deemed part of the collective bargaining unit; and (c) whose number will affect the number of members of the collective bargaining unit will be compelled to join the union. Such compulsion has legal effect, precisely because the employer by voluntarily entering in to a union shop clause in a CBA with the certified bargaining agent takes on the responsibility of dismissing the new regular employee who does not join the union.

21. ID.; ID.; ID.; ID.; ID.; RESTRICTIVE INTERPRETATION THEREOF WOULD PLACE THE CERTIFIED UNION'S VERY EXISTENCE AT THE MERCY AND CONTROL OF THE EMPLOYER. — Without the union shop clause or with the restrictive interpretation thereof x x x, the company can jeopardize the majority status of the certified union by excluding from union membership all new regular employees whom the Company will "absorb" in future mergers and all new regular employees whom the Company hires as regular from the beginning of their employment without undergoing a probationary period. In this manner, the Company can increase

Supreme Court E-Library

the number of members of the collective bargaining unit and if this increase is not accompanied by a corresponding increase in union membership, the certified union may lose its majority status and render it vulnerable to attack by another union who wishes to represent the same bargaining unit. Or worse, a certified union whose membership falls below twenty percent (20%) of the total members of the collective bargaining unit may lose its status as a legitimate labor organization altogether, even in a situation where there is no competing union. In such a case, an interested party may file for the cancellation of the union's certificate of registration with the Bureau of Labor Relations. Plainly, the restrictive interpretation of the union shop clause would place the certified union's very existence at the mercy and control of the employer. **Relevantly, only BPI, the employer appears to be interested in pursuing this case**. The former FEBTC employees have not joined BPI in this appeal.

22. ID.; ID.; ID.; ID.; ID.; AN EMPLOYEE'S PERMANENT AND REGULAR EMPLOYMENT STATUS IN ITSELF DOES NOT NECESSARILY EXEMPT HIM FROM THE COVERAGE THEREOF. — The dissenting opinions place a premium on the fact that even if the former FEBTC employees are not old employees, they nonetheless were employed as regular and permanent employees without a gap in their service. However, an employee's permanent and regular employment status in itself does not necessarily exempt him from the coverage of a union shop clause. In the past this Court has upheld even the more stringent type of union security clause, *i.e.*, the closed shop provision, and held that it can be made applicable to old employees who are already regular and permanent but have chosen not to join a union. In the early case of *Juat v. Court of Industrial Relations*, the Court held that an old employee who had no union may be compelled to join the union even if the collective bargaining agreement (CBA) imposing the closed shop provision was only entered into seven years after of the hiring of the said employee. x x x Although the present case does not involve a closed shop provision that included even old employees, the *Juat* example is but one of the cases that laid down the doctrine that the right not to join a union is not absolute. Theoretically, there is nothing in law or jurisprudence to prevent an employer and a union from stipulating that existing employees (who already attained regular

Supreme Court E-Library

and permanent status but who are not members of any union) are to be included in the coverage of a union security clause. Even Article 248 (e) of the Labor Code only expressly exempts **old employees who already have a union** from inclusion in a union security clause. *Juat* has not been overturned by *Victoriano v. Elizalde Rope Workers' Union* nor by *Reyes v. Trajano*.

23. ID.; ID.; ID.; ID.; ID.; NOT A VIOLATION OF THE EMPLOYEE'S CONSTITUTIONAL RIGHT TO FREEDOM OF ASSOCIATION; RATIONALE. — Time and again, this Court has ruled that the individual employee's right not to join a union may be validly restricted by a union security clause in a CBA and such union security clause is not a violation of the employee's constitutional right to freedom of association. It is unsurprising that significant provisions on labor protection of the 1987 Constitution are found in Article XIII on Social Justice. The constitutional guarantee given the right to form unions and the State policy to promote unionism have social justice considerations. In *People's Industrial and Commercial Employees and Workers Organization v. People's Industrial and Commercial Corporation*, we recognized that "[l]abor, being the weaker in economic power and resources than capital, deserve protection that is actually substantial and material." The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits **all employees in the bargaining unit** since such a union would be in a better position to demand improved benefits and conditions of work from the employer. This is the rationale behind the State policy to promote unionism declared in the Constitution, which was elucidated in the case of *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*

24. ID.; ID.; ID.; ID.; ID.; THE RIGHT TO ABSTAIN FROM JOINING A LABOR ORGANIZATION IS SUBORDINATE TO THE POLICY OF ENCOURAGING UNIONISM AS AN INSTRUMENT OF SOCIAL JUSTICE. — In the case at bar, since the former FEBTC employees are deemed covered by the Union Shop Clause, they are required to join the certified

bargaining agent, which supposedly has gathered the support of the majority of workers within the bargaining unit in the appropriate certification proceeding. Their joining the certified union would, in fact, be in the best interests of the former FEBTC employees for it unites their interests with the majority of employees in the bargaining unit. It encourages employee solidarity and affords sufficient protection to the majority status of the union during the life of the CBA which are precisely the objectives of union security clauses, such as the Union Shop Clause involved herein. We are indeed not being called to balance the interests of individual employees as against the State policy of promoting unionism, since the employees, who were parties in the court below, no longer contested the adverse Court of Appeals' decision. Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.

25. ID.; ID.; ID.; ID.; ID.; "ABSORBED EMPLOYEES" ARE COVERED BY THE UNION SHOP CLAUSE CONTAINED IN THE EXISTING COLLECTIVE BARGAINING AGREEMENT OF THE SURVIVING CORPORATION.— [T]his Court finds it reasonable and just to conclude that the Union Shop Clause of the CBA covers the former FEBTC employees who were hired/employed by BPI during the effectivity of the CBA in a manner which petitioner describes as "absorption." A contrary appreciation of the facts of this case would, undoubtedly, lead to an inequitable and very volatile labor situation which this Court has consistently ruled against. In the case of former FEBTC employees who initially joined the union but later withdrew their membership, there is even greater reason for the union to request their dismissal from the employer since the CBA also contained a Maintenance of Membership Clause.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; LABOR; RIGHT OF WORKERS TO SELF-ORGANIZATION; DISCUSSED. — The Constitution guarantees the fundamental right of all workers

Supreme Court E-Library

to "self-organization." The right to "self-organization" is a species of the broader constitutional right of the people "to form unions, associations, or societies for purposes not contrary to law," which right "shall not be abridged." The right of workers to self-organization is protected under the Labor Code which provides that workers "shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purpose of collective bargaining." The Code proscribes the abridgment of this right, stating that: "It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing x x x." The right of workers to self-organization means that workers themselves voluntarily organize, without compulsion from outside forces. "Self-organization" means voluntary association without compulsion, threat of punishment, or threat of loss of livelihood. Workers who "self-organize" are workers who on their own volition freely and voluntarily form or join a union. **Compulsory membership is anathema to "self-organization.**"

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; FREEDOM TO JOIN UNIONS NECESSARILY INCLUDES THE FREEDOM NOT TO JOIN UNIONS; ELABORATED.— The right to self-organize includes the right not to exercise such right. Freedom to associate necessarily includes the freedom not to associate. Thus, freedom to join unions necessarily includes the freedom not to join unions. *Reyes v. Trajano* cannot be any clearer on this point: Logically, the right NOT to join, affiliate with, or assist any union, and to disaffiliate or resign from a labor organization, is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein. **The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising said right.** It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. xxx **Thus, it is the worker who should personally decide whether or not to join a labor union.** The union, the management, the

Supreme Court E-Library

courts, and even the State cannot decide this for the worker, more so against his will.

3. ID.; ID.; ID.; PURPOSE OF. — The State encourages union membership to protect an individual employee from the power of the employer. A union is an instrumentality utilized to achieve the objective of protecting the rights of workers. In *Guijarno v. Court of Industrial Relations*, we clarified the purpose of a union: x x x The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work." (Art. II, Sec. 9 of the Revised Constitution) **Where does that leave a labor union, it may be asked. Correctly understood, it is nothing but the means of assuring that such fundamental objectives would be achieved**. **It is the instrumentality through which an individual laborer who is helpless as against a powerful employer may, through concerted effort and activity, achieve the goal of economic well-being.** That is the philosophy underlying the Industrial Peace Act. (Republic Act No. 875 (1953)) For, rightly has it been said that workers unorganized are weak; workers organized are strong. Necessarily then, they join labor unions.

4. ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSES; UNION SHOP, EXPLAINED. — To further strengthen the powers of a union, the State has allowed the inclusion of union security clauses, including a "union shop" (the type of union security clause involved in this case), in collective bargaining agreements (CBA). In a "union shop," employees who are not union members at the time of signing of the contract need not join the union, but all workers hired thereafter must join. Non-members may be hired, but to retain employment must become union members after a certain period. The *ponencia* points out the validity in this jurisdiction of the more stringent union security of "closed shop" and its applicability to old employees who are non-union members at the time of effectivity of the CBA. In a "closed shop," only union members can be hired by the company and they must remain union members to retain employment in the company.

5. ID.; ID.; ID.; ID.; ID.; CLOSED SHOP; MUST BE STRICTLY CONSTRUED AND DOUBTS MUST BE RESOLVED AGAINST IT. — As explained in *Guijarno*, it was to "further

Supreme Court E-Library

increase the effectiveness of [unions] that a closed shop has been allowed." However, this undertaking did not come without detrimental effects on the workers themselves, such that in *Confederated Sons of Labor v. Anakan Lumber Co.*, we declared that a closed shop is "so harsh that it must be strictly construed" and that "doubts must be resolved against [it]." We also ruled in *Anakan* that "In order that an employer may be deemed bound, under a collective bargaining agreement, to dismiss employees for non-union membership, the stipulation to this effect must be so clear and unequivocal as to leave no room for doubt thereon."

6. STATUTORY CONSTRUCTION; LABOR STATUTES; IF BASED ON STATUTES IN FOREIGN JURISDICTION, THE DECISIONS OF THE HIGH COURTS IN THOSE JURISDICTIONS CONSTRUING AND INTERPRETING THE ACT ARE GIVEN PERSUASIVE EFFECTS IN THE APPLICATION OF PHILIPPINE LAW. — Although United States laws and jurisprudence on closed shops and union shops, as they now stand, are different from our own laws, it may be worthwhile to treat them with careful regard since our Labor Code and its precursor, the Industrial Peace Act, are patterned after US labor laws. We have previously ruled that when a statute has been adopted from another state or country and such statute has previously been construed by the courts of such state or country, the statute is deemed to have been adopted with the construction given to it. Where our labor statutes are based on statutes in foreign jurisdiction, the decisions of the high courts in those jurisdictions construing and interpreting the Act are given persuasive effects in the application of Philippine law.

7. COMMERCIAL LAW; CORPORATION LAW; MERGER; EFFECTS THEREOF; APPLICATION. — Union security agreements were adopted in our jurisdiction primarily to safeguard the rights of the working man. Where utilized to achieve a contrary purpose, these union devices should be curtailed and carefully maneuvered to remain within the periphery of labor protection. In this case, the CBA between BPI and the BPI Employees Union contains a union shop clause requiring that "new employees" of BPI join the Union within 30 days after they become regularized, as a condition for their continued employment. Upon merger, BPI, as the surviving entity, absorbs FEBTC and continues the combined business of the two banks. BPI

Supreme Court E-Library

assumes the legal personality of FEBTC, and automatically acquires FEBTC's rights, privileges and powers, as well as its liabilities and obligations. Section 80 of Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines" enumerates the effects of merger xxx. Among the obligations and liabilities of FEBTC is to continue the employment of FEBTC employees. These employees have already acquired certain employment status, tenure, salary and benefits. They are regular employees of FEBTC. Since after the merger, BPI has continued the business of FEBTC, FEBTC's obligation to these employees is assumed by BPI, and BPI becomes duty-bound to continue the employment of these FEBTC employees.

8. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABSENT JUST OR AUTHORIZED CAUSES, THE MERGER OF TWO CORPORATIONS DOES NOT AUTHORIZE THE SURVIVING CORPORATION TO TERMINATE THE EMPLOYEES OF THE ABSORBED CORPORATION. — Under Article 279 of the Labor Code, regular employees acquire security of tenure, and hence, may not be terminated by the employer except upon legal grounds. These grounds are the "just causes" enumerated under Article 282 of the Code, which include serious misconduct or willful disobedience by the employee, gross habitual neglect of duties, fraud or willful breach of employer's trust, and commission of a crime; or "authorized causes" under Article 283, which include installation of labor saving devices, redundancy, retrenchment to prevent losses, and closing or cessation of business operations. Without any of these legal grounds, the employer cannot validly terminate the employment of regular employees; otherwise, the employees' right to security of tenure would be violated. The merger of two corporations does not authorize the surviving corporation to terminate the employees of the absorbed corporation in the absence of just or authorized causes as provided in Articles 282 and 283 of the Labor Code. Merger of two corporations is not one of the just or authorized causes for termination of employment.

9. ID.; ID.; ID.; A UNION SHOP AGREEMENT IS NOT A JUST OR AUTHORIZED CAUSE TO TERMINATE A PERMANENT EMPLOYEE. — Not even a union shop agreement is just or authorized cause to terminate a permanent employee.

Supreme Court E-Library

A union shop clause is only a ground to terminate a probationary employee who refuses to join the union as a condition for continued employment. Once an employee becomes permanent, he is protected by the security of tenure clause in the Constitution, and he can be terminated only for just or authorized causes as provided by law.

10. COMMERCIAL LAW; CORPORATION LAW; MERGER; THE SURVIVING CORPORATION IS OBLIGATED TO CONTINUE THE EMPLOYMENT OF THE ABSORBED CORPORATION. — The right to security of tenure of regular employees is enshrined in the Constitution. This right cannot be eroded, let alone be forfeited except upon a clear and convincing showing of a just and lawful cause. In this case, there is no showing that legal ground exists to warrant a termination of the FEBTC employees. Therefore, BPI is obligated to continue FEBTC employees' regular employment in deference to their constitutional right to security of tenure.

11. ID.; ID.; ID.; A LEGITIMATE MANAGEMENT PREROGATIVE WHICH CANNOT BE REJECTED BY THE EMPLOYEES OF THE MERGING ENTITIES. — Meanwhile, the FEBTC employees **had no choice but to accept the absorption by way of merger.** A merger is a legitimate management prerogative which cannot be opposed or rejected by the employees of the merging entities. Hence, the absorption by BPI of the FEBTC employees was not within the FEBTC employees' control, and the latter had no choice but to be absorbed by BPI, unless they opted to give up their means of livelihood.

12. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; THE PETITIONER BANK'S EXISTING NON-UNION EMPLOYEES AT THE TIME OF THE EFFECTIVITY OF THE COLLECTIVE BARGAINING AGREEMENT CANNOT BE COMPELLED TO JOIN THE UNION AS A CONDITION FOR THEIR CONTINUED EMPLOYMENT; RATIONALE. — Upon the effectivity of the CBA in this case, BPI employees who were members of the Union were required to maintain their membership as a condition for continued employment. **On the other hand, the then non-union employees of BPI were not compelled to join the Union — they were given a choice whether or not to join the Union at no risk to their continued employment**. In other words, non-union BPI employees could opt not to join the Union and still retain their employment with

Supreme Court E-Library

BPI. Meanwhile, "new employees" or those who were hired by BPI after the effectivity and during the life of the CBA were automatically required to join the Union within 30 days after they were regularized. Existing BPI employees who were non-union members were not compelled to join the Union as a condition for their continued employment, as this would violate their fundamental constitutional right not to join a union. This freedom of choice exercised by non-union BPI employees was in recognition of their fundamental constitutional right to join or not to join a union which is part of their broader constitutional right to form associations. To force these employees to join a labor union at the risk of losing their means of livelihood would violate the Constitution. Thus, under the CBA, the BPI employees required to acquire or maintain union membership as a condition for their continued employment are (1) the union members at the time of the effectivity of the CBA and (2) the "new employees" who were hired during the effectivity of the CBA. Non-union BPI employees at the time of the effectivity of the CBA were not, and are still not, required to join the Union.

13. ID.; ID.; ID.; "NEW EMPLOYEES" HIRED BY THE PETITIONER BANK DURING THE LIFE OF THE COLLECTIVE BARGAINING AGREEMENT MAY BE COMPELLED TO JOIN THE UNION AS A CONDITION FOR CONTINUED EMPLOYMENT; REASON. — In the case of "new employees" hired by BPI during the life of the CBA, there is no violation of their constitutional right not to join a union. At the time of their application for employment with BPI, or at the latest, at the time they were hired by BPI, these employees knew that they were required to join the Union within 30 days upon regularization as a condition for continued employment with BPI. In short, the employees knew beforehand that they had to join the Union to be employed with BPI. **Thus, these employees had a clear choice whether or not to be employed with BPI, which requires that they must join the Union upon regularization**.

14. ID.; ID.; ID.; AFTER THE MERGER, THE EMPLOYEES ABSORBED BY THE SURVIVING ENTITY ARE NOT CONSIDERED AS NEW EMPLOYEES THEREOF; PROBATIONARY PERIOD, NOT APPLICABLE; APPLICATION. — The former FEBTC employees should not be considered as "new employees" of BPI. The former FEBTC

Supreme Court E-Library

employees were absorbed by BPI immediately upon merger, leaving no gap in their employment. The employees retained their previous employment status, tenure, salary and benefits. This clearly indicates the intention of BPI to assume and continue the employer-employee relations of FEBTC and its employees. The FEBTC employees' employment remained continuous and unchanged, except that their employer, FEBTC, merged with BPI which, as the surviving entity, continued the combined business of the two banks. Thus, the former FEBTC employees are immediately **regularized and made permanent employees of BPI**. They are not subject to any probationary period as in the case of "new employees" of BPI. The 30-day period within which regularized "new employees" of BPI must join the Union does not apply to former FEBTC employees who are not probationary employees but are immediately regularized as permanent employees of BPI. **In short, the former FEBTC employees are immediately given the same permanent status as old employees of BPI**.

15. ID.; ID.; ID.; AFTER THE MERGER, THE ABSORBED EMPLOYEE SHOULD BE GIVEN THE RIGHT TO CHOOSE WHETHER TO JOIN OR NOT A UNION. — The absorbed FEBTC employees are not "new employees" who are seeking jobs for the first time. These absorbed employees are employees who have been working with FEBTC for years, or even decades, and were only absorbed by BPI because of the merger. Without the merger, these employees would have remained FEBTC employees without being required to join a union to retain their employment. **These absorbed employees are recognized by BPI and even by the Union as permanent employees immediately upon their absorption by BPI because these employees do not have to go through a probationary period.** These absorbed employees are different from the newly-hired employees of BPI, as these absorbed employees already had existing employment tenure, and were earning a livelihood when they were told that they had to join the Union at the risk of losing their livelihood. To require these absorbed employees to join the Union at the risk of losing their jobs is akin to forcing an existing non-union BPI employee to join the Union on pain of termination. In the same way that an existing non-union BPI employee is given the constitutional right to choose whether or not to join a union, an absorbed employee should be equally given the same right. And this

Supreme Court E-Library

right must be conferred to the absorbed employee upon the effectivity of the merger between FEBTC and BPI.

16. ID.; ID.; ID.; THE RIGHT TO FORM AN ASSOCIATION DOES NOT INCLUDE THE RIGHT TO COMPEL OTHERS TO FORM OR JOIN ONE. — Indisputably, the right to join or not to join a Union is part of the fundamental constitutional right to form associations. In *Sta. Clara Homeowners' Association v. Gaston*, we held that, "The constitutionally guaranteed freedom of association includes the freedom *not* to associate. **The right to choose with whom one will associate oneself is the very foundation and essence of that partnership. It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."** Thus, to compel the absorbed FEBTC employees to join the Union at the risk of losing their jobs is violative of their constitutional freedom to associate.

17. ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; THE UNION SHOP CLAUSE CANNOT PREVAIL OVER THE FUNDAMENTAL CONSTITUTIONAL RIGHT OF A WORKER TO JOIN OR NOT TO JOIN A UNION. — The *ponencia* states, "When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of a Union Shop Clause, a form of discrimination or a derogation of the freedom or right not to join any labor organization occurs but *these are valid restrictions because they are in favor of unionism*." In this case, a derogation of the employees' fundamental constitutional right not to join a union is being done without a determination of whether the employees are in favor of unionism. Certainly, the union shop clause in a CBA cannot prevail over the fundamental constitutional right of a worker to join or not to join a union.

18. ID.; ID.; ID.; ID.; OBLIGATION OF NON-UNION EMPLOYEES WHO ACCEPT BENEFITS UNDER THE COLLECTIVE BARGAINING AGREEMENT. — Section 248(e) of the Labor Code provides that, "Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement x x x." **The absorbed FEBTC employees who refuse to join the Union**

Supreme Court E-Library

will not be free riders. We held in *Holy Cross of Davao College, Inc. v. Joaquin* that the collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248 (e) of the Labor Code. The employee's acceptance of benefits resulting from a CBA justifies the deduction of agency fees from his pay and the union's entitlement thereto. In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union. In the present case, since the absorbed FEBTC employees will pay all union dues and fees, there is no reason to force them to join the Union except to humiliate them by trampling upon their fundamental constitutional right to join or not join a union. This the Court should not allow.

BRION, *J., dissenting opinion:*

1. COMMERCIAL LAW; CORPORATION CODE; CORPORATIONS; MERGER; THE SURVIVING OR CONSOLIDATED CORPORATION ASSUMES *IPSO JURE* THE LIABILITIES OF THE DISSOLVED CORPORATIONS REGARDLESS OF WHETHER THE CREDITORS CONSENTED TO THE MERGER OR CONSOLIDATION. — Unlike the old Corporation Code that did not contain express provisions on mergers and consolidations, the present law now authorizes, under Section 76, two or more corporations to merge under one of the participating constituent corporations, or to consolidate into a new single corporation called the consolidated corporation. In either case, no liquidation of the assets of the dissolved corporations takes place, and the *surviving or consolidated corporation assumes ipso jure the liabilities of the dissolved corporations, regardless of whether the creditors consented to the merger or consolidation.*

2. ID.; ID.; ID.; ID.; LEGAL EFFECTS THEREOF; APPLICATION TO THE CASE AT BAR. — The transaction between BPI and FEBTC was a merger under one of the modes provided under Section 76 – *i.e.*, the two corporations, BPI and FEBTC, merged with FEBTC fading away as a corporate entity and BPI surviving as FEBTC's successor. Section 80 of the Corporation Code

Supreme Court E-Library

provides for the legal effects of a merger. As applied to BPI and FEBTC, the effects were: a. BPI and FEBTC became a single corporation with BPI as the surviving corporation; b. The separate corporate existence of FEBTC ceased; c. BPI now possesses all the rights, obligations, privileges, immunities, and franchises of both BPI and FEBTC; d. All property, real or personal, and all receivables due on whatever choses in action, and all other interest of, belonging to, or due to FEBTC are deemed transferred to BPI; e. BPI becomes responsible and liable for all the liabilities and obligations of FEBTC as if it had incurred these liabilities or obligations; f. Any claim, action, or proceeding pending by or against FEBTC should be prosecuted by or against BPI; and g. Neither the rights of creditors nor any lien on the property of FEBTC is impaired by the merger. In short, FEBTC ceased to have any legal personality, and *BPI stepped into everything that was FEBTC's, pursuant to the law and the terms of their Merger Plan.*

3. ID.; ID.; ID.; ID.; MODE OF TRANSFER OF CORPORATE ASSETS AND LIABILITIES, DISCUSSED. — An overview of the whole range or levels of transfers of corporate assets and liabilities, as established by jurisprudence, is helpful and instructive for the full appreciation of the nature of the BPI-FEBTC merger. These levels of transfers are: (1) the **assets-only level**; (2) the **business enterprise level**; and (3) the **equity level**. Each has its own impact on the participating corporations and the immediately affected parties, among them, the employees. **Beyond and encompassing all these levels of transfers is total corporate merger or consolidation.** The **asset-only transfer** affects only the corporate seller's raw assets and properties; the purchaser is not interested in the seller's corporate personality – its goodwill, or in other factors affecting the business itself. In this transaction, no complications arise affecting the employer-employee relationship, except perhaps the redundancy of employees whose presence in the selling company is affected by the sale of the chosen assets and properties, but this is a development completely internal to the selling corporation. In the **business enterprise** level transaction, the purchaser's interest goes beyond the assets and properties and extends into the seller corporation's whole business and "earning capability," short of the seller's juridical personality. Thus, a whole business is sold and purchased but the parties retain their respective juridical personalities. In this type of

Supreme Court E-Library

transaction, employer-employee and employer liability complications arise, as can be seen from a survey of the cases on corporate transfers that this Court has already passed upon. A transaction at the **equity level** does not disturb the participating corporations' separate juridical personality as both corporations continue to remain in existence; the purchaser corporation simply buys the underlying equity of the selling corporation which thus retains its separate corporate personality. The selling corporation continues to run its business, but control of the business is transferred to the purchaser corporation whose control of the selling corporation's equity enables it to elect the members of the selling corporation's board of directors. As pointed out above, a total merger or consolidation goes way beyond all three levels of dealings in corporate business, assets and property. *In a total merger, the merged corporation transfers everything – figuratively speaking, its "body and soul" – to the surviving corporation.* This was what happened in the BPI-FEBTC merger.

4. ID.; ID.; ID.; ID.; THE RIGHT OF THE CORPORATION OVER ITS HUMAN RESOURCES CAN BE CLASSIFIED AS CORPORATE ASSETS; CLARIFIED. — A corporation possesses tangible and intangible assets and properties that, operated on and managed by the corporation's human resources, become an operating business. The intangibles consist, among others, of the corporate goodwill, credits and other incorporeal rights. The human resources that the corporation relies upon to run its business, strictly speaking, are not corporate assets because the corporation does not "own" the people running its business. But corporations are bound to their managers and employees by various forms of contracts of service, such as individual employment contracts, consultancies and other instruments evidencing personal service. In this sense, a corporation has rights over the human resources it has contracted to run and serve its business. These contractual rights, because they are exercised over those who enable the company to fulfill its goal of production, can be classified as corporate assets. But unlike the usual assets, they are unique and special, as contracts of personal service embody rights *in personam, i.e.*, intransferable rights demandable by the parties only against one another. An employment contract or contract of service essentially has value because it embodies work – the means

Supreme Court E-Library

of adding value to basic raw materials and the processes for producing goods, materials and services that become the lifeblood of corporations and, ultimately, of the nation. Viewed from this perspective, the employment contract or contract of service is not an ordinary agreement that can be viewed in strictly *contractual* sense. It embodies work and production and carries with it a very significant element of public interest; thus, the Constitution, no less, accords full recognition and protection to workers and their contribution to production.

5. ID.; ID.; ID.; WHERE NO APPROPRIATE PROVISION FOR THE MERGED CORPORATION'S HUMAN RESOURCES COMPONENT IS MADE IN THE MERGER PLAN, THE SURVIVING ENTITY MAY BE COMPELLED TO ABSORB THE AFFECTED EMPLOYEES. — In a corporate merger situation – where one corporation totally surrenders itself, giving up to another corporation even the human resources that enable its business to operate – the terms of the Constitution bar us from looking at the corporate transaction purely as a contract that should be analyzed purely on the basis of the law on contracts. Nor can we accept as valid that the transfer of all assets and liabilities in a merger situation, as in this case, refers only to FEBTC's property rights and obligations and does not include the employment contracts of its personnel. [D]ue consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation – *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment – should point this Court to a declaration that ***in a complete merger situation*** *where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be*, the latter should not be left in legal limbo and should be properly provided for, by compelling the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation. Not to be forgotten is that the affected employees managed, operated and worked on the transferred assets and properties as their means of livelihood;

Supreme Court E-Library

they constituted a basic component of their corporation during its existence. In a merger and consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. **Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.**

6. ID.; ID.; ID.; ID.; RATIONALE — This recognition is not to objectify the workers as assets and liabilities, but to recognize – using the spirit of the law and constitutional standards – their necessary involvement and need to be provided for in a merger situation. Neither does this step, directly impacting on the employees' individual employment contracts, detract from the *in personam* character of these contracts. **For in a merger situation, no change of employer is involved; the change is in the *internal personality of the employer* rather than through the introduction of a new employer which would have novated the contract.** This conclusion proceeds from the nature of a merger as a corporate development regulated by law and the merger's implementation through the parties' merger agreement. In the context of this case, BPI's relationship with the absorbed employees ***cannot be equated with a situation involving voluntary hiring.*** Note that voluntary hiring, as the basis of the relationship, presupposes that employment with FEBTC had been terminated – a development that, as explained above, did not take place; the employment of the absorbed employees simply continued by operation of law, specifically by the combined operation of the Corporation Code and the Labor Code under the backdrop of the labor and social justice provisions of the Constitution.

7. ID.; ID.; ID.; ID.; AN INDIVIDUAL EMPLOYEE CAN WALK AWAY FROM HIS EMPLOYMENT CONTRACT SUBJECT ONLY TO THE ADJUSTMENT OF THE OBLIGATIONS HE HAS INCURRED UNDER THE CONTRACTUAL RELATIONSHIP THAT BINDS HIM; A CONTRARY RULE IS VIOLATIVE OF

Supreme Court E-Library

THE CONSTITUTIONAL PROVISION ON INVOLUNTARY SERVICE. — An individual employee can, at any time, in a consensual and *in personam* employment contract, walk away from it, subject only to the adjustment of the obligations he has incurred under the contractual relationship that binds him; a contrary rule would violate the involuntary service provision of the Constitution. Ordinarily, walking away would be an act of voluntary resignation that entitles the employee only to benefits that have been earned and accrued; a merger situation is differentiated by the separation pay that the Merger Plan should at least provide under the combined application of the Corporation Code, as well as the just and authorized causes for termination of employment under the Labor Code. Otherwise, the employee has the right to be secure in his tenure without loss of seniority, benefits and level of pay.

8. ID.; ID.; ID.; ID.; ID.; EMPLOYMENT CONTRACTS SHOULD BE HELD TO BE CONTINUING, UNLESS REJECTED BY THE EMPLOYEES THEMSELVES OR DECLARED BY THE MERGING PARTIES TO BE SUBJECT TO THE AUTHORIZED CAUSES FOR TERMINATION OF EMPLOYMENT. — That an employment contract is *in personam* cannot be disputed as this is the essence of such contract and what this contract should be in light of the constitutional prohibition against involuntary servitude. But as pointed out, this is not wholly and strictly how an employment contract is to be viewed under our Constitution. While these contracts are binding only between the parties, they resonate with public interest that the Constitution and our laws have seen fit to regulate; employment contracts translate to service which itself translates to productive work that the economy and the nation need. In the BPI-FEBTC situation, these employment contracts are part of the obligations that the merging parties have to account and make provisions for under the Constitution and the Corporation Code; in the absence of any clear agreement, these employment contracts subsist, subject to the right of the employees to reject them as they cannot be compelled to render service but can only be made to answer in damages if the rejection constitutes a breach. ***In other words, in mergers and consolidations, these contracts should be held to be continuing, unless rejected by the employees themselves or declared by the merging parties to***

Supreme Court E-Library

be subject to the authorized causes for termination of employment under Sections 282 and 283 of the Labor Code. In this sense, the merging parties' control and business decision on how employees shall be affected, in the same manner that the affected employees' decision on whether to abide by the merger or to opt out, remain unsullied.

9. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; IN A MERGER SITUATION, THE ABSORBED EMPLOYEES MAY COME WITHIN THE COVERAGE OF THE BARGAINING UNIT BUT MAY STILL BE EXEMPT FROM COMPULSORY UNION MEMBERSHIP UNDER THE UNION SECURITY CLAUSES. — Where a union is present in a merger situation, complications arise as the adjustment will not only involve the assumption of the role of the merged corporation as employer and the non-diminution of the terms and conditions of employment; existing terms and conditions of the relationship with the union must as well be observed and respected. This union scenario gave rise to the present case and at its core asks: *what terms and conditions of relationship with the union must be observed in light of BPI's expanded role as an employer*. Union presence at the workplace is generally most effective when it has a current CBA with the employer. This agreement necessarily implies that a bargaining unit has been properly defined and delineated in the organized portion of the employer's establishment. In the present case, the establishment is BPI's Davao Branch and the defined bargaining unit covers the rank-and-file positions in the Branch. At the minimum, the absorbed employees working within BPI's Davao Branch who are ***classified as rank-and-file employees*** and ***who are not expressly excluded*** from coverage should be covered by the collective bargaining unit and by the CBA. Note that *this coverage by the bargaining unit is separate from compulsory union membership which is provided under the union security clauses* xxx. *Employees may come within the coverage of the bargaining unit, but may still be exempt from compulsory union membership under the union security clauses*.

10. ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSES; MAINTENANCE OF MEMBERSHIP DISTINGUISHED FROM UNION SHOP; APPLICATION TO THE CASE AT BAR. — The CBA at BPI

Supreme Court E-Library

contains two union security provisions whose respective roles are **to protect** and **to compel** union membership within the effective term of the CBA. The first is the **Maintenance of Membership** provision whose role is to ***protect the union's current membership.*** By its express terms, it covers and renders continued union membership compulsory for: **(1)** those who were already union members at the time the CBA was signed; and **(2)** the new employees who will become regular during the life of the CBA. The first classification of union members directly implies that ***BPI employees who were not members of the union, at the time of the signing of the CBA, are not compelled to be union members.*** Thus, on the basis of this union security clause and the compulsory membership it compels, there are three kinds of employees at BPI, namely – (1) those who **are not compelled to be union members** because they were not union members at the time the CBA was signed; (2) those **who are compelled** to continue membership because they were **already union members when the CBA was signed;** and (3) those who, **previously non-regular employees**, are compelled to be union members **after they attain regular status.** As applied to the absorbed employees, the maintenance of membership clause would apply to them *only if they voluntarily joined the union after the BPI-FEBTC merger*; they would thereafter have to maintain their union membership under pain of dismissal. The second union security provision is entitled **Union Shop** *whose role is to compel the membership of those who are not yet union members.* To quote its direct terms, it refers to "**[N]ew employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank."** Strictly speaking, this definition is defective as it speaks of new non-regular employees who are not therefore members of the bargaining unit yet. The provision should properly read: *new employees occupying positions falling within the bargaining unit.* x x x. In a resulting **purely maintenance of membership** regime, those who would not opt to join the union carry no obligation to maintain any union membership. In a **union shop** regime, the absorbed employees may remain non-union members until an agreed specified time when union membership is declared obligatory as a condition for continued employment. With the same effect would be the stricter **closed shop** clause that compels management to hire

Supreme Court E-Library

only union members. **In any of these regimes, of course, compulsory membership shall depend on the terms of the CBA on who would be subject to compulsion and how compulsion would operate.** As a cautionary note to avoid similar problems in the future, it may be best for the parties to incorporate terms expressly providing for the situation of employees absorbed by reason of merger.

11. ID.; ID.; ID.; ID.; TERM "NEW EMPLOYEES," CONSTRUED. — Read closely, this reference to "new employees" is not a definition that specifies who are new. It simply refers to those employees *whose positions fall within the bargaining unit and who are subsequently given regular status;* they must join the union as a condition of their continued employment. By its reference to employees who are as yet on non-regular status, what is clearly a requirement for the application of the union shop clause, as framed by this provision, is the grant of regular status. In other words, it applies to those recently given regular employment and who, by necessary implication, were hired as non-regular employees and were thereafter accorded regular status. In contrast with the non-regular employees that the CBA clearly referred to, absorbed FEBTC employees did not undergo the process of waiting for the grant of regular status; their regular employment simply continued from FEBTC to BPI without any break because BPI only succeeded to the role of FEBTC as employer in a merger, where the same employment was maintained and only the employer's personality changed. Thus, they cannot be "new" under the terms of the union security clause. For that matter, they are not even "new" under the ordinary meaning of this word which connotes something that recently came into existence, use, or a particular state or relation.

12. ID.; ID.; ID.; ID.; ABSORBED EMPLOYEES AND THOSE WHO ARE HIRED AS IMMEDIATE REGULARS, DISTINGUISHED. — Even granting the validity of the *ponencia's* position that the union shop provision *as written* does not distinguish between non-regular employees, who subsequently became regular, and those who were hired and immediately granted regular status without passing through a non-regular phase, still the union security clause would not cover the absorbed employees because they do not fall under either classification. An intrinsic distinction exists between the absorbed employees and those who are hired as immediate regulars, which distinction

Supreme Court E-Library

cannot simply be disregarded because it establishes how the absorbed employees came to work for BPI. Those who are immediately hired as regulars acquire their status through the voluntary act of hiring done within the effective term or period of the CBA. The absorbed employees, on the other hand, merely continued the employment they started with FEBTC; they came to be BPI employees by reason of a corporate merger that changed the personality of their employer but *did not at all give them any new employment*. Thus, they are neither "new" employees nor employees who became regular only during the term of the CBA in the way that newly regularized employees become so. They were regular employees under their present employment long before BPI succeeded to FEBTC's role as employer.

13. ID.; ID.; ID.; ABSORBED EMPLOYEES OF THE DISSOLVED CORPORATION, CLASSIFICATION THEREOF CLARIFIED. — It may well be asked: what then is the classification under the CBA of the absorbed employees whose positions fall within the bargaining unit? As discussed, they cannot be new employees. In fact, they are more similar to the "old" employees, if their continuity of service will be considered. This characterization, nevertheless, is clearly inapt since they cannot also be treated in exactly the same way as the pre-merger BPI employees. Besides, *being "old" employees will not compel them to join the union under the maintenance of membership provision as they never had any union membership to maintain.* Ultimately, the absorbed employees are best recognized for what they really are – a ***sui generis* group of employees** whose classification will not be duplicated until BPI has another merger where it would be the surviving corporation and no provision would be made to define the situation of the employees of the merged constituent corporation. Significantly, this classification – ***obviously, not within the contemplation of the CBA parties when they executed their CBA*** – is not contrary to, nor governed by, any of the agreed terms of the existing CBA on union security, and thus occupies a gap that BPI, in the exercise of its management prerogative, can fill. In the meantime, whether to join or not to join the union is a choice that these absorbed employees will have to make after the next CBA, when their status becomes subject to the results of the collective negotiations.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan and *Hildegardo F. Iñigo* for petitioner.

Gregorio A. Pizzaro for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

May a corporation invoke its merger with another corporation as a valid ground to exempt its "absorbed employees" from the coverage of a union shop clause contained in its existing Collective Bargaining Agreement (CBA) with its own certified labor union? That is the question we shall endeavor to answer in this petition for review filed by an employer after the Court of Appeals decided in favor of respondent union, which is the employees' recognized collective bargaining representative.

At the outset, we should call to mind the spirit and the letter of the Labor Code provisions on union security clauses, specifically Article 248 (e), which states, "x x x **Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment,** except those employees who are already members of another union at the time of the signing of the collective bargaining agreement."[1] This case which involves the application of a collective bargaining agreement with a union shop clause should be resolved principally from the standpoint of the clear provisions of our labor laws, and the express terms of the CBA in question, and not by inference from the general consequence of the merger of corporations under the Corporation Code, which obviously does not deal with and, therefore, is silent on the terms and conditions of employment in corporations or juridical entities.

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[1] Presidential Decree No. 442, as amended. Emphasis added.

Supreme Court E-Library

This issue must be resolved NOW, instead of postponing it to a future time when the CBA is renegotiated as suggested by the Honorable Justice Arturo D. Brion because the same issue may still be resurrected in the renegotiation if the absorbed employees insist on their privileged status of being exempt from any union shop clause or any variant thereof.

We find it significant to note that it is only the employer, Bank of the Philippine Islands (BPI), that brought the case up to this Court *via* the instant petition for review; while the employees actually involved in the case did not pursue the same relief, but had instead chosen in effect to acquiesce to the decision of the Court of Appeals which effectively required them to comply with the union shop clause under the existing CBA at the time of the merger of BPI with Far East Bank and Trust Company (FEBTC), **which decision had already become final and executory as to the aforesaid employees**. By not appealing the decision of the Court of Appeals, the aforesaid employees are bound by the said Court of Appeals' decision to join BPI's duly certified labor union. In view of the apparent acquiescence of the affected FEBTC employees in the Court of Appeals' decision, BPI should not have pursued this petition for review. However, even assuming that BPI may do so, the same still cannot prosper.

What is before us now is a petition for review under Rule 45 of the Rules of Court of the Decision[2] dated September 30, 2003 of the Court of Appeals, as reiterated in its Resolution[3] of June 9, 2004, reversing and setting aside the Decision[4] dated November 23, 2001 of Voluntary Arbitrator Rosalina Letrondo-Montejo, in *CA-G.R. SP No. 70445*, entitled *BPI Employees*

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[2] Penned by Associate Justice Arsenio J. Magpale (ret.) with Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes, concurring; *rollo*, pp. 15-25.

[3] *Rollo,* pp. 41-42.

[4] *Id.* at 86-93.

Supreme Court E-Library

Union-Davao Chapter-Federation of Unions in BPI Unibank v. Bank of the Philippine Islands, et al.

The antecedent facts are as follows:

On March 23, 2000, the Bangko Sentral ng Pilipinas approved the Articles of Merger executed on January 20, 2000 by and between BPI, herein petitioner, and FEBTC.[5] This Article and Plan of Merger was approved by the Securities and Exchange Commission on April 7, 2000.[6]

Pursuant to the Article and Plan of Merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI as the surviving corporation. FEBTC employees, including those in its different branches across the country, were hired by petitioner as its own employees, with their status and tenure recognized and salaries and benefits maintained.

Respondent BPI Employees Union-Davao Chapter - Federation of Unions in BPI Unibank (hereinafter the "Union," for brevity) is the exclusive bargaining agent of BPI's rank and file employees in Davao City. The former FEBTC rank-and-file employees in Davao City did not belong to any labor union at the time of the merger. Prior to the effectivity of the merger, or on March 31, 2000, respondent Union invited said FEBTC employees to a meeting regarding the Union Shop Clause (Article II, Section 2) of the existing CBA between petitioner BPI and respondent Union.[7]

The parties both advert to certain provisions of the existing CBA, which are quoted below:

ARTICLE I

Section 1. Recognition and Bargaining Unit – The BANK recognizes the UNION as the sole and exclusive collective bargaining

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[5] *Id.* at 78.

[6] *Id.* at 79.

[7] *Id.* at 18.

Supreme Court E-Library

representative of all the regular rank and file employees of the Bank offices in Davao City.

Section 2. Exclusions

Section 3. Additional Exclusions

Section 4. Copy of Contract

ARTICLE II

Section 1. Maintenance of Membership – All employees within the bargaining unit who are members of the Union on the date of the effectivity of this Agreement as well as employees within the bargaining unit who subsequently join or become members of the Union during the lifetime of this Agreement shall as a condition of their continued employment with the Bank, maintain their membership in the Union in good standing.

Section 2. Union Shop — **New employees** falling within the bargaining unit as defined in Article I of this Agreement, **who may hereafter be regularly employed** by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment. It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.[8] (Emphases supplied.)

After the meeting called by the Union, some of the former FEBTC employees joined the Union, while others refused. Later, however, some of those who initially joined retracted their membership.[9]

Respondent Union then sent notices to the former FEBTC employees who refused to join, as well as those who retracted their membership, and called them to a hearing regarding the matter. When these former FEBTC employees refused to attend the hearing, the president of the Union requested BPI to implement the Union Shop Clause of the CBA and to terminate their employment pursuant thereto.[10]

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[8] *Id.* at 16-17.

[9] Records, p. 8.

[10] *Id.* at 18.

Supreme Court E-Library

After two months of management inaction on the request, respondent Union informed petitioner BPI of its decision to refer the issue of the implementation of the Union Shop Clause of the CBA to the Grievance Committee. However, the issue remained unresolved at this level and so it was subsequently submitted for voluntary arbitration by the parties.[11]

Voluntary Arbitrator Rosalina Letrondo-Montejo, in a Decision[12] dated November 23, 2001, ruled in favor of petitioner BPI's interpretation that the former FEBTC employees were not covered by the Union Security Clause of the CBA between the Union and the Bank on the ground that the said employees were not new employees who were hired and subsequently regularized, but were absorbed employees "by operation of law" because the "**former employees** of FEBTC can be considered **assets and liabilities of the absorbed corporation**." The Voluntary Arbitrator concluded that the former FEBTC employees could not be compelled to join the Union, as it was their constitutional right to join or not to join any organization.

Respondent Union filed a Motion for Reconsideration, but the Voluntary Arbitrator denied the same in an Order dated March 25, 2002.[13]

Dissatisfied, respondent then appealed the Voluntary Arbitrator's decision to the Court of Appeals. In the herein assailed Decision dated September 30, 2003, the Court of Appeals reversed and set aside the Decision of the Voluntary Arbitrator.[14] Likewise, the Court of Appeals denied herein petitioner's Motion for Reconsideration in a Resolution dated June 9, 2004.

The Court of Appeals pertinently ruled in its Decision:

A union-shop clause has been defined as a form of union security provision wherein non-members may be hired, but to retain employment must become union members after a certain period.

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[11] *Id.* at 19.

[12] *Supra* note 4.

[13] *Rollo*, p. 19.

[14] *Id.* at 24.

Supreme Court E-Library

There is no question as to the existence of the union-shop clause in the CBA between the petitioner-union and the company. The controversy lies in its application to the "absorbed" employees.

This Court agrees with the voluntary arbitrator that the ABSORBED employees are distinct and different from NEW employees BUT only in so far as their employment service is concerned. The distinction ends there. In the case at bar, the absorbed employees' length of service from its former employer is tacked with their employment with BPI. Otherwise stated, the absorbed employees service is continuous and there is no gap in their service record.

This Court is persuaded that the *similarities* of "new" and "absorbed" employees far outweighs the *distinction* between them. The similarities lies on the following, to wit: (a) they have a new employer; (b) new working conditions; (c) new terms of employment and; (d) new company policy to follow. As such, they should be considered as "new" employees for purposes of applying the provisions of the CBA regarding the "union-shop" clause.

To rule otherwise would definitely result to a very awkward and unfair situation wherein the "absorbed" employees shall be in a different if not, better situation than the existing BPI employees. The existing BPI employees by virtue of the "union-shop" clause are required to pay the monthly union dues, remain as members in good standing of the union otherwise, they shall be terminated from the company, and other union-related obligations. On the other hand, the "absorbed" employees shall enjoy the "fruits of labor" of the petitioner-union and its members for nothing in exchange. Certainly, this would disturb industrial peace in the company which is the paramount reason for the existence of the CBA and the union.

The voluntary arbitrator's interpretation of the provisions of the CBA concerning the coverage of the "union-shop" clause is at war with the spirit and the rationale why the Labor Code itself allows the existence of such provision.

The Supreme Court in the case of *Manila Mandarin Employees Union vs. NLRC* (G.R. No. 76989, September 29, 1987) rule, to quote:

> "This Court has held that a valid form of union security, and such a provision in a collective bargaining agreement is not a restriction of the right of freedom of association guaranteed by the Constitution.

Supreme Court E-Library

> A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is **"THE MOST PRIZED ACHIEVEMENT OF UNIONISM." IT ADDS MEMBERSHIP AND COMPULSORY DUES.** By holding out to loyal members a promise of employment in the closed-shop, **it wields group solidarity**." (Emphasis supplied)

Hence, the voluntary arbitrator erred in construing the CBA literally at the expense of industrial peace in the company.

With the foregoing ruling from this Court, necessarily, the alternative prayer of the petitioner to require the individual respondents to become members or if they refuse, for this Court to direct respondent BPI to dismiss them, follows.[15]

Hence, petitioner's present recourse, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE FORMER FEBTC EMPLOYEES SHOULD BE CONSIDERED 'NEW' EMPLOYEES OF BPI FOR PURPOSES OF APPLYING THE UNION SHOP CLAUSE OF THE CBA

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE VOLUNTARY ARBITRATOR'S INTERPRETATION OF THE COVERAGE OF THE UNION SHOP CLAUSE IS "AT WAR WITH THE SPIRIT AND THE RATIONALE WHY THE LABOR CODE ITSELF ALLOWS THE EXISTENCE OF SUCH PROVISION"[16]

In essence, the sole issue in this case is whether or not the former FEBTC employees that were absorbed by petitioner upon the merger between FEBTC and BPI should be covered by the Union Shop Clause found in the existing CBA between petitioner and respondent Union.

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[15] *Rollo*, pp. 229-231.

[16] *Id.* at 66.

Supreme Court E-Library

Petitioner is of the position that the former FEBTC employees are not new employees of BPI for purposes of applying the Union Shop Clause of the CBA, on this note, petitioner points to Section 2, Article II of the CBA, which provides:

> **New employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank shall, within thirty (30) days after they become regular** employees, **join the Union as a condition of their continued employment.** It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.[17] (Emphases supplied.)

Petitioner argues that the term "new employees" in the Union Shop Clause of the CBA is qualified by the phrases "who may hereafter be regularly employed" and "after they become regular employees" which led petitioner to conclude that the "new employees" referred to in, and contemplated by, the Union Shop Clause of the CBA were only those employees who were "new" to BPI, on account of having been hired initially on a temporary or probationary status for possible regular employment at some future date. BPI argues that the FEBTC employees absorbed by BPI cannot be considered as "new employees" of BPI for purposes of applying the Union Shop Clause of the CBA.[18]

According to petitioner, the contrary interpretation made by the Court of Appeals of this particular CBA provision ignores, or even defies, what petitioner assumes as its clear meaning and scope which allegedly contradicts the Court's strict and restrictive enforcement of union security agreements.

We do not agree.

Section 2, Article II of the CBA is silent as to how one becomes a "regular employee" of the BPI for the first time. **There is nothing in the said provision which requires that a "new" regular employee first undergo a temporary or**

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[17] *Id.* at 17.

[18] *Id.* at 68-69.

Supreme Court E-Library

probationary status before being deemed as such under the union shop clause of the CBA.

"Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[19]

In the case of *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*,[20] we ruled that:

It is the policy of the State to promote unionism to enable the workers to negotiate with management on the same level and with more persuasiveness than if they were to individually and independently bargain for the improvement of their respective conditions. To this end, the Constitution guarantees to them the rights "to self-organization, collective bargaining and negotiations and peaceful concerted actions including the right to strike in accordance with law." There is no question that these purposes could be thwarted if every worker were to choose to go his own separate way instead of joining his co-employees in planning

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[19] *Inguillo v. First Philippine Scales, Inc.*, G.R. No. 165407, June 5, 2009, 588 SCRA 471, 485-486.

[20] 259 Phil. 1156, 1167-1168 (1989).

Supreme Court E-Library

collective action and presenting a united front when they sit down to bargain with their employers. It is for this reason that the law has sanctioned stipulations for the union shop and the closed shop as a means of encouraging the workers to join and support the labor union of their own choice as their representative in the negotiation of their demands and the protection of their interest *vis-à-vis* the employer. (Emphasis ours.)

In other words, the purpose of a union shop or other union security arrangement is to guarantee the continued existence of the union through enforced membership for the benefit of the workers.

All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. **However, under law and jurisprudence, the following kinds of employees are exempted from its coverage**, namely, employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds;[21] **employees already in the service and already members of a union other than the majority at the time the union shop agreement took effect**;[22] confidential employees who are excluded from the rank and file bargaining unit;[23] and **employees excluded from the union shop by express terms of the agreement**.

When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of Union Security Clauses, this condition is a valid restriction of the freedom or right not to join any labor organization because it is in favor of unionism. This Court, on occasion, has even held that a

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[21] *Victoriano v. Elizalde Rope Workers' Union*, G.R. No. L-25246, September 12, 1974, 59 SCRA 54, 68.

[22] *Freeman Shirt Manufacturing Co. v. Court of Industrial Relations*, G.R. No. L-16561, January 28,1961, 1 SCRA 353, 356; *Sta. Cecilia Sawmills v. Court of Industrial Relations*, G.R. Nos. L-19273-74, February 29, 1964, 10 SCRA 433, 437.

[23] *Metrolab Industries, Inc. v. Confesor*, G.R. No. 108855, February 28, 1996, 254 SCRA 182, 197.

Supreme Court E-Library

union security clause in a CBA is not a restriction of the right of freedom of association guaranteed by the Constitution.[24]

Moreover, a closed shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "**the most prized achievement of unionism**." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed shop, **it wields group solidarity**.[25]

Indeed, the situation of the former FEBTC employees in this case clearly does not fall within the first three exceptions to the application of the Union Shop Clause discussed earlier. No allegation or evidence of religious exemption or prior membership in another union or engagement as a confidential employee was presented by both parties. The sole category therefore in which petitioner may prove its claim is the fourth recognized exception or whether the former FEBTC employees are excluded by the express terms of the existing CBA between petitioner and respondent.

To reiterate, petitioner insists that the term "new employees," as the same is used in the Union Shop Clause of the CBA at issue, refers only to employees hired by BPI as **non-regular** employees who **later qualify** for regular employment and become regular employees, and not those who, as a legal consequence of a merger, are allegedly automatically deemed regular employees of BPI. However, the CBA does not make a distinction as to how a regular employee attains such a status. Moreover, there is nothing in the Corporation Law and the merger agreement mandating the automatic employment as regular employees by the surviving corporation in the merger.

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[24] *Manila Mandarin Employees Union v. National Labor Relations Commission*, G.R. No. 76989, September 29, 1987, 154 SCRA 368, 375 (citing *Lirag Textile Mills, Inc. v. Blanco*, G.R. No. L-27029, November 12, 1981, 109 SCRA 87 and *Manalang v. Artex Development Company, Inc.*, G.R. No. L-20432, October 30, 1967, 21 SCRA 561).

[25] *Id.* at 375.

Supreme Court E-Library

It is apparent that petitioner hinges its argument that the former FEBTC employees were absorbed by BPI merely as a legal consequence of a merger based on the characterization by the Voluntary Arbiter of these absorbed employees as included in the "assets and liabilities" of the dissolved corporation - assets because they help the Bank in its operation and liabilities because redundant employees may be terminated and company benefits will be paid to them, thus reducing the Bank's financial status. Based on this ratiocination, she ruled that the same are not new employees of BPI as contemplated by the CBA at issue, noting that the Certificate of Filing of the Articles of Merger and Plan of Merger between FEBTC and BPI stated that "x x x the entire assets and liabilities of FAR EASTERN BANK & TRUST COMPANY will be transferred to and absorbed by the BANK OF THE PHILIPPINE ISLANDS x x x (underlining supplied)."[26] In sum, the Voluntary Arbiter upheld the reasoning of petitioner that the FEBTC employees became BPI employees by "operation of law" because they are included in the term "assets and liabilities."

Absorbed FEBTC Employees are Neither Assets nor Liabilities

In legal parlance, however, human beings are never embraced in the term "assets and liabilities." Moreover, BPI's absorption of former FEBTC employees was neither by operation of law nor by legal consequence of contract. There was no government regulation or law that compelled the merger of the two banks or the absorption of the employees of the dissolved corporation by the surviving corporation. Had there been such law or regulation, the absorption of employees of the non-surviving entities of the merger would have been mandatory on the surviving corporation.[27] In the present case, the merger was voluntarily entered into by both banks presumably for some mutually acceptable consideration. **In fact, the Corporation Code does**

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[26] *Rollo*, p. 79.

[27] *Filipinas Port Services, Inc. v. National Labor Relations Commission*, G.R. No. 97237, August 16, 1991, 200 SCRA 773, 780.

Supreme Court E-Library

not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger. Section 80 of the Corporation Code provides:

SEC. 80. *Effects of merger or consolidation.* – The merger or consolidation, as provided in the preceding sections shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or the consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of such constituent corporations shall be impaired by such merger or consolidated.

Supreme Court E-Library

Significantly, too, the Articles of Merger and Plan of Merger dated April 7, 2000 did **not** contain any specific stipulation with respect to the employment contracts of existing personnel of the non-surviving entity which is FEBTC. Unlike the Voluntary Arbitrator, this Court cannot uphold the reasoning that the general stipulation regarding transfer of FEBTC assets and liabilities to BPI as set forth in the Articles of Merger necessarily includes the transfer of all FEBTC employees into the employ of BPI and neither BPI nor the FEBTC employees allegedly could do anything about it. **Even if it is so, it does not follow that the absorbed employees should not be subject to the terms and conditions of employment obtaining in the surviving corporation**.

> The rule is that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties. A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties. This conclusion draws its force from the right of an employer to select his employees and to decide when to engage them as protected under our Constitution, and the same can only be restricted by law through the exercise of the police power.[28]

Furthermore, this Court believes that it is contrary to public policy to declare the former FEBTC employees as forming part of the assets or liabilities of FEBTC that were transferred and absorbed by BPI in the Articles of Merger. Assets and liabilities, in this instance, should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel. A corporation cannot unilaterally transfer its employees to another employer like chattel. Certainly, if BPI as an employer had the right to choose who to retain among FEBTC's employees, FEBTC employees had the concomitant right to choose not to be absorbed by BPI. Even though FEBTC employees had no choice or control over

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[28] *Sundowner Development Corporation v. Drilon*, G.R. No. 82341, December 6, 1989, 180 SCRA 14, 18.

Supreme Court E-Library

the merger of their employer with BPI, they had a choice whether or not they would allow themselves to be absorbed by BPI. Certainly nothing prevented the FEBTC's employees from resigning or retiring and seeking employment elsewhere instead of going along with the proposed absorption.

Employment is a personal consensual contract and absorption by BPI of a former FEBTC employee without the consent of the employee is in violation of an individual's freedom to contract. It would have been a different matter if there was an express provision in the articles of merger that as a condition for the merger, BPI was being required to assume all the employment contracts of all existing FEBTC employees with the conformity of the employees. In the absence of such a provision in the articles of merger, then BPI clearly had the business management decision as to whether or not employ FEBTC's employees. FEBTC employees likewise retained the prerogative to allow themselves to be absorbed or not; otherwise, that would be tantamount to involuntary servitude.

There appears to be no dispute that with respect to FEBTC employees that BPI chose not to employ or FEBTC employees who chose to retire or be separated from employment instead of "being absorbed," **BPI's assumed liability** to these employees pursuant to the merger is FEBTC's liability to them in terms of separation pay,[29] retirement

[29] Art. 283 of the Labor Code provides:

CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and Ministry of Labor an Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Supreme Court E-Library

pay[30] or other benefits that may be due them depending on the circumstances.

Legal Consequences of Mergers

Although not binding on this Court, American jurisprudence on the consequences of voluntary mergers on the right to employment and seniority rights is persuasive and illuminating. We quote the following pertinent discussion from the American Law Reports:

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[30] Art. 287 of the Labor Code states:

RETIREMENT. – Any employees may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contact.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however,* That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment may retire and shall be entitled to retirement pay equivalent to at least one half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term "one-half (1/2) month salary" shall mean fifteen (15) days plus one twelfth (1/12) of the 13th-month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine workers, who has served at least (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article. (R.A. No.8558, approved on February 26, 1998.)

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the final provisions provided under Article 288 of this Code.

Supreme Court E-Library

Several cases have involved the situation where as a result of **mergers**, consolidations, or shutdowns, one group of employees, who had accumulated seniority at one plant or for one employer, finds that their jobs have been discontinued except to the extent that they are offered employment at the place or by the employer where the work is to be carried on in the future. *Such cases have involved the question whether such transferring employees should be entitled to carry with them their accumulated seniority or whether they are to be compelled to start over at the bottom of the seniority list in the "new" job. It has been recognized in some cases that the accumulated seniority does not survive and cannot be transferred to the "new" job.*

In ***Carver v. Brien*** **(1942) 315 Ill App 643, 43 NE2d 597**, the shop work of three formerly separate railroad corporations, which had previously operated separate facilities, was consolidated in the shops of one of the roads. Displaced employees of the other two roads were given preference for the new jobs created in the shops of the railroad which took over the work. A controversy arose between the employees as to whether the displaced employees were entitled to carry with them to the new jobs the seniority rights they had accumulated with their prior employers, that is, whether the rosters of the three corporations, for seniority purposes, should be "dovetailed" or whether the transferring employees should go to the bottom of the roster of their new employer. Labor representatives of the various systems involved attempted to work out an agreement which, in effect, preserved the seniority status obtained in the prior employment on other roads, and the action was for specific performance of this agreement against a demurring group of the original employees of the railroad which was operating the consolidated shops. The relief sought was denied, the court saying that, *absent some specific contract provision otherwise, seniority rights were ordinarily limited to the employment in which they were earned*, and concluding that the contract for which specific performance was sought was not such a completed and binding agreement as would support such equitable relief, since the railroad, whose concurrence in the arrangements made was essential to their effectuation, was not a party to the agreement.

Where the provisions of a labor contract provided that in the event that a trucker **absorbed** the business of another private contractor or common carrier, or was a party to a **merger** of lines, *the seniority of the employees* ***absorbed*** *or affected thereby should be determined*

Supreme Court E-Library

by mutual agreement between the trucker and the unions involved, it was held in ***Moore v. International Brotherhood of Teamsters, etc.* (1962, Ky) 356 SW2d 241**, that the trucker *was not required to absorb the affected employees as well as the business, the court saying that they could find no such meaning in the above clause, stating that it dealt only with seniority, and not with initial employment. Unless and until the absorbing company agreed to take the employees of the company whose business was being* ***absorbed****, no seniority problem was created, said the court, hence the provision of the contract could have no application*. Furthermore, said the court, it did not require that the absorbing company take these employees, but only that if it did take them *the question of seniority between the old and* ***new employees*** *would be worked out by agreement* or else be submitted to the grievance procedure.[31] (Emphasis ours.)

Indeed, from the tenor of local and foreign authorities, in voluntary mergers, absorption of the dissolved corporation's employees or the recognition of the absorbed employees' service with their previous employer may be demanded from the surviving corporation if required by provision of law or contract. The dissent of Justice Arturo D. Brion tries to make a distinction as to the terms and conditions of employment of the absorbed employees in the case of a corporate merger or consolidation which will, in effect, take away from corporate management the prerogative to make purely business decisions on the hiring of employees or will give it an excuse not to apply the CBA in force to the prejudice of its own employees and their recognized collective bargaining agent. In this regard, we disagree with Justice Brion.

Justice Brion takes the position that because the surviving corporation continues the personality of the dissolved corporation and acquires all the latter's rights and obligations, it is duty-bound to absorb the dissolved corporation's employees, even in the absence of a stipulation in the plan of merger. He proposes that this interpretation would provide the necessary protection to labor as it spares workers from being "left in legal limbo."

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[31] 90 ALR 2D 975, 983-984.

Supreme Court E-Library

However, there are instances where an employer can validly discontinue or terminate the employment of an employee without violating his right to security of tenure. Among others, in case of redundancy, for example, superfluous employees may be terminated and such termination would be authorized under Article 283 of the Labor Code.[32]

Moreover, assuming for the sake of argument that there is an obligation to hire or absorb all employees of the non-surviving corporation, there is still no basis to conclude that the terms and conditions of employment under a valid collective bargaining agreement in force in the surviving corporation should not be made to apply to the absorbed employees.

The Corporation Code and the Subject Merger Agreement are Silent on Efficacy, Terms and Conditions of Employment Contracts

The lack of a provision in the plan of merger regarding the transfer of employment contracts to the surviving corporation could have very well been deliberate on the part of the parties to the merger, in order to grant the surviving corporation the freedom to choose who among the dissolved corporation's employees to retain, in accordance with the surviving corporation's

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[32] **Art. 283. Closure of establishment and reduction of personnel.** The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Supreme Court E-Library

business needs. If terminations, for instance due to redundancy or labor-saving devices or to prevent losses, are done in good faith, they would be valid. The surviving corporation too is duty-bound to protect the rights of its own employees who may be affected by the merger in terms of seniority and other conditions of their employment due to the merger. Thus, we are not convinced that in the absence of a stipulation in the merger plan the surviving corporation was compelled, or may be judicially compelled, to absorb all employees under the same terms and conditions obtaining in the dissolved corporation as the surviving corporation should also take into consideration the state of its business and its obligations to its own employees, and to their certified collective bargaining agent or labor union.

Even assuming we accept Justice Brion's theory that in a merger situation the surviving corporation should be compelled to absorb the dissolved corporation's employees as a legal consequence of the merger and as a social justice consideration, it bears to emphasize his dissent also recognizes that the employee may choose to end his employment at any time by voluntarily resigning. For the employee to be "absorbed" by BPI, it requires the employees' implied or express consent. It is because of this human element in employment contracts and the personal, consensual nature thereof that we cannot agree that, in a merger situation, employment contracts are automatically transferable from one entity to another in the same manner that a contract pertaining to purely proprietary rights – such as a promissory note or a deed of sale of property – is perfectly and automatically transferable to the surviving corporation.

That BPI is the same entity as FEBTC after the merger is but a legal fiction intended as a tool to adjudicate rights and obligations between and among the merged corporations and the persons that deal with them. Although in a merger it is as if there is no change in the personality of the employer, there is in reality a change in the situation of the employee. Once an FEBTC employee is absorbed, there are presumably changes in his condition of employment even if his previous tenure and salary rate is recognized by BPI. It is reasonable to assume that BPI would have different rules and regulations and company

Supreme Court E-Library

practices than FEBTC and it is incumbent upon the former FEBTC employees to obey these new rules and adapt to their new environment. Not the least of the changes in employment condition that the absorbed FEBTC employees must face is the fact that prior to the merger they were employees of an unorganized establishment and after the merger they became employees of a unionized company that had an existing collective bargaining agreement with the certified union. This presupposes that the union who is party to the collective bargaining agreement is the certified union that has, in the appropriate certification election, been shown to represent a majority of the members of the bargaining unit.

Likewise, with respect to FEBTC employees that BPI chose to employ and who also chose to be absorbed, then due to BPI's blanket assumption of liabilities and obligations under the articles of merger, BPI was bound to respect the years of service of these FEBTC employees and to pay the same, or commensurate salaries and other benefits that these employees previously enjoyed with FEBTC.

As the Union likewise pointed out in its pleadings, **there were benefits under the CBA that the former FEBTC employees did not enjoy with their previous employer**. As BPI employees, they will enjoy all these CBA benefits upon their "absorption." Thus, although in a sense BPI is continuing FEBTC's employment of these absorbed employees, BPI's employment of these absorbed employees was not under exactly the same terms and conditions as stated in the latter's employment contracts with FEBTC. This further strengthens the view that BPI and the former FEBTC employees voluntarily contracted with each other for their employment in the surviving corporation.

Proper Appreciation of the Term "New Employees" Under the CBA

In any event, it is of no moment that the former FEBTC employees retained the regular status that they possessed while working for their former employer upon their absorption by petitioner. This fact would not remove them from the scope of the phrase "new employees" as contemplated in the Union

Supreme Court E-Library

Shop Clause of the CBA, contrary to petitioner's insistence that the term "new employees" only refers to those who are initially hired as **non-regular** employees for possible regular employment.

The Union Shop Clause in the CBA simply states that "new employees" who during the effectivity of the CBA "may be regularly employed" by the Bank must join the union within thirty (30) days from their regularization. There is nothing in the said clause that limits its application to only **new employees who possess non-regular status,** meaning probationary status, at the start of their employment. Petitioner likewise failed to point to any provision in the CBA expressly excluding from the Union Shop Clause new employees who are "absorbed" as regular employees from the beginning of their employment. What is indubitable from the Union Shop Clause is that upon the effectivity of the CBA, petitioner's new regular employees (**regardless of the manner by which they became employees of BPI**) are required to join the Union as a condition of their continued employment.

The dissenting opinion of Justice Brion dovetails with Justice Carpio's view only in their restrictive interpretation of who are "new employees" under the CBA. To our dissenting colleagues, the phrase "new employees" (who are covered by the union shop clause) should only include new employees who were hired as probationary during the life of the CBA and were later granted regular status. They propose that the former FEBTC employees who were deemed regular employees from the beginning of their employment with BPI should be treated as a special class of employees and be excluded from the union shop clause.

Justice Brion himself points out that there is no clear, categorical definition of "new employee" in the CBA. In other words, the term "new employee" as used in the union shop clause is used broadly without any qualification or distinction. However, the Court should not uphold an interpretation of the term "new employee" based on the general and extraneous provisions of the Corporation Code on merger that would defeat,

Supreme Court E-Library

rather than fulfill, the purpose of the union shop clause. **To reiterate, the provision of the Article 248(e) of the Labor Code in point mandates that nothing in the said Code or any other law should stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment.**

Significantly, petitioner BPI never stretches its arguments so far as to state that the absorbed employees should be deemed "old employees" who are not covered by the Union Shop Clause. This is not surprising.

By law and jurisprudence, a merger only becomes effective upon approval by the Securities and Exchange Commission (SEC) of the articles of merger. In *Associated Bank v. Court of Appeals*,[33] we held:

> The procedure to be followed is prescribed under the Corporation Code. Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. **The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.** (Emphasis ours.)

In other words, even though BPI steps into the shoes of FEBTC as the surviving corporation, BPI does so at a particular point in time, *i.e.*, the effectivity of the merger upon the SEC's issuance of a certificate of merger. In fact, the articles of merger themselves provided that both BPI and FEBTC will continue their respective business operations until the SEC issues the certificate of merger and in the event SEC does not issue such a certificate, they agree to hold each other blameless for the non-consummation of the merger.

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[33] G.R. No. 123793, June 29, 1998, 291 SCRA 511, 521-522.

Supreme Court E-Library

Considering the foregoing principle, BPI could have only become the employer of the FEBTC employees it absorbed after the approval by the SEC of the merger. If the SEC did not approve the merger, BPI would not be in the position to absorb the employees of FEBTC at all. Indeed, there is evidence on record that BPI made the assignments of its absorbed employees in BPI effective April 10, 2000, or after the SEC's approval of the merger.[34] In other words, BPI became the employer of the absorbed employees only at some point **after the effectivity of the merger**, notwithstanding the fact that the absorbed employees' years of service with FEBTC were voluntarily recognized by BPI.

Even assuming for the sake of argument that we consider the absorbed FEBTC employees as "old employees" of BPI who are not members of any union (***i.e.*, it is their date of hiring by FEBTC and not the date of their absorption that is considered**), this does not necessarily exclude them from the union security clause in the CBA. The CBA subject of this case was effective from April 1, 1996 until March 31, 2001. Based on the allegations of the former FEBTC employees themselves, there were former FEBTC employees who were **hired by FEBTC after April 1, 1996** and if their date of hiring by FEBTC is considered as their date of hiring by BPI, they would undeniably be considered "new employees" of BPI within the contemplation of the Union Shop Clause of the said CBA. Otherwise, it would lead to the absurd situation that we would discriminate not only between new BPI employees (hired during the life of the CBA) and former FEBTC employees (absorbed during the life of the CBA) but also among the former FEBTC employees themselves. In other words, we would be treating employees who are exactly similarly situated (*i.e.*, the group of absorbed FEBTC employees) differently. This hardly satisfies the demands of equality and justice.

Petitioner limited itself to the argument that its absorbed employees do not fall within the term "new employees" contemplated under the Union Shop Clause with the apparent

[34] CA *rollo*, p. 218.

Supreme Court E-Library

objective of excluding all, and not just some, of the former FEBTC employees from the application of the Union Shop Clause.

However, in law or even under the express terms of the CBA, there is no special class of employees called "absorbed employees." In order for the Court to apply or not apply the Union Shop Clause, we can only classify the former FEBTC employees as either "old" or "new." If they are not "old" employees, they are necessarily "new" employees. If they are new employees, the Union Shop Clause did not distinguish between new employees who are *non-regular* at their hiring but who subsequently become regular and new employees who are "absorbed" as regular and permanent from the beginning of their employment. The Union Shop Clause did not so distinguish, and so neither must we.

No Substantial Distinction Under the CBA Between Regular Employees Hired After Probationary Status and Regular Employees Hired After the Merger

Verily, we agree with the Court of Appeals that there are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a merger, for purposes of applying the Union Shop Clause. Both employees were hired/employed only after the CBA was signed. At the time they are being required to join the Union, they are both already regular rank and file employees of BPI. They belong to the same bargaining unit being represented by the Union. They both enjoy benefits that the Union was able to secure for them under the CBA. When they both entered the employ of BPI, the CBA and the Union Shop Clause therein were already in effect and neither of them had the opportunity to express their preference for unionism or not. We see no cogent reason why the Union Shop Clause should not be applied equally to these two types of new employees, for they are undeniably similarly situated.

The effect or consequence of BPI's so-called "absorption" of former FEBTC employees should be limited to what they

Supreme Court E-Library

actually agreed to, *i.e.* recognition of the FEBTC employees' years of service, salary rate and other benefits with their previous employer. The effect should not be stretched so far as to **exempt** former FEBTC employees from the existing CBA terms, company policies and rules which apply to employees similarly situated. If the Union Shop Clause is valid as to other new regular BPI employees, there is no reason why the same clause would be a violation of the "absorbed" employees' freedom of association.

Non-Application of Union Shop Clause Contrary to the Policy of the Labor Code and Inimical to Industrial Peace

It is but fair that similarly situated employees who enjoy the same privileges of a CBA should be likewise subject to the same obligations the CBA imposes upon them. A contrary interpretation of the Union Shop Clause will be inimical to industrial peace and workers' solidarity. This unfavorable situation will not be sufficiently addressed by asking the former FEBTC employees to simply pay agency fees to the Union in lieu of union membership, as the dissent of Justice Carpio suggests. The fact remains that other new regular employees, to whom the "absorbed employees" should be compared, do not have the option to simply pay the agency fees and they must join the Union or face termination.

Petitioner's restrictive reading of the Union Shop Clause could also inadvertently open an avenue, which an employer could readily use, in order to dilute the membership base of the certified union in the collective bargaining unit (CBU). By entering into a voluntary merger with a non-unionized company that employs more workers, an employer could get rid of its existing union by the simple expedient of arguing that the "absorbed employees" are **not** new employees, as are commonly understood to be covered by a CBA's union security clause.This could then lead to a new majority within the CBU that could potentially threaten the majority status of the existing union and, ultimately, spell its demise as the CBU's bargaining representative.Such a dreaded but not entirely far-fetched

Supreme Court E-Library

scenario is no different from the ingenious and creative "union-busting" schemes that corporations have fomented throughout the years, which this Court has foiled time and again in order to preserve and protect the valued place of labor in this jurisdiction consistent with the Constitution's mandate of insuring social justice.

There is nothing in the Labor Code and other applicable laws or the CBA provision at issue that requires that a new employee has to be of probationary or non-regular status at the beginning of the employment relationship. An employer may confer upon a new employee the status of regular employment even at the onset of his engagement. Moreover, no law prohibits an employer from voluntarily recognizing the length of service of a new employee with a previous employer in relation to computation of benefits or seniority but it should not unduly be interpreted to exclude them from the coverage of the CBA which is a binding contractual obligation of the employer and employees.

Indeed, a union security clause in a CBA should be interpreted to give meaning and effect to its purpose, which is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit.

The union shop clause offers protection to the certified bargaining agent by ensuring that future regular employees who (a) enter the employ of the company during the life of the CBA; (b) are deemed part of the collective bargaining unit; and (c) whose number will affect the number of members of the collective bargaining unit will be compelled to join the union. Such compulsion has legal effect, precisely because the employer by voluntarily entering in to a union shop clause in a CBA with the certified bargaining agent takes on the responsibility of dismissing the new regular employee who does not join the union.

Without the union shop clause or with the restrictive interpretation thereof as proposed in the dissenting opinions, the company can jeopardize the majority status of the certified union by excluding from union membership all new regular

Supreme Court E-Library

employees whom the Company will "absorb" in future mergers and all new regular employees whom the Company hires as regular from the beginning of their employment without undergoing a probationary period. In this manner, the Company can increase the number of members of the collective bargaining unit and if this increase is not accompanied by a corresponding increase in union membership, the certified union may lose its majority status and render it vulnerable to attack by another union who wishes to represent the same bargaining unit.[35]

Or worse, a certified union whose membership falls below twenty percent (20%) of the total members of the collective bargaining unit may lose its status as a legitimate labor organization altogether, even in a situation where there is no competing union.[36]

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[35] Article 256 of the Labor Code provides:

Art. 256. Representation issue in organized establishments. In organized establishments, when **a verified petition questioning the majority status of the incumbent bargaining agent** is filed before the Department of Labor and Employment within the sixty-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is **supported by the written consent of at least twenty-five percent (25%) of all the employees** in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed. (Emphases supplied.)

[36] Article 234 of the Labor Code provides:

Art. 234. Requirements of registration. Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements. x x x

Supreme Court E-Library

In such a case, an interested party may file for the cancellation of the union's certificate of registration with the Bureau of Labor Relations.[37]

Plainly, the restrictive interpretation of the union shop clause would place the certified union's very existence at the mercy and control of the employer. **Relevantly, only BPI, the employer appears to be interested in pursuing this case**. The former FEBTC employees have not joined BPI in this appeal.

For the foregoing reasons, Justice Carpio's proposal to simply require the former FEBTC to pay agency fees is wholly inadequate to compensate the certified union for the loss of additional membership supposedly guaranteed by compliance with the union shop clause. This is apart from the fact that treating these "absorbed employees" as a special class of new employees does not encourage worker solidarity in the company since another class of new employees (*i.e.* those whose were hired as probationary and later regularized during the life of the CBA) would not have the option of substituting union membership with payment of agency fees.

Justice Brion, on the other hand, appears to recognize the inherent unfairness of perpetually excluding the "absorbed" employees from the ambit of the union shop clause. He proposes that this matter be left to negotiation by the parties in the next CBA. To our mind, however, this proposal does not sufficiently address the issue. With BPI already taking the position that employees "absorbed" pursuant to its voluntary mergers with other banks are exempt from the union shop clause, the chances of the said bank ever agreeing to the inclusion of such employees in a future CBA is next to nil – more so, if BPI's narrow interpretation of the union shop clause is sustained by this Court.

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x x x x x x x x x

c. The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

[37] Article 238 of the Labor Code provides "[t]he certificate of registration of any legitimate labor organization, whether national or local, shall be cancelled by the Bureau if it has reason to believe, after due hearing, that the said labor organization no longer meets one or more of the requirements herein prescribed."

Supreme Court E-Library

Right of an Employee not to Join a Union is not Absolute and Must Give Way to the Collective Good of All Members of the Bargaining Unit

The dissenting opinions place a premium on the fact that even if the former FEBTC employees are not old employees, they nonetheless were employed as regular and permanent employees without a gap in their service. However, an employee's permanent and regular employment status in itself does not necessarily exempt him from the coverage of a union shop clause.

In the past this Court has upheld even the more stringent type of union security clause, *i.e.*, the closed shop provision, and held that it can be made applicable to old employees who are already regular and permanent but have chosen not to join a union. In the early case of *Juat v. Court of Industrial Relations*,[38] the Court held that an old employee who had no union may be compelled to join the union even if the collective bargaining agreement (CBA) imposing the closed shop provision was only entered into seven years after of the hiring of the said employee. To quote from that decision:

> A closed-shop agreement has been considered as one form of union security whereby only union members can be hired and workers must remain union members as a condition of continued employment. The requirement for employees or workers to become members of a union as a condition for employment **redounds to the benefit and advantage of said employees** because by holding out to loyal members a promise of employment in the closed-shop the union **wields group solidarity**. In fact, it is said that "the closed-shop contract is the most prized achievement of unionism."
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> This Court had categorically held in the case of *Freeman Shirt Manufacturing Co., Inc., et al. vs. Court of Industrial Relations, et al.*, G.R. No. L-16561, Jan. 28, 1961, that the **closed-shop proviso** of a collective bargaining agreement entered into between an employer and a duly authorized labor union is **applicable not only to the**

[38] G.R. No. L-20764, November 29, 1965, 15 SCRA 391, 395-397.

Supreme Court E-Library

employees or laborers that are employed after the collective bargaining agreement had been entered into but also to old employees who are not members of any labor union at the time the said collective bargaining agreement was entered into. In other words, if an employee or laborer is already a member of a labor union different from the union that entered into a collective bargaining agreement with the employer providing for a closed-shop, said employee or worker cannot be obliged to become a member of that union which had entered into a collective bargaining agreement with the employer as a condition for his continued employment. (Emphasis and underscoring supplied.)

Although the present case does not involve a closed shop provision that included even old employees, the *Juat* example is but one of the cases that laid down the doctrine that the right not to join a union is not absolute. Theoretically, there is nothing in law or jurisprudence to prevent an employer and a union from stipulating that existing employees (who already attained regular and permanent status but who are not members of any union) are to be included in the coverage of a union security clause. Even Article 248(e) of the Labor Code only expressly exempts **old employees who already have a union** from inclusion in a union security clause.[39]

Contrary to the assertion in the dissent of Justice Carpio, *Juat* has not been overturned by *Victoriano v. Elizalde Rope*

[39] Article 248. Unfair Labor Practices of Employers. – It shall be unlawful for an employer to commit any of the following unfair labor practice: x x x

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. **Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement**.

Employees of an appropriate collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent. x x x. (Emphasis supplied.)

Supreme Court E-Library

Workers' Union[40] nor by *Reyes v. Trajano*.[41] The factual milieus of these three cases are vastly different.

In *Victoriano*, the issue that confronted the Court was whether or not employees who were members of the Iglesia ni Kristo (INK) sect could be compelled to join the union under a closed shop provision, despite the fact that their religious beliefs prohibited them from joining a union. In that case, the Court was asked to balance the constitutional right to religious freedom against a host of other constitutional provisions including the freedom of association, the non-establishment clause, the non-impairment of contracts clause, the equal protection clause, and the social justice provision. In the end, the Court held that "religious freedom, although not unlimited, is a fundamental personal right and liberty, and has a preferred position in the hierarchy of values."[42]

However, *Victoriano* is consistent with *Juat* since they both affirm that the right to refrain from joining a union is not absolute. The relevant portion of *Victoriano* is quoted below:

The right to refrain from joining labor organizations recognized by Section 3 of the Industrial Peace Act is, however, limited. The legal protection granted to such right to refrain from joining is **withdrawn by operation of law, where a labor union and an employer have agreed on a closed shop, by virtue of which the employer may employ only member of the collective bargaining union, and the employees must continue to be members of the union for the duration of the contract in order to keep their jobs**. Thus Section 4 (a) (4) of the Industrial Peace Act, before its amendment by Republic Act No. 3350, provides that **although it would be an unfair labor practice for an employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" the employer is, however, not precluded "from making an agreement with a labor organization to require as a condition of employment membership**

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[40] *Supra* note 21.

[41] G.R. No. 84433, June 2, 1992, 209 SCRA 484.

[42] *Victoriano v. Elizalde Rope Workers' Union*, *supra* note 21 at 72.

Supreme Court E-Library

therein, if such labor organization is the representative of the employees." By virtue, therefore, of a closed shop agreement, before the enactment of Republic Act No. 3350, if any person, regardless of his religious beliefs, wishes to be employed or to keep his employment, he must become a member of the collective bargaining union. **Hence, the right of said employee not to join the labor union is curtailed and withdrawn**.[43] (Emphases supplied.)

If *Juat* exemplified an exception to the rule that a person has the right not to join a union, *Victoriano* merely created an exception to the exception on the ground of religious freedom.

Reyes, on the other hand, did not involve the interpretation of any union security clause. In that case, there was no certified bargaining agent yet since the controversy arose during a certification election. In *Reyes*, the Court highlighted the idea that the freedom of association included the right not to associate or join a union in resolving the issue whether or not the votes of members of the INK sect who were part of the bargaining unit could be excluded in the results of a certification election, simply because they were not members of the two contesting unions and were expected to have voted for "NO UNION" in view of their religious affiliation. The Court upheld the inclusion of the votes of the INK members since in the previous case of *Victoriano* we held that INK members may not be compelled to join a union on the ground of religious freedom and even without *Victoriano* every employee has the right to vote "no union" in a certification election as part of his freedom of association. However, *Reyes* is not authority for Justice Carpio's proposition that an employee who is not a member of any union may claim an exemption from an existing union security clause because he already has regular and permanent status but simply prefers not to join a union.

The other cases cited in Justice Carpio's dissent on this point are likewise inapplicable. *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas*,[44]

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[43] *Id.* at 67-68.

[44] G.R. No. L-27113, November 19, 1974, 61 SCRA 93.

Supreme Court E-Library

Anucension v. National Labor Union,[45] and *Gonzales v. Central Azucarera de Tarlac Labor Union*[46] all involved members of the INK. In line with *Victoriano,* these cases upheld the INK members' claimed exemption from the union security clause on religious grounds. In the present case, the former FEBTC employees never claimed any religious grounds for their exemption from the Union Shop Clause. As for *Philips Industrial Development, Inc. v. National Labor Relations Corporation*[47] and *Knitjoy Manufacturing, Inc. v. Ferrer-Calleja*,[48] the employees who were exempted from joining the respondent union or who were excluded from participating in the certification election were found to be **not members of the bargaining unit represented by respondent union** and were free to form/join their own union. In the case at bar, it is undisputed that the former FEBTC employees were part of the bargaining unit that the Union represented. Thus, the rulings in *Philips* and *Knitjoy* have no relevance to the issues at hand.

Time and again, this Court has ruled that the individual employee's right not to join a union may be validly restricted by a union security clause in a CBA[49] and such union security clause is not a violation of the employee's constitutional right to freedom of association.[50]

It is unsurprising that significant provisions on labor protection of the 1987 Constitution are found in Article XIII on Social Justice. The constitutional guarantee given the right to form unions[51] and

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[45] G.R. No. L-26097, November 29, 1977, 80 SCRA 350.

[46] G.R. No. L-38178, October 3, 1985, 139 SCRA 30.

[47] G.R. No. 88957, June 25, 1992, 210 SCRA 339.

[48] G.R. Nos. 81883 and 82111, September 23, 1992, 214 SCRA 174.

[49] *Dela Salle University v. Dela Salle University Employees Association,* 386 Phil. 569, 590 (2000).

[50] *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*, *supra* note 20.

[51] Article III, Section 8 of the 1987 Constitution states: "The right of the people, including those employed in the public and private sectors, to form

Supreme Court E-Library

the State policy to promote unionism[52] have social justice considerations. In *People's Industrial and Commercial Employees and Workers Organization v. People's Industrial and Commercial Corporation*,[53] we recognized that "[l]abor, being the weaker in economic power and resources than capital, deserve protection that is actually substantial and material."

The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits **all employees in the bargaining unit** since such a union would be in a better position to demand improved

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unions, associations, or societies for purposes not contrary to law shall not be abridged."

[52] Article XIII, Section 3 of the 1987 Constitution provides:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

[53] G.R. No. L-37687, March 15, 1982, 112 SCRA 440, 455.

Supreme Court E-Library

benefits and conditions of work from the employer. This is the rationale behind the State policy to promote unionism declared in the Constitution, which was elucidated in the above-cited case of *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*[54]

In the case at bar, since the former FEBTC employees are deemed covered by the Union Shop Clause, they are required to join the certified bargaining agent, which supposedly has gathered the support of the majority of workers within the bargaining unit in the appropriate certification proceeding. Their joining the certified union would, in fact, be in the best interests of the former FEBTC employees for it unites their interests with the majority of employees in the bargaining unit. It encourages employee solidarity and affords sufficient protection to the majority status of the union during the life of the CBA which are precisely the objectives of union security clauses, such as the Union Shop Clause involved herein. We are indeed not being called to balance the interests of individual employees as against the State policy of promoting unionism, since the employees, who were parties in the court below, no longer contested the adverse Court of Appeals' decision. Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.

Also in the dissenting opinion of Justice Carpio, he maintains that one of the dire consequences to the former FEBTC employees who refuse to join the union is the forfeiture of their retirement benefits. This is clearly not the case precisely because BPI expressly recognized under the merger the length of service of the absorbed employees with FEBTC. Should some refuse to become members of the union, they may still opt to retire if they are qualified under the law, the applicable retirement plan, or the CBA, based on their combined length of service with

[54] *Supra* note 20.

Supreme Court E-Library

FEBTC and BPI. Certainly, there is nothing in the union shop clause that should be read as to curtail an employee's eligibility to apply for retirement if qualified under the law, the existing retirement plan, or the CBA as the case may be.

In sum, this Court finds it reasonable and just to conclude that the Union Shop Clause of the CBA covers the former FEBTC employees who were hired/employed by BPI during the effectivity of the CBA in a manner which petitioner describes as "absorption." A contrary appreciation of the facts of this case would, undoubtedly, lead to an inequitable and very volatile labor situation which this Court has consistently ruled against.

In the case of former FEBTC employees who initially joined the union but later withdrew their membership, there is even greater reason for the union to request their dismissal from the employer since the CBA also contained a Maintenance of Membership Clause.

A final point in relation to procedural due process, the Court is not unmindful that the former FEBTC employees' refusal to join the union and BPI's refusal to enforce the Union Shop Clause in this instance may have been based on the honest belief that the former FEBTC employees were not covered by said clause. In the interest of fairness, we believe the former FEBTC employees should be given a fresh thirty (30) days from notice of finality of this decision to join the union before the union demands BPI to terminate their employment under the Union Shop Clause, assuming said clause has been carried over in the present CBA and there has been no material change in the situation of the parties.

WHEREFORE, the petition is hereby *DENIED*, and the Decision dated September 30, 2003 of the Court of Appeals is *AFFIRMED*, subject to the thirty (30) day notice requirement imposed herein. Former FEBTC employees who opt not to become union members but who qualify for retirement shall receive their retirement benefits in accordance with law, the applicable retirement plan, or the CBA, as the case may be.

SO ORDERED.

Supreme Court E-Library

Corona, C.J., Peralta, del Castillo, Abad, Villarama, Jr., and *Perez, JJ.,* concur.

Carpio and Brion, JJ., see dissenting opinions.

Carpio Morales, J., joins the dissents of *JJ.* Carpio and Brion.

Nachura, Bersamin, and *Mendoza, JJ.,* join the dissent of *J.* Brion.

Velasco, Jr., J., on leave.

DISSENTING OPINION

CARPIO, *J.*:

I dissent.

The petition calls upon this Court to review the Court of Appeals decision which reversed the decision of the Voluntary Arbitrator. The Voluntary Arbitrator ruled that the FEBTC employees absorbed by BPI are not covered by the union shop clause in the CBA between BPI and BPI Employees Union (Union) because said absorbed employees are not "new employees" and they **"cannot be compelled to join the Union as it is their constitutional right to join or not to join any organization."**[1]

In its Memorandum, petitioner BPI reiterated that "**the State policy of promoting unionism should not be blindly and indiscriminately implemented at the expense of other rights as enshrined in the Constitution and the laws.**"[2] Petitioner discussed the protection of the rights of workers as provided in the Constitution and the Labor Code. We quote the pertinent portion of petitioner's Memorandum, to wit:[3]

Article II, [S]ection 18 of the 1987 Constitution x x x provides:

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[1] Voluntary Arbitrator's Decision dated 23 November 2001, Annex "C" to Petitioner's Memorandum dated 10 June 2005, *rollo*, p. 86; emphasis supplied.

[2] Petitioner's Memorandum dated 10 June 2005, *rollo*, p. 73; emphasis supplied.

[3] *Id.* at 73-74; emphasis in the original and underscoring omitted.

Supreme Court E-Library

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

One of the rights sought to be protected is the right of workers to self-organization and to form, join, or assist labor organizations of their own choosing. (Articles 3 and 243, Labor Code) In this regard, the Labor Code also declares as a policy of the State the fostering of a free and voluntary organization of a strong and united labor movement. (Article 211(A)(c), Labor Code)

Consequently, the Labor Code declares that it shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization, which includes the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection. (Article 246, Labor Code)

In *Victoriano v. Elizalde Rope Workers' Union, et al.* (G.R. No. L-25246, September 12, 1974), the Supreme Court declared that the right to join a union includes the right to abstain from joining any union, for a right comprehends at least two broad notions, namely: first, liberty or freedom, *i.e.*, the absence of legal restraint, whereby an employee may act for himself without being prevented by law; and second, power, whereby an employee may, as he pleases, join or refrain from joining an association. **In as much as what both the Constitution and the Labor Code have recognized and guaranteed to the employee is the "right" to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations.**

Indeed, the right to abstain from joining labor organizations may be curtailed or restricted by union security agreements, such as the Union Shop Clause. However, being, in a sense, a derogation of the freedom or right NOT to join any labor organization, this Honorable Court's strict and restrictive enforcement of union security agreements is clearly warranted and justified. (Emphasis supplied)

Respondent Union requested petitioner BPI to implement the union shop clause of the CBA against absorbed FEBTC employees who refused to join the Union, and to **terminate their employment** pursuant to the union shop clause.[4]

[4] *Ponencia*, p. 4; citing the Court of Appeals Decision, *rollo*, p. 18.

Supreme Court E-Library

BPI, independently of the absorbed FEBTC employees, has the right to challenge the constitutionality of the union shop clause as applied to the absorbed FEBTC employees because BPI is being compelled, against its best interests, to terminate their employment if they do not join the Union. Besides, this Court cannot adopt as part of its jurisprudence a practice that clearly violates a fundamental constitutional right just because the aggrieved employees gave up the fight to protect such right.

The Constitution guarantees the fundamental right of all workers to "self-organization."[5] The right to "self-organization" is a species of the broader constitutional right of the people "to form unions, associations, or societies for purposes not contrary to law," which right "shall not be abridged."[6]

The right of workers to self-organization is protected under the Labor Code which provides that workers "shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purpose of collective bargaining."[7] The Code proscribes the abridgment of this right, stating that: "It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing x x x."[8]

The right of workers to self-organization means that workers themselves voluntarily organize, without compulsion from outside

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[5] Article XIII, Section 3 of the 1987 Philippine Constitution states:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. x x x (Emphasis supplied)

[6] Article III, Section 8 of the 1987 Philippine Constitution.

[7] Article 243 (Coverage and Employees' Right to Self-Organization), The Labor Code of the Philippines, as amended.

[8] *Id.*, Article 246.

Supreme Court E-Library

forces. "Self-organization" means voluntary association without compulsion, threat of punishment, or threat of loss of livelihood. Workers who "self-organize" are workers who on their own volition freely and voluntarily form or join a union. **Compulsory membership is anathema to "self-organization.**"

The right to self-organize includes the right not to exercise such right. Freedom to associate necessarily includes the freedom not to associate. Thus, freedom to join unions necessarily includes the freedom not to join unions. *Reyes v. Trajano* [9] cannot be any clearer on this point:

> Logically, the right NOT to join, affiliate with, or assist any union, and to disaffiliate or resign from a labor organization, is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein. **The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising said right.** It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. (Emphasis supplied)

Reyes was decided on 2 June 1992 under the 1987 Constitution. Even prior to *Reyes*, this Court already declared in *Victoriano v. Elizalde Rope Workers' Union*,[10] decided on 12 September 1974 under the 1973 Constitution, that:

> What the Constitution and Industrial Peace Act recognize and guarantee is the 'right' to form or join associations. Notwithstanding the different theories propounded by the different schools of jurisprudence regarding the nature and contents of a 'right,' it can be safely said that whatever theory one subscribes to, a right comprehends at least two broad notions, namely: first, liberty or freedom, *i.e.*, the absence of legal restraint, whereby an employee may act for himself without being prevented by law; second, power, whereby an employee may, as he pleases, join or refrain from joining an association. **It is therefore the employee who should decide for himself whether he should join or not an association; and should he choose to join, he himself makes up his mind as to which**

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[9] G.R. No. 84433, 2 June 1992, 209 SCRA 484, 489.

[10] 158 Phil. 60, 75 (1974).

Supreme Court E-Library

association he would join; and even after he has joined, he still retains the liberty and the power to leave and cancel his membership with said organization at any time x x x. It is clear, therefore, that the right to join a union includes the right to abstain from joining any union. (Citations omitted) **Inasmuch as what both the Constitution and the Industrial Peace Act have recognized, and guaranteed to the employee, is the 'right' to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations. The law does not enjoin an employee to sign up with any association**. (Emphasis supplied)

The ruling in *Victoriano* has been reiterated in a plethora of cases, including *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas (1974)*,[11] *Anucension v. National Labor Union (1977)*,[12] *Gonzales v. Central Azucarera de Tarlac Labor Union (1985)*,[13] and *Knitjoy Manufacturing, Inc. v. Ferrer-Calleja (1992)*.[14] In the case of *Philips Industrial Development, Inc. v. NLRC*, decided on 25 June 1992,[15] this Court held:

> x x x in holding that they are included in the bargaining unit for the rank and file employees of PIDI, the NLRC practically forced them to become members of PEO-FFW or to be subject to its sphere of influence, it being the certified bargaining agent for the subject bargaining unit. **This violates, obstructs, impairs and impedes the service engineers' and the sales representatives' constitutional right to form unions or associations and to self-organization**. (Emphasis supplied)

Thus, it is the worker who should personally decide whether or not to join a labor union. The union, the management, the courts, and even the State cannot decide this for the worker, more so against his will.

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[11] 158 Phil. 753, 765-766 (1974).

[12] 170 Phil. 373, 384-385 (1977).

[13] 223 Phil. 249, 255-256 (1985).

[14] G.R. No. 81883, 23 September 1992, 214 SCRA 174, 182.

[15] G.R. No. 88957, 210 SCRA 339, 348-349.

Supreme Court E-Library

The State encourages union membership to protect an individual employee from the power of the employer. A union is an instrumentality utilized to achieve the objective of protecting the rights of workers. In *Guijarno v. Court of Industrial Relations*,[16] we clarified the purpose of a union:

> x x x The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work." (Art. II, Sec. 9 of the Revised Constitution) **Where does that leave a labor union, it may be asked. Correctly understood, it is nothing but the means of assuring that such fundamental objectives would be achieved**. **It is the instrumentality through which an individual laborer who is helpless as against a powerful employer may, through concerted effort and activity, achieve the goal of economic well-being.** That is the philosophy underlying the Industrial Peace Act. (Republic Act No. 875 (1953)) For, rightly has it been said that workers unorganized are weak; workers organized are strong. Necessarily then, they join labor unions. (Emphasis supplied)

To further strengthen the powers of a union, the State has allowed the inclusion of union security clauses, including a "union shop" (the type of union security clause involved in this case), in collective bargaining agreements (CBA). In a "union shop," employees who are not union members at the time of signing of the contract need not join the union, but all workers hired thereafter must join.[17] Non-members may be hired, but to retain employment must become union members after a certain period.[18] The *ponencia* points out the validity in this jurisdiction of the more stringent union security of "closed shop" and its applicability to old employees who are non-union members at the time of effectivity of the CBA. In a "closed shop," only union members can be hired by the company and they must remain union members to retain employment in the company. [19]

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[16] G.R. Nos. L-28791-93, 27 August 1973, 52 SCRA 307, 310.

[17] Azucena, *The Labor Code with Comments and Cases*, vol. II, p. 242 (2004).

[18] *Id*.

[19] *Id*.

Supreme Court E-Library

As explained in *Guijarno*, it was to "further increase the effectiveness of [unions] that a closed shop has been allowed."[20] However, this undertaking did not come without detrimental effects on the workers themselves, such that in *Confederated Sons of Labor v. Anakan Lumber Co.*,[21] we declared that a closed shop is "so harsh that it must be strictly construed" and that "doubts must be resolved against [it]." We also ruled in *Anakan* that "In order that an employer may be deemed bound, under a collective bargaining agreement, to dismiss employees for non-union membership, the stipulation to this effect must be so clear and unequivocal as to leave no room for doubt thereon."[22]

Guijarno elucidated the downside of a closed shop and its compulsory membership, thus:

> x x x To further increase the effectiveness of such organizations, a closed shop has been allowed. *It could happen, though, that such a stipulation which assures further weight to a labor union at the bargaining table could be utilized against minority groups or individual members thereof.* x x x Respondent Court, it would appear, was not sufficiently alert to such a danger. What is worse, it paid no heed to the controlling doctrine which is merely a recognition of a basic fact in life, namely, that power in a collectivity could be the means of crushing opposition and stifling the voices of those who are in dissent. The right to join others of like persuasion is indeed valuable. An individual by himself may feel inadequate to meet the exigencies of life or even to express his personality without the right to association being vitalized. It could happen though that whatever group may be in control of the organization may simply ignore his most-cherished desires and treat him as if he counts for naught. The antagonism between him and the group becomes marked. Dissatisfaction if given expression may be labeled disloyalty. In the labor field, the union under such circumstances may no longer be a haven of refuge, but indeed as much of a potential foe as management itself. Precisely with the *Anakan* doctrine, such an

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[20] *Id.* at 314.

[21] 107 Phil. 915, 919 (1960).

[22] *Id.*

Supreme Court E-Library

undesirable eventuality has been sought to be minimized, if not entirely avoided. x x x. [23] (Emphasis supplied)

Justice Fernando, in his concurring opinion in *Victoriano*,[24] highlighted the importance of freedom of association, while referring to closed shop and its coercive nature with manifest disapproval, *viz*:

x x x **Thought must be given to the freedom of association, likewise an aspect of intellectual liberty**. For the late Professor Howe a constitutionalist and in his lifetime the biographer of the great Holmes, it even partakes of the political theory of pluralistic sovereignty. **So great is the respect for the autonomy accorded voluntary societies. Such a right implies at the very least that one can determine for himself whether or not he should join or refrain from joining a labor organization, an institutional device for promoting the welfare of the working man. A closed shop, on the other hand, is inherently coercive. That is why, as is unmistakably reflected in our decisions, the latest of which is *Guijarno v. Court of Industrial Relations*, it is far from being a favorite of the law. For a statutory provision then to further curtail its operation, is precisely to follow the dictates of sound public policy.** (Emphasis supplied, citations omitted)

In the United States, closed shops, which require compulsory union membership for all employees, have been declared unlawful since 1947, while union shops, which allow old employees to remain non-union members but require new employees to become members after a certain period, are generally allowed. Previously, closed shops, union shops and agency shops were all [25] permitted under Section 8(3) of the National Labor Relations Act of 1935 (NLRA), also known as the Wagner Act. [26] But in 1947, the US Congress "reacted to widespread abuses of closed-shop agreements by banning such arrangements" through the enactment

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[23] *Supra* note 16, p. 314.

[24] *Supra* note 10, pp. 98-99.

[25] An agreement whereby employees must either join the union or pay to the union as exclusive bargaining agent a sum equal to that paid by the members.

[26] *Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al. v. Mobil Oil Corporation*, 426 U.S. 407, 96 S. Ct. 2140 (1976).

Supreme Court E-Library

of the Labor Management Relations Act (LMRA), or the Taft-Hartley Act, which amended the NLRA by adding Section 8(a)(3). [27] In *National Labor Relations Board v. General Motors Corporation*,[28] the US Supreme Court explained that the Taft-Hartley Act amendments were intended to accomplish twin purposes, one of which is to abolish closed shop to eliminate serious abuses of compulsory unionism.

> These additions were intended to accomplish twin purposes. On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision 'many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share *741 of the cost.' S.Rep.No.105, 80th Cong., 1st Sess., p. 6, 1 Leg.Hist.L.M.R.A. 412. Consequently, under the new law 'employers would still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired,' but 'expulsion from a union cannot be a ground of compulsory discharge if the worker is not delinquent in paying his initiation fee or dues.' S.Rep.No.105, p. 7, 1 Leg.Hist.L.M.R.A. 413. The amendments were intended only to 'remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements.' *Ibid.* As far as the federal law was concerned, all employees could be required to pay their way. The bill 'abolishes the closed shop but permits voluntary agreements for requiring such forms of compulsory membership as the union shop or maintenance of membership ***.' S.Rep.No.105, p. 3, 1 Leg.Hist.L.M.R.A. 409.

Union shops and agency shops are still permitted under Section 8(a)(3) of the NLRA as amended; however, Section 14(b) authorizes States to exempt themselves from Section 8(a)(3) and to enact "right-to-work" laws prohibiting union or agency shops.[29] Where union shop agreements are allowed, workers may be required to belong to labor unions as a condition of

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[27] *Id.*; 48 Am. Jur. 2d Labor and Labor Relations S. 1070.

[28] 373 U.S. 734, 83 S. Ct. 1453 (1963).

[29] *Supra* note 27.

Supreme Court E-Library

their employment, so long as such workers are required to render nothing other than financial support to the union and so long as the unions themselves do not attempt to use union shop agreements as vehicles for imposing ideological conformity.[30] Thus, "membership" in unions as a condition of employment is whittled down to its financial core.[31]

Although United States laws and jurisprudence on closed shops and union shops, as they now stand, are different from our own laws, it may be worthwhile to treat them with careful regard since our Labor Code and its precursor, the Industrial Peace Act, are patterned after US labor laws.[32] We have previously ruled that when a statute has been adopted from another state or country and such statute has previously been construed by the courts of such state or country, the statute is deemed to have been adopted with the construction given to it.[33] Where our labor statutes are based on statutes in foreign jurisdiction, the decisions of the high courts in those jurisdictions construing and interpreting the Act are given persuasive effects in the application of Philippine law.[34]

Union security agreements were adopted in our jurisdiction primarily to safeguard the rights of the working man. Where utilized to achieve a contrary purpose, these union devices should be curtailed and carefully maneuvered to remain within the periphery of labor protection.

In this case, the CBA between BPI and the BPI Employees Union contains a union shop clause requiring that "new employees"

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[30] 16A Am. Jur. 2d Constitutional Law S. 549.

[31] *Supra* note 28.

[32] Azucena, *The Labor Code with Comments and Cases*, vol. 1, p. 16 (1999).

[33] *Cerezo v. Atlantic Gulf & Pacific Co.*, 33 Phil. 425, 428-429 (1916).

[34] Concurring Opinion of Justice Reynato Puno in *United Pepsi-Cola Supervisory Union v. Laguesma*, G.R. No. 122226, 25 March 1998, 288 SCRA 15, p. 54, citing *Cerezo v. Atlantic Gulf & Pacific Co.*, *supra* note 29, and *Boy Scouts of the Philippines v. Araos*, 102 Phil. 1080 (1958).

Supreme Court E-Library

of BPI join the Union within 30 days after they become regularized, as a condition for their continued employment.

The *ponencia* points out that the absorption of FEBTC employees was purely voluntary on the part of BPI, and was not mandated by law or by a contract between the merging entities. The *ponencia* holds that in the absence of a stipulation in the plan of merger regarding the absorption of FEBTC's employees by BPI, the latter has no obligation to absorb or continue the employment of said FEBTC employees.

I do not agree.

Upon merger, BPI, as the surviving entity, absorbs FEBTC and continues the combined business of the two banks. BPI assumes the legal personality of FEBTC, and automatically acquires FEBTC's rights, privileges and powers, as well as its liabilities and obligations. Section 80 of Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines" enumerates the effects of merger, to wit:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; x x x

2. The separate existence of the constituent corporations shall cease, except that of the surviving x x x corporation;

3. The surviving x x x corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. **The surviving x x x corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations**; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving x x x corporation without further act or deed; and

5. **The surviving x x x corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations** in the same manner as if such surviving

Supreme Court E-Library

x x x corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger. (Emphasis supplied)

Among the obligations and liabilities of FEBTC is to continue the employment of FEBTC employees. These employees have already acquired certain employment status, tenure, salary and benefits. They are regular employees of FEBTC. Since after the merger, BPI has continued the business of FEBTC, FEBTC's obligation to these employees is assumed by BPI, and BPI becomes duty-bound to continue the employment of these FEBTC employees.

Under Article 279 of the Labor Code, regular employees acquire security of tenure, and hence, may not be terminated by the employer except upon legal grounds. These grounds are the "just causes" enumerated under Article 282 of the Code, which include serious misconduct or willful disobedience by the employee, gross habitual neglect of duties, fraud or willful breach of employer's trust, and commission of a crime; or "authorized causes" under Article 283, which include installation of labor saving devices, redundancy, retrenchment to prevent losses, and closing or cessation of business operations. Without any of these legal grounds, the employer cannot validly terminate the employment of regular employees; otherwise, the employees' right to security of tenure would be violated.

The merger of two corporations does not authorize the surviving corporation to terminate the employees of the absorbed corporation in the absence of just or authorized causes as provided in Articles 282 and 283 of the Labor Code. Merger of two corporations is not one of the just or authorized causes for termination of employment. Not even a union shop agreement is just or authorized cause to terminate a permanent employee. A union shop clause is only a ground to terminate a probationary employee who refuses to join the union as a condition for continued employment. Once an employee becomes permanent,

Supreme Court E-Library

he is protected by the security of tenure clause in the Constitution, and he can be terminated only for just or authorized causes as provided by law.

The right to security of tenure of regular employees is enshrined in the Constitution.[35] This right cannot be eroded, let alone be forfeited except upon a clear and convincing showing of a just and lawful cause.[36] In this case, there is no showing that legal ground exists to warrant a termination of the FEBTC employees. Therefore, BPI is obligated to continue FEBTC employees' regular employment in deference to their constitutional right to security of tenure.

Meanwhile, the FEBTC employees **had no choice but to accept the absorption by way of merger.** A merger is a legitimate management prerogative[37] which cannot be opposed or rejected by the employees of the merging entities. Hence, the absorption by BPI of the FEBTC employees was not within the FEBTC employees' control, and the latter had no choice but to be absorbed by BPI, unless they opted to give up their means of livelihood.

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[35] Article XIII, Section 3 of the 1987 Philippine Constitution states:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure,** humane conditions of work, and a living wage. x x x (Emphasis supplied)

[36] *BPI Credit Corporation v. NLRC*, G.R. No. 106027, 25 July 1994, 234 SCRA 441, 454.

[37] In *Central Azucarera del Danao v. Court of Appeals*, 221 Phil. 647, 657 (1985), this Court held that, "x x x [I]t is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would ensure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties x x x ."

Supreme Court E-Library

Upon the effectivity of the CBA in this case, BPI employees who were members of the Union were required to maintain their membership as a condition for continued employment. **On the other hand, the then non-union employees of BPI were not compelled to join the Union — they were given a choice whether or not to join the Union at no risk to their continued employment**. In other words, non-union BPI employees could opt not to join the Union and still retain their employment with BPI. Meanwhile, "new employees" or those who were hired by BPI after the effectivity and during the life of the CBA were automatically required to join the Union within 30 days after they were regularized.

Existing BPI employees who were non-union members were not compelled to join the Union as a condition for their continued employment, as this would violate their fundamental constitutional right not to join a union. This freedom of choice exercised by non-union BPI employees was in recognition of their fundamental constitutional right to join or not to join a union which is part of their broader constitutional right to form associations. To force these employees to join a labor union at the risk of losing their means of livelihood would violate the Constitution.

Thus, under the CBA, the BPI employees required to acquire or maintain union membership as a condition for their continued employment are (1) the union members at the time of the effectivity of the CBA and (2) the "new employees" who were hired during the effectivity of the CBA. Non-union BPI employees at the time of the effectivity of the CBA were not, and are still not, required to join the Union.

In the case of "new employees" hired by BPI during the life of the CBA, there is no violation of their constitutional right not to join a union. At the time of their application for employment with BPI, or at the latest, at the time they were hired by BPI, these employees knew that they were required to join the Union within 30 days upon regularization as a condition for continued employment with BPI. In short, the employees knew beforehand that they had to join the Union to be employed with BPI. **Thus, these employees had a clear choice whether or not to be**

Supreme Court E-Library

employed with BPI, which requires that they must join the Union upon regularization.

The *ponencia* holds that the absorbed FEBTC employees should be considered as **"new employees"** of BPI, and therefore, required to join the Union pursuant to the union shop clause of the CBA. The *ponencia* deprives the absorbed employees of their fundamental constitutional right to choose whether or not to join the Union.

I cannot subscribe to this view.

The former FEBTC employees should not be considered as "new employees" of BPI. The former FEBTC employees were absorbed by BPI immediately upon merger, leaving no gap in their employment. The employees retained their previous employment status, tenure, salary and benefits. This clearly indicates the intention of BPI to assume and continue the employer-employee relations of FEBTC and its employees. The FEBTC employees' employment remained continuous and unchanged, except that their employer, FEBTC, merged with BPI which, as the surviving entity, continued the combined business of the two banks.

Thus, the former FEBTC employees are immediately **regularized and made permanent employees of BPI**. They are not subject to any probationary period as in the case of "new employees" of BPI. The 30-day period within which regularized "new employees" of BPI must join the Union does not apply to former FEBTC employees who are not probationary employees but are immediately regularized as permanent employees of BPI. **In short, the former FEBTC employees are immediately given the same permanent status as old employees of BPI**.

The absorbed FEBTC employees are not "new employees" who are seeking jobs for the first time. These absorbed employees are employees who have been working with FEBTC for years, or even decades, and were only absorbed by BPI because of the merger. Without the merger, these employees would have remained FEBTC employees without being required to join a

Supreme Court E-Library

union to retain their employment. **These absorbed employees are recognized by BPI and even by the Union as permanent employees immediately upon their absorption by BPI because these employees do not have to go through a probationary period.** These absorbed employees are different from the newly-hired employees of BPI, as these absorbed employees already had existing employment tenure, and were earning a livelihood when they were told that they had to join the Union at the risk of losing their livelihood.

To require these absorbed employees to join the Union at the risk of losing their jobs is akin to forcing an existing non-union BPI employee to join the Union on pain of termination. In the same way that an existing non-union BPI employee is given the constitutional right to choose whether or not to join a union, an absorbed employee should be equally given the same right. And this right must be conferred to the absorbed employee upon the effectivity of the merger between FEBTC and BPI.

Indisputably, the right to join or not to join a Union is part of the fundamental constitutional right to form associations. In *Sta. Clara Homeowners' Association v. Gaston*,[38] we held that, "The constitutionally guaranteed freedom of association includes the freedom *not* to associate.[39] **The right to choose with whom one will associate oneself is the very foundation and essence of that partnership.[40] It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."[41]** Thus, to compel the absorbed FEBTC employees to join the Union at the risk of losing their jobs is violative of their constitutional freedom to associate.

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[38] 425 Phil. 221 (2002).

[39] Citing *Sinaca v. Mula*, 373 Phil. 896 (1999).

[40] Citing *Ortega v. CA*, 315 Phil. 573 (1995).

[41] Citing Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, p. 340 (1996).

Supreme Court E-Library

To consider the former FEBTC employees *not* "new employees" of BPI for the purpose of the union shop clause of the CBA does not necessarily mean that the FEBTC employees are considered "old employees" of BPI, hired by BPI on the date that the employees were hired by FEBTC. The former FEBTC employees are not old BPI employees. They are former FEBTC employees *absorbed* by BPI upon effectivity of the merger. Nevertheless, as absorbed employees, these former FEBTC employees cannot be relegated to being "new employees" of BPI within the contemplation of the union shop clause of the CBA.

If the absorbed employees are treated as "new employees," and they refuse to join the Union, the Union can ask BPI to terminate their employment. And BPI can validly terminate their employment pursuant to the union shop clause. It is well-settled that termination of employment by virtue of a union security clause embodied in a CBA is recognized in our jurisdiction,[42] and an employer who merely complies in good faith with the union's request for the dismissal of an employee pursuant to the CBA cannot be considered guilty of unfair labor practice.[43]

Upon such termination, the absorbed employees are not entitled to separation pay under the law.[44] Grant of separation pay to

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[42] *Alabang Country Club, Inc. v. National Labor Relations Commission*, G.R. No. 170287, 14 February 2008, 545 SCRA 351, 361.

[43] *Olvido v. Court of Appeals*, G.R. Nos. 141166-67, 15 October 2007, 536 SCRA 73, 79, citing *Soriano v. Atienza*, G.R. No. 68619, 16 March 1989, 171 SCRA 284, 289-290 and *National Labor Union v. Zip Venetian Blinds*, G.R. Nos. L-15827 and L-15828, 31 May 1961, 2 SCRA 509, 514-515.

[44] Under the present law and jurisprudence, separation pay is given only in the following instances: (1) as the employer's statutory obligation in cases of legal termination due to authorized causes under Articles 283 and 284 of the Labor Code (*i.e.*, installation of labor saving devices, redundancy, retrenchment to prevent losses, the closing or cessation of operation of the establishment or undertaking, and in cases where an employee is found to be suffering from any disease and his continued employment is prohibited by law or is prejudicial to his health as well as to that of his co-employees); (2) as financial assistance, as an act of social justice, even in cases of legal

Supreme Court E-Library

employees dismissed pursuant to a union shop clause of a CBA is not a statutory requirement. Worse, assuming that the absorbed employees have already reached the age of 60 years or above, as "new employees" of BPI, they will not be entitled to retirement benefits under the law. For instance, an absorbed employee who is 60 years old or above, but less than 65 years which is the compulsory retirement age, cannot avail of *optional* retirement benefits since the law requires that the employee "has served at least five (5) years in the said establishment."[45] Considering that the absorbed employees are required to join the Union within 30 days from regularization, and the law requires that probationary employment shall not exceed six months from

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dismissal under Article 282 of the Labor Code; (3) separation pay given in lieu of reinstatement in illegal dismissal cases where reinstatement is not feasible; and (4) separation pay as an employee benefit granted in a CBA or company policy. (C.A. Azucena, *The Labor Code with Comments and Cases*, Vol. 2 [2004], p. 694)

[45] Art. 287 of the Labor Code, as amended by Republic Act No. 7641, provides:

Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

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Supreme Court E-Library

the date the employee started working,[46] after which the employee shall be considered a regular employee, it may be assumed that the absorbed employees had not yet served BPI for at least five years when required to join the Union. If, on the other hand, the absorbed employee has already reached the *compulsory* retirement age of 65 years, then neither can the employee avail of any retirement benefit since the law provides that a compulsory retiree shall be entitled to "at least one-half (½) month salary *for every year of service*, a fraction of at least six (6) months being considered as one whole year."[47] Assuming that the absorbed employee has not yet rendered service in BPI for at least six months when said employee reached the compulsory retirement age of 65 years, then the employee will not be entitled to receive any retirement benefit. Thus, to consider the absorbed FEBTC employees as "new employees" of BPI can have dire consequences on the absorbed employees who refuse to join the Union, not the least of which is the forfeiture of benefits which should be properly accorded these employees after years, or probably even decades, of loyal service to FEBTC.

The *ponencia* points to Article 248 (e) of the Labor Code which states, thus: "x x x Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. x x x"

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[46] With the exception of employment covered by an apprenticeship agreement stipulating a longer period. Art. 281 of the Labor Code provides:

Art. 281. Probationary employment. Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an appreticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[47] *Supra* note 45.

Supreme Court E-Library

The above provision presupposes that the parties **agreed** on "requiring membership in a recognized collective bargaining agent as a condition for employment," with the stated exception. In this case, BPI and the Union agreed on a union shop clause concerning "**new employees**" only. We quote:

> Section 2. Union Shop – **New employees** falling within the bargaining unit as defined in Article I of the Agreement, **who may hereafter be regularly employed** by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment.[48] x x x." (Emphasis in the original)

As previously discussed, the absorbed FEBTC employees are NOT and cannot be considered as "new employees" within the contemplation of the union shop clause.

Verily, BPI and the Union never agreed on requiring the former FEBTC employees to join the Union as a condition for their employment by BPI. On the contrary, BPI is questioning the applicability of the union shop clause to said employees.

The *ponencia* states, "When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of a Union Shop Clause, a form of discrimination or a derogation of the freedom or right not to join any labor organization occurs but *these are valid restrictions because they are in favor of unionism*." In this case, a derogation of the employees' fundamental constitutional right not to join a union is being done without a determination of whether the employees are in favor of unionism. Certainly, the union shop clause in a CBA cannot prevail over the fundamental constitutional right of a worker to join or not to join a union.

Finally, the *ponencia* agrees with the Court of Appeals that sustaining petitioner's position will result in an awkward and unfair situation wherein the absorbed employees will be in a better position than the existing BPI employees, since the latter will be required to pay monthly union dues, while the absorbed

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[48] *Ponencia*, p. 5.

Supreme Court E-Library

employees will "enjoy the fruits of labor of the [union] and its members for nothing in exchange." This is not correct. Section 248(e) of the Labor Code provides that, "Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement x x x." **The absorbed FEBTC employees who refuse to join the Union will not be free riders.**

We held in *Holy Cross of Davao College, Inc. v. Joaquin*[49] that the collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248 (e) of the Labor Code. The employee's acceptance of benefits resulting from a CBA justifies the deduction of agency fees from his pay and the union's entitlement thereto. [50] In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.[51]

In the present case, since the absorbed FEBTC employees will pay all union dues and fees, there is no reason to force them to join the Union except to humiliate them by trampling upon their fundamental constitutional right to join or not to join a union. This the Court should not allow.

It is this Court's solemn duty to implement the State policy of promoting unionism. However, this duty cannot be done at the expense of a fundamental constitutional right of a worker. We cannot exalt union rights over and above the freedom and right of employees to join or not to join a union.

Accordingly, I vote to **GRANT** the petition.

[49] G.R. No. 110007, 18 October 1996, 263 SCRA 358, 369.

[50] *Id*.

[51] *Id*.

Supreme Court E-Library

DISSENTING OPINION

BRION, *J.:*

I dissent.

Out at outset, I wish to clarify what this case **is** all about and what it **is not** about.

The case is simply about the interpretation and application, in a merger situation, of union security clauses in the petitioner's collective bargaining agreement (*CBA*) with the respondent union. To be exact, the basic underlying issue of the case is about the effects of merger on the merging corporations' employees – an issue that arose soon after the merger and one that is still current despite the execution of two subsequent CBAs. It is not an issue, therefore, that simply must be resolved because it will recur, as the *ponencia* posits; it must be resolved because it is a live dispute that now exists between the parties.

The case is not about the constitutional validity of union security provisions in CBAs or their application. No constitutional issue has been raised either in the petition or in the respondent's comment, although I invoked the Constitution in this Dissenting Opinion for interpretative purposes. Justice Antonio T. Carpio, in his own dissent, injects a constitutional issue by positing that the employees absorbed by the surviving corporation in the merger have the constitutional right not to join any union, and cannot be compelled to join, under the union, security clauses whose interpretation and application are disputed.

The Bank of the Philippine Islands (*BPI* or *successor corporation*) merged with the Far East Bank and Trust Company (*FEBTC* or *merged corporation*) pursuant to an Article and Plan of Merger (*Merger Plan*) that saw *all the assets and liabilities of FEBTC transferred to, and absorbed by, BPI, with the latter as the surviving as well as the successor corporate entity*. No specific provision in the Merger Plan referred to the FEBTC employees, specifically, what their situation would be under the merger. BPI, however, absorbed all the FEBTC employees (*absorbed employees*) as its own employees with

Supreme Court E-Library

their status of employment, tenure, salaries and benefits under the FEBTC maintained.

The BPI Employees Union–Davao Chapter Federation of Unions in BPI Unibank (the *union* or *respondent union*) is the exclusive bargaining agent of BPI's rank-and-file employees in Davao City. The absorbed employees in Davao City did not belong to any labor union while they were with the FEBTC. The union now claims that the absorbed employees whose positions fall within the bargaining unit it represents should now join the union *as members* pursuant to the following provisions of the existing CBA:

ARTICLE I

Section 1. Recognition and Bargaining Unit. The BANK recognizes the UNION as the sole and exclusive bargaining representative of all rank-and-file employees of the Bank offices in Davao City.

x x x x x x x x x

ARTICLE II

Section 1. Maintenance of Membership. All employees within the bargaining unit ***who are members of the Union on the date of the effectivity of this Agreement*** as well as employees within the bargaining unit ***who subsequently join or become members of the Union during the lifetime of this Agreement*** shall, as a condition of their continued employment with the Bank, maintain their membership in the Union in good standing. [Emphasis supplied.]

Section 2. Union Shop. ***New employees falling within the bargaining unit*** as defined in Article I of this Agreement, ***who may hereafter be regularly employed by the Bank*** shall, within ***thirty (30) days after they become regular employees***, join the Union as a condition of their continued employment. It is understood that membership in good standing is a condition of their continued employment with the Bank. [Emphasis supplied.]

Some of the absorbed employees refused to join the union while BPI failed to act on the grievance filed by the union after it had asked BPI to dismiss the refusing absorbed employees. BPI took the position that the absorbed employees are not "new" employees who, under the terms of the union security provisions,

Supreme Court E-Library

are under obligation to join the union to maintain their employment.

When settlement of the disagreement at the grievance machinery was not reached, the union referred the matter to voluntary arbitration. *The voluntary arbitrator ruled in favor of the refusing absorbed employees and BPI, holding that the refusing employees are not new employees to whom the union shop provision of the CBA applies. On appeal, the Court of Appeals reversed and set aside the voluntary arbitrator's ruling.*

The *ponencia* affirms the CA decision and reiterates that all absorbed employees falling within the bargaining unit should join the union pursuant to the CBA's union security clauses. In so ruling, the *ponencia* holds that:

a. The absorbed employees are "new" BPI employees to whom the union shop provision of the CBA applies;[1]

b. The absorbed employees do not fall within the exceptions recognized by law and jurisprudence to be excluded from the application of union security provisions; thus, the only issue is whether the absorbed employees "are excluded by the express terms of the existing CBA between the petitioner and the respondent";[2]

c. Unless expressly assumed, labor contracts, such as employment contracts and CBAs, are not enforceable against the transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties;[3]

d. BPI's role as the employer of the former FEBTC employees was not by operation of law nor a legal consequence of the merger agreement;[4] BPI simply voluntarily hired or contracted with these absorbed employees;[5]

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[1] *Ponencia*, pp. 6, 17-19.

[2] *Id.* at 9.

[3] *Id.* at 10-11.

[4] *Id.* at 10.

[5] *Id.* at 14.

Supreme Court E-Library

e. It is contrary to public policy to declare the absorbed employees a part of the assets or liabilities of FEBTC that were transferred to BPI through the Merger Plan. The transferred assets and liabilities should be deemed to refer only to property rights and obligations of FEBTC and do not include employment contracts of its personnel;[6] and

f. The constitutional associational right not to join the union does not apply to the absorbed employees because they fall within a collective bargaining unit and are covered by a CBA whose union security clauses are constitutionally valid.[7]

I disagree with points (a) to (e) and submit in point (f) that the constitutional issue raised is not material to the resolution of the issues raised.

Parenthetically, the non-involvement of affected employees at this level of the litigation (a new point the modified *ponencia* raised) is not a stumbling block to the present petition as the *ponencia* now posits. In interpreting a CBA provision, the real parties in interest are the bargaining parties – the company and the union – the agreement is between them. Hence, it matters not that the affected employees, mere necessary parties, are not direct parties in the present petition for review on *certiorari*. For ease of appreciation, I submit the following discussions topically presented, not necessarily in the order of the *ponencia's* presentation of positions as shown above.

The Merger

A basic point of disagreement with the *ponencia* relates to the approach in resolving the issues raised. The *ponencia* appears to consider only the purely labor law aspect of the case in determining the relationships among BPI, FEBTC and the absorbed employees. More than anything else, however, the issues before us are rooted in the corporate merger that took place; thus, the

[6] *Id.* at 27.

[7] *Id.* at 24.

Supreme Court E-Library

first priority in resolving the issues before us should be to consider and analyze the nature and consequences of the BPI-FEBTC merger – essentially a matter under the Corporation Code. On the basis of this analysis, the application of labor law can follow.

Unlike the old Corporation Code that did not contain express provisions on mergers and consolidations, the present law now authorizes, under Section 76,[8] two or more corporations to merge under one of the participating constituent corporations, or to consolidate into a new single corporation called the consolidated corporation. In either case, no liquidation of the assets of the dissolved corporations takes place, and the *surviving or consolidated corporation assumes ipso jure the liabilities of the dissolved corporations, regardless of whether the creditors consented to the merger or consolidation.*[9]

The transaction between BPI and FEBTC was a merger under one of the modes provided under Section 76 – *i.e.*, the two corporations, BPI and FEBTC, merged with FEBTC fading away as a corporate entity and BPI surviving as FEBTC's successor. Section 80 of the Corporation Code[10] provides for the legal effects of a merger. As applied to BPI and FEBTC, the effects were:

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[8] Section 76 of the Corporation Code reads:

Section 76. **Plan of merger or consolidation. —** Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

[9] Villanueva, *Philippine Corporate Law*, 2001 ed., pp. 606-607.

[10] Section 80. Effects of merger or consolidation. — The merger or consolidation x x x shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

Supreme Court E-Library

a. BPI and FEBTC became a single corporation with BPI as the surviving corporation;

b. The separate corporate existence of FEBTC ceased;

c. BPI now possesses all the rights, obligations, privileges, immunities, and franchises of both BPI and FEBTC;

d. All property, real or personal, and all receivables due on whatever choses in action, and all other interest of, belonging to, or due to FEBTC are deemed transferred to BPI;

e. BPI becomes responsible and liable for all the liabilities and obligations of FEBTC as if it had incurred these liabilities or obligations;

f. Any claim, action, or proceeding pending by or against FEBTC should be prosecuted by or against BPI; and

g. Neither the rights of creditors nor any lien on the property of FEBTC is impaired by the merger.

In short, FEBTC ceased to have any legal personality, and *BPI stepped into everything that was FEBTC's, pursuant to the law and the terms of their Merger Plan*.

An overview of the whole range or levels of transfers of corporate assets and liabilities, as established by jurisprudence,

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4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to andvested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of each constituent corporations shall be impaired by such merger or consolidation.

Supreme Court E-Library

is helpful and instructive for the full appreciation of the nature of the BPI-FEBTC merger. These levels of transfers are: (1) the **assets-only level**; (2) the **business enterprise level**; and (3) the **equity level**. Each has its own impact on the participating corporations and the immediately affected parties, among them, the employees.[11] **Beyond and encompassing all these levels of transfers is total corporate merger or consolidation.**

The **asset-only transfer** affects only the corporate seller's raw assets and properties; the purchaser is not interested in the seller's corporate personality – its goodwill, or in other factors affecting the business itself. In this transaction, no complications arise affecting the employer-employee relationship, except perhaps the redundancy of employees whose presence in the selling company is affected by the sale of the chosen assets and properties, but this is a development completely internal to the selling corporation.[12]

In the **business enterprise** level transaction, the purchaser's interest goes beyond the assets and properties and extends into the seller corporation's whole business and "earning capability," short of the seller's juridical personality.Thus, a whole business is sold and purchased but the parties retain their respective juridical personalities.In this type of transaction, employer-employee and employer liability complications arise, as can be seen from a survey of the cases on corporate transfers that this Court has already passed upon.[13]

A transaction at the **equity level** does not disturb the participating corporations' separate juridical personality as both corporations continue to remain in existence; the purchaser corporation simply buys the underlying equity of the selling corporation which thus retains its separate corporate personality. The selling corporation continues to run its business, but control

[11] Villanueva, *Phillippine Corporate Law*, 2001 ed., pp. 592–633.

[12] *Id.* at 593.

[13] *Id.* at 594, 620-624, citing *Central Azucarera del Danao v. Court of Appeals*, 221 SCRA 647 (1985) and *San Felipe Neri School of Mandaluyong, Inc. v. National Labor Relations Commission*, G.R. No. 78350, September 11, 1991, 201 SCRA 478.

Supreme Court E-Library

of the business is transferred to the purchaser corporation whose control of the selling corporation's equity enables it to elect the members of the selling corporation's board of directors.[14]

As pointed out above, a total merger or consolidation goes way beyond all three levels of dealings in corporate business, assets and property. *In a total merger, the merged corporation transfers everything – figuratively speaking, its "body and soul" – to the surviving corporation.* This was what happened in the BPI-FEBTC merger.

Corporate Assets and Employment Contracts

A corporation possesses tangible and intangible assets and properties that, operated on and managed by the corporation's human resources, become an operating business. The intangibles consist, among others, of the corporate goodwill, credits and other incorporeal rights. The human resources that the corporation relies upon to run its business, strictly speaking, are not corporate assets because the corporation does not "own" the people running its business. But corporations are bound to their managers and employees by various forms of contracts of service, such as individual employment contracts, consultancies and other instruments evidencing personal service.In this sense, a corporation has rights over the human resources it has contracted to run and serve its business. These contractual rights, because they are exercised over those who enable the company to fulfill its goal of production, can be classified as corporate assets. But unlike the usual assets, they are unique and special, as contracts of personal service embody rights *in personam*, *i.e.*, intransferable rights demandable by the parties only against one another.[15]

An employment contract or contract of service essentially has value because it embodies work – the means of adding value to basic raw materials and the processes for producing goods, materials and services that become the lifeblood of corporations and, ultimately, of the nation. Viewed from this

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[14] *Id.* at 593-594.

[15] *Sundowner Development Corporation v. Drilon*, G.R. No. 82341, December 6, 1989, 180 SCRA 14, 18.

Supreme Court E-Library

perspective, the employment contract or contract of service is not an ordinary agreement that can be viewed in strictly *contractual* sense. It embodies work and production and carries with it a very significant element of public interest; thus, the Constitution, no less, accords full recognition and protection to workers and their contribution to production. Section 18, Article II of the Constitution provides:

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

Another recognition of the value of work, production and labor to the national economy is reflected in Article XII on National Economy and Patrimony whose Section 1 states:

The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; **a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.**

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, **through industries that make full and efficient use of human and natural resources,** and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given **optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations,** shall be encouraged to broaden the base of their ownership. [Emphasis supplied.]

From the point of view of labor itself, Article XIII, Section 3 commands:

The State shall afford **full protection to labor**, local and overseas, organized and unorganized, and promote **full employment and equality of employment opportunities** for all. [Emphasis supplied.]

These constitutional statements and directives, aside from telling us to consider work, labor and employment beyond purely *contractual* terms, also provide us directions on how our

Supreme Court E-Library

considerations should be made, *i.e.*, with an eye on the interests they represent – the individual, the corporate, and more importantly, the national.

In a corporate merger situation – where one corporation totally surrenders itself, giving up to another corporation even the human resources that enable its business to operate – the terms of the Constitution bar us from looking at the corporate transaction purely as a contract that should be analyzed purely on the basis of the law on contracts, in the way the *ponencia* suggested. Nor can we accept as valid the *ponencia*'s pronouncement, apparently in line with its purely contractual analysis, that the transfer of all assets and liabilities in a merger situation, as in this case, refers only to FEBTC's property rights and obligations and does not include the employment contracts of its personnel.

To my mind, due consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation – *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment – should point this Court to a declaration that ***in a complete merger situation*** *where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be*, the latter should not be left in legal limbo and should be properly provided for, by compelling the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation.

Not to be forgotten is that the affected employees managed, operated and worked on the transferred assets and properties as their means of livelihood; they constituted a basic component of their corporation during its existence. In a merger and consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and

Supreme Court E-Library

directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. **Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.**

This recognition is not to objectify the workers as assets and liabilities, but to recognize – using the spirit of the law and constitutional standards – their necessary involvement and need to be provided for in a merger situation. Neither does this step, directly impacting on the employees' individual employment contracts, detract from the *in personam* character of these contracts. **For in a merger situation, no change of employer is involved; the change is in the *internal personality of the employer* rather than through the introduction of a new employer which would have novated the contract.** This conclusion proceeds from the nature of a merger as a corporate development regulated by law and the merger's implementation through the parties' merger agreement.

In the context of this case, BPI's relationship with the absorbed employees ***cannot be equated with a situation involving voluntary hiring, as the ponencia posited***. Note that voluntary hiring, as the basis of the relationship, presupposes that employment with FEBTC had been terminated – a development that, as explained above, did not take place; the employment of the absorbed employees simply continued by operation of law, specifically by the combined operation of the Corporation Code and the Labor Code under the backdrop of the labor and social justice provisions of the Constitution.

An individual employee can, at any time, in a consensual and *in personam* employment contract, walk away from it, subject only to the adjustment of the obligations he has incurred under the contractual relationship that binds him; a contrary

Supreme Court E-Library

rule would violate the involuntary service provision of the Constitution.[16] Ordinarily, walking away would be an act of voluntary resignation that entitles the employee only to benefits that have been earned and accrued; a merger situation is differentiated by the separation pay[17] that the Merger Plan should at least provide under the combined application of the Corporation Code,[18] as well as the just and authorized causes for termination of employment under the Labor Code.[19] Otherwise, the employee has the right to be secure in his tenure without loss of seniority, benefits and level of pay.[20]

The above view reconciles the terms of the Constitution, the Corporation Code, and the Labor Code, and directly conflicts with the *ponencia's* views that: (1) BPI's role as employer of the absorbed FEBTC employees was not by operation of law or a legal consequence of the merger, but by BPI's voluntary act of hiring the employees after the merger; (2) the employees' contracts are purely *in personam* and are binding only between the parties; and (3) it is contrary to public policy to declare the absorbed employees to be part of the assets or liabilities of FEBTC that were transferred to BPI under the Merger Plan since the transferred assets and liabilities should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel.

To encapsulate the discussions above in relation with the *ponencia's*, BPI was the successor of FEBTC in the latter's employment relationships, and the succession occurred both

[16] Article III, Section 18(2) of the Constitution states that:

Section 18. (1) x x x

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

[17] *Glory Philippines, Inc. v. Vergara*, G.R. No. 176627, August 24,2007, 531 SCRA 253, 264; *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 172; *Torillo v. Leogardo*, 274 Phil. 758, 765-767 (1991).

[18] Section 80 of the Corporation Code.

[19] Sections 282, 283 and 284 of the Labor Code.

[20] Section 279 of the Labor Code.

Supreme Court E-Library

by contract and by operation of law. The two corporations decided to merge; necessarily, their merger – made through a merger agreement – is governed by the Corporation Code that recognizes the merger and its terms, including the "body and soul" succession to BPI of everything that was FEBTC's.

This succession included FEBTC's employment contracts, subject to the right of the employees to reject or accept the succession because employment contracts are essentially *in personam*. It is immaterial that BPI's assumption of the role of employer was not embodied in the merger agreement; in the absence of clear agreement terms, the law – specifically, Section 80 of the Corporation Code – takes over and governs. What appeared to be BPI's voluntary act of "hiring" the former FEBTC employees is legally insignificant as BPI was in fact obliged under the law to assume the role of employer to the FEBTC employees in the absence of an agreement on how the merging parties would treat the employment contracts and the employees they cover.

In support of its position, the *ponencia* cites the American Law Reports on "the consequences of voluntary mergers on the right to employment and seniority rights" with the view that these are "persuasive and illuminating." The first case cited is *Carver v. Brien*,[21] which relates to the recognition of seniority in a consolidation of operations situation. Another is *Moore v. International Brotherhood of Teamsters*,[22] which refers to the absorption by a trucker of the business of another private trucker or common carrier, and holds that the seniority of affected employees depends on the agreement between the trucker and the unions involved.

I do not believe that these cited cases are relevant to the present case, particularly for the purposes the *ponencia* cites them; these cited cases can neither be "persuasive nor illuminating" as they do not even approximate the factual situation of the present case so that their rulings can be applied to the latter.

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[21] 43 NE2nd 597 (1942).

[22] 356 SW2nd 241 (1962).

Supreme Court E-Library

No corporate merger was involved in the cited cases, in the same sense as in the present case; in fact, what was involved in *Carver* was merely a consolidation of operations, while *Moore* merely related to the absorption of the business of one corporation by another, not to a merger. As painstakingly explained above, these are dealings in corporate interests and properties that are lesser in extent and scope than total merger or consolidation and should be distinguished from the latter under the terms of Section 80 of our Corporation Code. Thus, the cited cases and rulings should not at all be considered in resolving the issues posed in the present case.

From another perspective, the differing consequences, discussed above,[23] arising from the different modes of transfers of corporate assets and liabilities and corporate consolidations, apparently escape the *ponencia*. Thus, it has no hesitation at all in citing American cases that do not at all involve fact situations equivalent to the merger envisioned by Sections 76 and 80 of the Corporation Code. This is a fatal error, leading no less to the *ponencia's* conclusion that the issue before us is purely a labor law issue, divorced from its corporation law context.

That an employment contract is *in personam* cannot be disputed as this is the essence of such contract and what this contract should be in light of the constitutional prohibition against involuntary servitude.[24] But as above pointed out, this is not wholly and strictly how an employment contract is to be viewed under our Constitution. While these contracts are binding only between the parties, they resonate with public interest that the Constitution and our laws have seen fit to regulate; employment contracts translate to service which itself translates to productive work that the economy and the nation need.

In the BPI-FEBTC situation, these employment contracts are part of the obligations that the merging parties have to account and make provisions for under the Constitution and the Corporation Code; in the absence of any clear agreement, these

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[23] At pages 7 to 8 of this Dissent.

[24] Article III, Section 18(2) of the Constitution.

Supreme Court E-Library

employment contracts subsist, subject to the right of the employees to reject them as they cannot be compelled to render service but can only be made to answer in damages if the rejection constitutes a breach.[25] ***In other words, in mergers and consolidations, these contracts should be held to be continuing, unless rejected by the employees themselves or declared by the merging parties to be subject to the authorized causes for termination of employment under Sections 282 and 283 of the Labor Code. In this sense, the merging parties' control and business decision on how employees shall be affected, in the same manner that the affected employees' decision on whether to abide by the merger or to opt out, remain unsullied.*** Unfortunately, this is another dimension of a merger situation that escapes the *ponencia's* short-sighted reading of corporate mergers in general, and of the merger between BPI and FEBTC in particular.

From these perspectives, it appears clearly that the *ponencia* has not fully appreciated how mergers operate and how they affect employment contracts when it viewed employment contracts as *strictly contractual* and *binding only between the parties*, with no effective legal intervention from the law in terms of the combined operation of the Constitution, the Corporation Code and the Labor Code.

BPI's Assumption of Role as Employer

As soon as the BPI-FEBTC merger took effect, FEBTC completely faded out as employer and BPI succeeded to this role. BPI's assumption of this role is not in the sense of a novation, *i.e.*, that a change of employer took place as the employment contracts were transferred to BPI. As stated above, instead of the clear change or substitution of an employer for another that would have taken place in a novated employment contract (*e.g.*, such that would have taken place if only a *business enterprise level of transfer* took place where the whole business is transferred, accompanied by a substitution of the employer running the business), what took place in the BPI-FEBTC total

[25] Article 2201 of the Civil Code.

merger was an internal change; BPI succeeded to everything that was FEBTC's, thereby assuming the latter's identity and role as employer. In this sense, BPI simply expanded its role as an employer to encompass the employees who were previously identified as FEBTC employees.

The effect of this development on the internal BPI employment situation in a *non-unionized environment* would not have posed any difficulty, as there would simply be an adjustment of working conditions based on the premise that the absorbed employees would not suffer any diminution of the terms and conditions of employment under their contracts.

Where a union is present in a merger situation, complications arise as the adjustment will not only involve the assumption of the role of the merged corporation as employer and the non-diminution of the terms and conditions of employment; existing terms and conditions of the relationship with the union must as well be observed and respected. This union scenario gave rise to the present case and at its core asks: *what terms and conditions of relationship with the union must be observed in light of BPI's expanded role as an employer.*

Union presence at the workplace is generally most effective when it has a current CBA with the employer. This agreement necessarily implies that a bargaining unit has been properly defined and delineated in the organized portion of the employer's establishment. In the present case, the establishment is BPI's Davao Branch and the defined bargaining unit covers the rank-and-file positions in the Branch. At the minimum, the absorbed employees working within BPI's Davao Branch who are ***classified as rank-and-file employees*** and ***who are not expressly excluded*** from coverage should be covered by the collective bargaining unit and by the CBA. Note that *this coverage by the bargaining unit is separate from compulsory union membership which is provided under the union security clauses discussed below. Employees may come within the coverage of the bargaining unit, but may still be exempt*

Supreme Court E-Library

from compulsory union membership under the union security clauses. [26]

The CBA's Union Security Clauses

The CBA at BPI contains two union security provisions whose respective roles are **to protect** and **to compel** union membership within the effective term of the CBA.

The first is the **Maintenance of Membership** provision whose role is to ***protect the union's current membership.*** By its express terms, it covers and renders continued union membership compulsory for: **(1)** those who were already union members at the time the CBA was signed; and **(2)** the new employees who will become regular during the life of the CBA. The first classification of union members directly implies that ***BPI employees who were not members of the union, at the time of the signing of the CBA, are not compelled to be union members.***

Thus, on the basis of this union security clause and the compulsory membership it compels, there are three kinds of employees at BPI, namely – (1) those who **are not compelled to be union members** because they were not union members at the time the CBA was signed; (2) those **who are compelled** to continue membership because they were **already union members when the CBA was signed;** and (3) those who, **previously non-regular employees**, are compelled to be union members **after they attain regular status.**

As applied to the absorbed employees, the maintenance of membership clause would apply to them *only if they voluntarily joined the union after the BPI-FEBTC merger*; they would thereafter have to maintain their union membership under pain of dismissal.

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[26] Note that confidential employees may occupy rank and file positions but are not covered by the bargaining unit because of express exclusion. Rank and file employees who are not union members because they are "old" employees not covered by the maintenance of membership clause are covered by the CBA but are not union members; they simply pay "agency fees" to avoid being "free riders" to the CBA.

Supreme Court E-Library

The second union security provision is entitled **Union Shop** *whose role is to compel the membership of those who are not yet union members.* To quote its direct terms, it refers to "**[N]ew employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank."**[27] Strictly speaking, this definition is defective as it speaks of new non-regular employees who are not therefore members of the bargaining unit yet. The provision should properly read: *new employees occupying positions falling within the bargaining unit.*

Read closely, this reference to "new employees" is not a definition that specifies who are new. It simply refers to those employees *whose positions fall within the bargaining unit and who are subsequently given regular status;* they must join the union as a condition of their continued employment.

By its reference to employees who are as yet on non-regular status, what is clearly a requirement for the application of the union shop clause, as framed by this provision, is the grant of regular status. In other words, it applies to those recently given regular employment and who, by necessary implication, were hired as non-regular employees and were thereafter accorded regular status.

In contrast with the non-regular employees that the CBA clearly referred to, absorbed FEBTC employees did not undergo the process of waiting for the grant of regular status; their regular employment simply continued from FEBTC to BPI without any break because BPI only succeeded to the role of FEBTC as employer in a merger, where the same employment was maintained and only the employer's personality changed. Thus, they cannot be "new" under the terms of the union security clause. For that matter, they are not even "new" under the

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[27] *Rollo,* p. 17. The CBA provides that "[n]ew employees falling within the bargaining unit as defined in Article I of this Agreement, who may hereafter be regularly employed by the Bank, shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment. It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank."

Supreme Court E-Library

ordinary meaning of this word which connotes something that recently came into existence, use, or a particular state or relation.[28]

Even granting the validity of the *ponencia's* position that the union shop provision *as written* does not distinguish between non-regular employees, who subsequently became regular, and those who were hired and immediately granted regular status without passing through a non-regular phase, still the union security clause would not cover the absorbed employees because they do not fall under either classification.

An intrinsic distinction exists between the absorbed employees and those who are hired as immediate regulars, which distinction cannot simply be disregarded because it establishes how the absorbed employees came to work for BPI. Those who are immediately hired as regulars acquire their status through the voluntary act of hiring done within the effective term or period of the CBA. The absorbed employees, on the other hand, merely continued the employment they started with FEBTC; they came to be BPI employees by reason of a corporate merger that changed the personality of their employer but *did not at all give them any new employment*. Thus, they are neither "new" employees nor employees who became regular only during the term of the CBA in the way that newly regularized employees become so. They were regular employees under their present employment long before BPI succeeded to FEBTC's role as employer.

It may well be asked: what then is the classification under the CBA of the absorbed employees whose positions fall within the bargaining unit? As discussed above, they cannot be new employees. In fact, they are more similar to the "old" employees, if their continuity of service will be considered. This characterization, nevertheless, is clearly inapt since they cannot also be treated in exactly the same way as the pre-merger BPI employees. Besides, *being "old" employees will not compel them to join the union under the maintenance of membership provision as they never had any union membership to maintain.*

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[28] *Webster's Third New International Dictionary,* 1993 ed.

Supreme Court E-Library

Ultimately, the absorbed employees are best recognized for what they really are – a ***sui generis* group of employees** whose classification will not be duplicated until BPI has another merger where it would be the surviving corporation and no provision would be made to define the situation of the employees of the merged constituent corporation. Significantly, this classification – ***obviously, not within the contemplation of the CBA parties when they executed their CBA*** – is not contrary to, nor governed by, any of the agreed terms of the existing CBA on union security, and thus occupies a gap that BPI, in the exercise of its management prerogative, can fill.

In the meantime, whether to join or not to join the union is a choice that these absorbed employees will have to make after the next CBA, when their status becomes subject to the results of the collective negotiations.

In a resulting **purely maintenance of membership** regime, those who would not opt to join the union carry no obligation to maintain any union membership. In a **union shop** regime, the absorbed employees may remain non-union members until an agreed specified time when union membership is declared obligatory as a condition for continued employment. With the same effect would be the stricter **closed shop** clause that compels management to hire only union members. **In any of these regimes, of course, compulsory membership shall depend on the terms of the CBA on who would be subject to compulsion and how compulsion would operate.** As a cautionary note to avoid similar problems in the future, it may be best for the parties to incorporate terms expressly providing for the situation of employees absorbed by reason of merger.

The Constitutional Question

The constitutional question, as framed by Justice Antonio T. Carpio, arises under the view that the absorbed employees cannot be covered by the union security clause and thereby be compelled to join the union. As indicated at the beginning of this Opinion, this question was never posed nor discussed by any of the parties and, hence, is not a question presented for our consideration in the present case. Besides, this is a question

Supreme Court E-Library

that *may only arise when and if the absorbed employees are considered bound under the union security clauses to join the union*. For these reasons, I see no need to confront and resolve this constitutional issue.

In light of these considerations, I vote to **GRANT** the petition.

FIRST DIVISION

[G.R. No. 137794. August 11, 2010]

ERLINDA REYES and ROSEMARIE MATIENZO, *petitioners, vs.* **HON. JUDGE BELEN B. ORTIZ, Presiding, Branch 49, Metropolitan Trial Court, Caloocan City; SPOUSES BERNARD and FLORENCIA PERL, represented by Attorney-in-Fact BENJAMIN MUCIO; HON. JUDGE VICTORIA ISABEL A. PAREDES, Presiding, Branch 124, Regional Trial Court, Caloocan City and SEGUNDO BAUTISTA,** *respondents.*

[G.R. No. 149664. August 11, 2010]

SPS. ALBERTO EMBORES and LOURDES EMBORES, SPS. ROBERTO and EVELYN PALAD, DENNIS HENOSA and CORAZON LAURENTE, *petitioners, vs.* **HON. RAYMUNDO G. VALLEGA, Presiding Judge, Branch 52, Metropolitan Trial Court, Caloocan City; HON. ELEANOR R. KWONG, Presiding Judge, Branch 51, Metropolitan Trial Court, Caloocan City; HON. JUDGE BELEN B. ORTIZ, Presiding Judge, Branch 49, Metropolitan Trial Court, Caloocan City; VICTORIA C. SALIRE-ALBIS, represented by her attorney-in-fact MR. MENELIO C. SALIRE; MA. FE**