SUPREME COURT
EN BANC

FEATI UNIVERSITY,
***Petitioner*,**

-versus- **G.R. No. L-21278**
December 27, 1966

HON. JOSE S. BAUTISTA, Presiding Judge of the Court of Industrial Relations and FEATI UNIVERSITY FACULTY CLUB-PAFLU,
***Respondents*.**
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FEATI UNIVERSITY,
***Petitioner-Appellant*,**

-versus- **G.R. No. L-21462**

FEATI UNIVERSITY FACULTY CLUB-PAFLU,
***Respondent-Appellee*.**
x----------x

FEATI UNIVERSITY,
***Petitioner-Appellant*,**

-versus- **G.R. No. L-21500**

FEATI FACULTY CLUB PAFLU,
Respondent-Appellee.
x----------x

D E C I S I O N

ZALDIVAR, *J.*:

This Court, by Resolution, ordered that these three cases be considered together, and the parties were allowed to file only one brief for the three cases.

On January 14, 1963, the President of the respondent Feati University Faculty Club PAFLU — hereinafter referred to as Faculty Club — wrote a letter to Mrs. Victoria L. Araneta, President of petitioner Feati University — hereinafter referred to as University — informing her of the organization of the Faculty Club into a registered labor union. The Faculty Club is composed of members who are professors and/or instructors of the University. On January 22, 1963, the President of the Faculty Club sent another letter containing twenty six demands that have connection with the employment of the members of the Faculty Club by the University, and requesting an answer within ten days from receipt thereof. The President of the University answered the two letters, requesting that she be given at least thirty days to study thoroughly the different phases of the demands. Meanwhile counsel for the University, to whom the demands were referred, wrote a letter to the President of the Faculty Club demanding proof of its majority status-and designation as a bargaining representative. On February 1, 1963, the President of the Faculty Club again wrote the President of the University rejecting the latter's request for extension of time, and on the same day he filed a notice of strike with the

Bureau of Labor alleging as reason therefor the refusal of the University to bargain collectively. The parties were called to conferences at the Conciliation Division of the Bureau of Labor but efforts to conciliate them failed. On February 18, 1963, the members of the Faculty Club declared a strike and established picket lines in the premises of the University, resulting in the disruption of classes in the University. Despite further efforts of the officials from the Department of Labor to effect a settlement of the differences between the management of the University and the striking faculty members no satisfactory agreement was arrived at. On March 21, 1963, the President of the Philippines certified to the Court of Industrial Relations the dispute between the management of the University and the Faculty Club pursuant to the provisions of Section 10 of Republic Act No. 875.

In connection with the dispute between the University and the Faculty Club and certain incidents related to said dispute, various cases were filed with the Court of Industrial Relations — hereinafter referred to as CIR. The three cases now before this Court stemmed from those cases that were filed with the CIR.

CASE NO. G.R. NO. L-21278

On May 10, 1963, the University filed before this Court a "petition for certiorari and prohibition with writ of preliminary injunction", docketed as G. R. No. L-21278, praying: (1) for the issuance of a writ of preliminary injunction enjoining respondent Judge Jose S. Bautista of the CIR to desist from proceeding in CIR Cases Nos. 41-IPA, 1183-MC, and V-30; (2) that the proceedings in Cases Nos. 41-IPA and 1183-MC be annulled; (3) that the orders dated March 30, 1963 and April 6, 1963 in Case No. 41-IPA, the order dated April 6, 1963 in Case No. 1183-MC, and the order dated April 29, 1963 in Case No. V-30, all be annulled; and (4) that the respondent Judge be ordered to dismiss said cases Nos. 41-IPA, 1183-MC and V-30 of the CIR.

On May 10, 1963, this Court issued a writ of preliminary injunction, upon the University's filing a bond of P1,000.00, ordering respondent Judge Jose S. Bautista, as Presiding Judge of the CIR, until further order from this Court, "to desist and refrain from further proceeding

in the premises (Cases Nos. 41-IPA, 1183-MC and V-30 of the Court of Industrial Relations)."[1] On December 4, 1963, this Court ordered the injunction bond increased to P100, 000.00; but on January 23, 1964, upon a motion for reconsideration by the University, this Court reduced the bond to P50,000 00.

A brief statement of the three cases — CIR Cases 41-IPA, 1183-MC and V-30 — involved in the Case G. R. No. L-21278, is here necessary.

CIR Case No. 41-IPA, relates to the case in connection with the strike staged by the members of the Faculty Club. As we have stated, the dispute between the University and the Faculty Club was certified on March 21, 1963 by the President of the Philippines to the CIR. On the strength of the presidential certification, respondent Judge Bautista set the case for hearing on March 23, 1963. During the hearing, the Judge endeavored to reconcile the parties, and it was agreed upon that the striking faculty members would return to work and the University would readmit them under a status quo arrangement. On that very same day, however, the University, thru counsel filed a motion to dismiss the case upon the ground that the CIR has no jurisdiction over the case, because (1) the Industrial Peace Act is not applicable to the University, it being an educational institution, nor to the members of the Faculty Club, they being independent contractors; and (2) the presidential certification is violative of Section 10 of the Industrial Peace Act, as the University is not an industrial establishment and there was no industrial dispute which could be certified to the CIR. On March 30, 1963 the respondent Judge issued an order denying the motion to dismiss and declaring that the Industrial Peace Act is applicable to both parties in the case and that the CIR had acquired jurisdiction over the case by virtue of the presidential certification. In the same order, the respondent Judge, believing that the dispute could not be decided promptly, ordered the strikers to return immediately to work and the University to take them back under the last terms and conditions existing before the dispute arose, as per agreement had during the hearing on March 23, 1963; and likewise enjoined the University, pending adjudication of the case, from dismissing any employee or laborer without previous authorization from the CIR. The University filed on April 1, 1963 a motion for reconsideration of the order of March 30, 1963 by the CIR en banc, and at the same time asking that the motion for

reconsideration be first heard by the CIR en banc. Without the motion for reconsideration having been acted upon by the CIR en banc, respondent Judge set the case for hearing on the merits for May 8, 1963. The University moved for the cancellation of said hearing upon the ground that the court en banc should first hear the motion for reconsideration and resolve the issues raised therein before the case is heard on the merits. This motion for cancellation of the hearing was denied. The respondent Judge, however, canceled the scheduled hearing when counsel for the University manifested that he would take up before the Supreme Court, by a petition for certiorari, the matter regarding the actuations of the respondent Judge and the issues raised in the action for reconsideration, especially the issue' relating to the jurisdiction of the CIR. The order of March 30, 1963 in Case 41- IPA is one of the orders sought to be annulled in the case, G.R. No. L-21278.

Before the above-mentioned order of March 30, 1963 was issued by the respondent Judge, the University had employed professors and/or instructors to take the places of those professors and/or instructors who had struck. On April 1, 1963, the Faculty Club filed with the CIR in Case 41-IPA a petition to declare in contempt of court certain parties, alleging that the University refused to accept back to work the returning strikers, in violation of the return-to-work order of March 30, 1963. The University filed, on April 5, 1963, its opposition to the petition for contempt, denying the allegations of the Faculty Club and alleging by way of special defense that there was still the motion for reconsideration of the order of March 30, 1963 which had not yet been acted upon by the CIR en banc. On April 6, 1963, the respondent Judge issued an order stating that "said replacements are hereby warned and cautioned, for the time being, not to disturb nor in any manner commit any act tending to disrupt the effectivity of the order of March 30, 1963, pending the final resolution of the same."[2] On April 8, 1963, the replacing professors and/or instructors concerned filed, thru counsel, a motion for reconsideration by the CIR en banc of the order of respondent Judge of April 6, 1963. This order of April 6, 1963 is one of the orders that are sought to be annulled in case G. R. No. L-21278.

CIR Case No. 1183-MC relates to a petition for certification election filed by the Faculty Club on March 8, 1963 before the CIR, praying

that it be certified as the sole and exclusive bargaining representative of all the employees of the University. The University filed an opposition to the petition for certification election and at the same time a motion to dismiss said petition, raising the very same issues raised in Case No. 41-IPA, claiming that the petition did not comply with the rules promulgated by the CIR; that the Faculty Club is not a legitimate labor union; that the members of the Faculty Club cannot unionize for collective bargaining purposes; that the terms of the individual contracts of the professors, instructors, and teachers, who are members of the Faculty Club, would expire on March 25 or 31, 1963; and that the CIR has no jurisdiction to take cognizance of the petition because the Industrial Peace Act is not applicable to the members of the Faculty Club nor to the University. This case was assigned to Judge Baltazar Villanueva of the CIR. Before Judge Villanueva could act on the motion to dismiss, however, the Faculty Club filed on April 3, 1963 a motion to withdraw the petition on the ground that the labor dispute (Case No. 41-IPA) had already been certified by the President to the CIR and the issues raised in Case No. 1183-MC were absorbed by Case No. 41-IPA. The University opposed the withdrawal, alleging that the issues raised in Case No. 1183-MC were separate and distinct from the issues raised in Case No. 41-IPA; that the questions of recognition and majority status in Case No. 1183-MC were not absorbed by Case No. 41-IPA; and that the CIR could not exercise its power of compulsory arbitration unless the legal issue regarding the existence of employer-employee relationship was first resolved. The University prayed that the motion of the Faculty Club to withdraw the petition for certification election be denied, and that its motion to dismiss the petition be heard. Judge Baltazar Villanueva, finding that the reasons stated by the Faculty Club in the motion to withdraw were well taken, on April 6, 1963, issued an order granting the withdrawal. The University filed, on April 24, 1963, a motion for reconsideration of that order of April 6, 1963 by the CIR en banc. This order of April 6, 1963 in Case No. 1183-MC is one of the orders sought to be annulled in the case, G.R.-No. L-21278, now before us.

CIR Case No. V-30 relates to a complaint for indirect contempt of court filed against the administrative officials of the University. The Faculty Club, through the Acting Chief Prosecutor of the CIR, filed with the CIR a complaint, docketed as Case No. V-30, charging

President Victoria L. Araneta, Dean Daniel Salcedo, Executive Vice President Rodolfo Maslog, and Assistant to the President Jose Segovia, as officials of the University, with indirect contempt of court, reiterating the same charges filed in Case No. 41-IPA for alleged violation of the order dated March 30, 1963. Based on the complaint thus filed by the Acting Chief Prosecutor of the CIR, respondent Judge Bautista issued on April 29, 1963 an order commanding any officer of the law to arrest the above named officials of the University so that they may be dealt with in accordance with law, and at the same time fixed the bond for their release at P500.00 each. This order of April 29, 1963 is also one of the orders sought to be annulled in the Case, G.R. No. L-21278.

The principal allegation of the University in its petition for certiorari and prohibition with preliminary injunction in Case G.R. No. L-21278, now before Us, is that respondent Judge Jose S. Bautista acted without, or in excess of, jurisdiction, or with grave abuse of discretion, in taking cognizance of, and in issuing the questioned orders in, CIR Cases Nos. 41-IPA, 1183-MC and V-30. Let it be noted that when the petition for certiorari and prohibition with preliminary injunction was filed on May 10, 1963 in this case, the questioned orders in CIR Cases Nos. 41-IPA, 1183-MC and V-30 were still pending action by the CIR en banc upon motions for reconsideration filed by the University.

On June 10, 1963, the Faculty Club filed its answer to the petition for certiorari and prohibition with preliminary injunction, admitting some allegations contained in the petition and denying others, and alleging special defenses which boil down to the contentions that (1) the CIR had acquired jurisdiction to take cognizance of Case No. 41-IPA by virtue of the presidential certification, so that it had jurisdiction to issue the questioned orders in said Case No. 41-IPA; (2) that the Industrial Peace Act *(Republic Act 875)* is applicable to the University as an employer and to the members of the Faculty Club as employees who are affiliated with a duly registered labor union, so that the Court of Industrial Relations had jurisdiction to take cognizance of Cases Nos. 1183-MC and V-30 and to issue the questioned orders in those two cases; and (3) that the petition for certiorari and prohibition with preliminary injunction was prematurely filed because the orders of the CIR sought to be annulled

were still the subjects of pending motions for reconsideration before the CIR en banc when said petition for certiorari and prohibition with preliminary injunction was filed before this Court.

CASE G.R. NO. L-21462

This case, G.R. No. L-21462, involves also CIR Case No. 1183-MC. As already stated Case No. 1183-MC relates to a petition for certification election filed by the Faculty Club as a labor union, praying that it be certified as the sole and exclusive bargaining representative of all employees of the University. This petition was opposed by the University, and at the same time it filed a motion to dismiss said petition. But before Judge Baltazar Villanueva could act on the petition for certification election and the motion to dismiss the same, Faculty Club filed a motion to withdraw said petition upon the ground that the issues raised in Case No. 1183-MC were absorbed by Case No. 41-IPA which was certified by the President of the Philippines. Judge Baltazar Villanueva, by order of April 6, 1963 granted the motion to withdraw. The University filed a motion for reconsideration of that order of April 6, 1963 by the CIR en banc. That motion for reconsideration was pending action by the CIR en banc when the petition for certiorari and prohibition with preliminary injunction in Case G.R. No. L-21278 was filed on May 10, 1963. As earlier stated this Court, in Case G.R. No. L-21278, issued a writ of preliminary injunction on May 10, 1963, ordering respondent Judge Bautista, until further order from this Court, to desist and refrain from further proceeding in the premises. *(Cases Nos. 41-IPA, 1183-MC and V-30 of the Court of Industrial Relations)*

On June 5, 1963, that is, after this Court has issued the writ of preliminary injunction in Case G.R. No. L-21278, the CIR en banc issued a resolution denying the motion for reconsideration of the order of April 6, 1963 in Case No-1183-MC.

On July 8, 1963, the University filed before this Court a petition for certiorari, by way of an appeal from the resolution of the CIR en banc, dated June 5, 1963, denying the motion for reconsideration of the order of April 6, 1963 in Case No. 1183-MC. This petition was docketed as G.R. No. L-21462. In its petition for certiorari, the University alleges (1) that the resolution of the Court of Industrial

Relations of June 5, 1963 was null and void because it was issued in violation of the writ of preliminary injunction issued in Case G.R. No. L-21278; (2) that the issues of employer-employee relationship, the alleged status as a labor union, majority representation and designation as bargaining representative in an appropriate unit of the Faculty Club should have been resolved first in Case No. 1183-MC prior to the determination of the issues in Case No. 41-IPA and therefore the motion to withdraw the petition for certification election should not have been granted upon the ground that the issues in the first case have been absorbed in the second case; and (3) the lower court acted without or in excess of jurisdiction in taking cognizance of the petition for certification election and that the same should have been dismissed instead of having been ordered withdrawn. The University prayed that the proceedings in Case No. 1183-MC and the order of April 6, 1963 and the resolution of June 5, 1963 issued therein be annulled, and that the CIR be ordered to dismiss Case No. 1183-MC on the ground of lack of jurisdiction.

The Faculty Club filed its answer, admitting some, and denying other, allegations in the petition for certiorari; and specially alleging that the lower court's order granting the withdrawal of the petition for certification election was in accordance with law, and that the resolution of the court en banc on June 5, 1963 was not a violation of the writ of preliminary injunction issued in Case G.R. No. L-21278 because said writ of injunction was issued against Judge Jose S. Bautista and not against the Court of Industrial Relations, much less against Judge Baltazar Villanueva who was the trial judge of Case No. 1183-MC.

CASE G.R. NO. L-21500

This case, G.R. No. L-21500, involves also CIR Case No. 41-IPA. As earlier stated, Case No. 41-IPA relates to the strike staged by the members of the Faculty Club and the dispute was certified by the President of the Philippines to the CIR. The University filed a motion to dismiss that case upon the ground that the CIR has no jurisdiction over the case, and on March 30, 1963 Judge Jose S. Bautista issued an order denying the motion to dismiss and declaring that the Industrial Peace Act is applicable to both parties in the case and that the CIR had acquired jurisdiction over the case by virtue of the presidential

certification; and in that same order Judge Bautista ordered the strikers to return to work and the University to take them back under the last terms and conditions existing before the dispute arose; and enjoined the University from dismissing any employee or laborer without previous authority from the court. On April 1, 1963, the University filed a motion for reconsideration of the order of March 30, 1963 by the CIR en banc. That motion for reconsideration was pending action by the CIR en banc when the petition for certiorari and prohibition with preliminary injunction in Case G.R. No. L-21278 was filed on May 10, 1963. As we have already stated, this Court in said case G.R. No. L-21278, issued a writ of preliminary injunction on May 10, 1963 ordering respondent Judge Jose S. Bautista, until further order from this Court, to desist and refrain from further proceeding in the premises *(Cases No. 41-IPA, 1183-MC and V-30 of the Court of Industrial Relations)*.

On July 2, 1963, the University received a copy of the resolution of the CIR en banc, dated May 7, 1963 but actually received and stamped at the Office of the Clerk of the CIR on June 28, 1963, denying the motion for reconsideration of the order dated March 30, 1963 in Case No. 41-IPA.

On July 23, 1963, the University filed before this Court a petition for certiorari, by way of an appeal from the resolution of the Court of Industrial Relations en banc dated May 7, 1963 (but actually received by said petitioner on July 2, 1963) denying the motion for reconsideration of the order of March 30, 1963 in Case No. 41-IPA. This petition was docketed as G.R. No. L-21500. In its petition for certiorari the University alleges (1) that the resolution of the CIR en banc, dated May 7, 1963 but filed with the Clerk of the CIR on June 28, 1963, in Case No. 41-IPA, is null and void because it was issued in violation of the writ of preliminary injunction issued by this Court in G.R. No. L-21278; (2) that the CIR, through its Presiding Judge, had no jurisdiction to take cognizance of Case No. 41-IPA and the order of March 30, 1963 and the resolution dated May 7, 1963 issued therein are null and void; (3) that the certification made by the President of the Philippines is not authorized by Section 10 of Republic Act 895, but is violative thereof; (4) that the Faculty Club has no right to unionize or organize as a labor union for collective bargaining purposes and to be certified as a collective bargaining agent within

the purview of the Industrial Peace Act, and consequently it has no right to strike and picket on the ground of petitioner's alleged refusal to bargain collectively where such duty does not exist in law and is not enforceable against an educational institution; and (5) that the return-to-work order of March 30, 1963 is improper and illegal. The petition prayed that the proceedings in Case No. 41-IPA be annulled, that the order dated March 30, 1963 and the resolution dated May 7, 1963 be revoked, and that the lower court be ordered to dismiss Case 41-IPA on the ground of lack of jurisdiction.

On September 10, 1963, the Faculty Club, through counsel, filed a motion to dismiss the petition for certiorari on the ground that the petition being filed by way of an appeal from the orders of the Court of Industrial Relations denying the motion to dismiss in Case No. 41-IPA, the petition for certiorari is not proper because the orders appealed from are interlocutory in nature.

This Court, by resolution of September 26, 1963, ordered that these three cases *(G.R. Nos. L-21278, L-21462 and L-21500)* be considered together and the motion to dismiss in Case G.R. No. L-21500 be taken up when the cases are decided on the merits after the hearing.

Brushing aside certain technical questions raised by the parties in their pleadings, We proceed to decide these three cases on the merits of the issues raised.

The University has raised several issues in the present cases, the pivotal one being its claim that the Court of Industrial Relations has no jurisdiction over the parties and the subject matter in CIR Cases 41-IPA, 1183-MC and V-30, brought before it, upon the ground that Republic Act No. 875 is not applicable to the University because it is an educational institution and not an industrial establishment and hence not an "employer" in contemplation of said Act; and neither is Republic Act No. 875 applicable to the members of the Faculty Club because the latter are independent contractors and, therefore, not employees within the purview of the said Act.

In support of the contention that being an educational institution it is beyond the scope of Republic Act No. 875 the University cites cases decided by this Court: Boy Scouts of the Philippines vs. Juliana Araos,

L-10091, Jan. 29, 1958; University of San Agustin vs. CIR, et al., L-12222, May 28, 1958; Cebu Chinese High School vs. Philippine Land-Air-Sea Labor Union, PLASLU, L-12015, April 22, 1959; La Consolacion College, et al. vs. CIR, et al., L 13282, April 22, 1960; University of the Philippines, et al. vs. CIR, et al., L-15416, April 28, 1960; Far Eastern University vs. CIR, L 17620, August 31, 1962. We have reviewed these cases, and also related cases subsequent thereto, and We find that they do not sustain the contention of the University. It is true that this Court has ruled that certain educational institutions, like the University of Santo Tomas, University of San Agustin, La Consolacion College, and other juridical entities, like the Boy Scouts of the Philippines and Manila Sanitarium, are beyond the purview of Republic Act No. 875 in the sense that the Court of Industrial Relations has no jurisdiction to take cognizance of charges of unfair labor practice filed against them, but it is nonetheless true that the principal reason of this Court in ruling in those cases that those institutions are excluded from the operation of Republic Act 875 is that those entities are not organized, maintained and operated for profit and do not declare dividends to stockholders. The decision in the case of University of San Agustin vs. Court of Industrial Relations, G.R. No. L-12222, May 28, 1958, is very pertinent. We quote a portion of the decision:

> "It appears that the University of San Agustin, petitioner herein, is an educational institution conducted and managed by a 'religious non-stock corporation duly organized and existing under the laws of the Philippines.' It was organized not for profit or gain or division of the dividends among its stockholders, but solely for religious and educational purposes. It likewise appears that the Philippine Association of College and University Professors, respondent herein, is a non-stock association composed of professors and teachers in different colleges and universities and that since its organization two years ago, the university has adopted a hostile attitude to its formation and has tried to discriminate, harass and intimidate its members for which reason the association and the members affected filed the unfair labor practice complaint which initiated this proceeding. To the complaint of unfair labor practice, petitioner filed an answer wherein it disputed the jurisdiction of

the Court of Industrial Relations over the controversy on the following grounds:

> ‘(a) That complainants therein being college and/or university professors were not “industrial” laborers or employees, and the Philippine Association of College and University Professors being composed of persons engaged in the teaching profession, is not and cannot be a legitimate labor organization within the meaning of the law creating the Court of Industrial Relations and defining its powers and functions;
>
> ‘(b) That the University of San Agustin, respondent therein, is not an institution established for the purpose of gain or division of profits, and, consequently, it is not an “industrial” enterprise and the members of its teaching staff are not engaged in “industrial” employment *(U.S.T. Hospital Employees Association vs. Sto. Tomas University Hospital, G.R. No. L-6988, 24 May 1954; and San Beda College vs. Court of Industrial Relations and National Labor Union, G.R. No. L-7649, 29 October 1955; 51 O.G. (Nov. 1955) 5636-5640)*;
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> ‘(c) That, as a necessary consequence, alleged controversy between therein complainants and respondent is not an “industrial” dispute, and the Court of Industrial Relations has no jurisdiction, not only on the parties but also over the subject matter of the complaint.’

“The issue now before us is: Since the University of San Agustin is not an institution established for profit or gain, nor an industrial enterprise, but one established exclusively for educational purposes, can it be said that its relation with its professors is one of employer and employee that comes under the jurisdiction of the Court of Industrial Relations? In other words, do the provisions of the Magna Carta on unfair labor practice apply to the relation between petitioner and members of respondent association?”

"The issue is not new. Thus, in the case of Boy Scouts of the Philippines vs. Juliana V. Araos, G.R. No. L-10091, promulgated on January 29, 1958, this Court, speaking thru Mr. Justice Montemayor, answered the query in the negative in the following wise:

> 'The main issue involved in the present case is whether or not a charitable institution or one organized not for profit but for more elevated purposes, charitable, humanitarian, etc., like the Boy Scouts of the Philippines, be included in the definition of "employer" contained in Republic Act 875, and whether the employees of said institution fall under the definition of "employee" also contained in the same Republic Act. If they are included, then any act which may be considered unfair labor practice, within the meaning of said Republic Act, would come under the jurisdiction of the Court of Industrial Relations; but if they do not fall within the scope of said Republic Act, particularly, its definitions of employer and employee, then the Industrial Court would have no jurisdiction at all.
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> x x x
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> 'On the basis of the foregoing considerations, there is every reason to believe that our labor legislation from Commonwealth Act No. 103, creating the Court of Industrial Relations, down through the Eight Hour Labor Law, to the Industrial Peace Act, was intended by the Legislature to apply only to industrial employment and to govern the relations between employers engaged in industry and occupations for purposes of profit and gain, and their industrial employees, but not to organizations and entities which are organized, operated and maintained not for profit or gain, but for elevated and lofty purposes, such as, charity, social service, education and instruction, hospital and medical service, the encouragement and promotion of character, patriotism and kindred virtues in youth of the nation, etc.

> 'In conclusion, we find and hold that Republic Act No. 875, particularly, that portion thereof regarding labor disputes and unfair labor practice, does not apply to the Boy Scouts of the Philippines, end consequently, the Court of Industrial Relations had no jurisdiction to entertain and decide the action or petition filed by respondent Araos. Wherefore, the appealed decision and resolution of the CIR are hereby set aside, with costs against respondent.'
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> "There being a close analogy between the relation and facts involved in the two cases, we cannot but conclude that the Court of Industrial Relations has no jurisdiction to entertain the complaint for unfair labor practice lodged by respondent association against petitioner and, therefore, we hereby set aside the order and resolution subject to the present petition, with costs against respondent association."

The same doctrine was confirmed in the case of University of Santo Tomas vs. Hon. Baltazar Villanueva, et al., G.R. No. L-13748, October 30, 1959, where this Court ruled that:

> "In the present case, the record reveals that the petitioner University of Santo Tomas is not an industry organized for profit but an institution of learning devoted exclusively to the education of the youth. The Court of First Instance of Manila in its decision in Civil Case No. 28870, which has long become final and consequently the settled law in the case, found as established by the evidence adduced by the parties therein (herein petitioner and respondent labor union) that while the University collects fees from its students, all its income is used for the improvement end enlargement of the institution. The University declares no dividend, and the members of the corporation who founded it, as ordained in its articles of incorporation, receive no material compensation for the time and sacrifice they render to the University and its students. The respondent union itself in a case before the Industrial Court (Case No. 314-MC) has averred that 'the University of Santo Tomas, like the San Beda College, is an educational institution operated not for profit but for the sole purpose of educating

> young men.' (See Annex 'B' to petitioner's motion to dismiss.). It is apparent, therefore, that on the face of the record the University of Santo Tomas is not a corporation created for profit but an educational institution and therefore not an industrial or business organization."

In the case of La Consolacion College et al., vs. CIR et al., G.R. No. L-13282, April 22, 1960, this Court repeated the same ruling when it said:

> "The main issue in this appeal by petitioner is that the industrial court committed an error in holding that it has jurisdiction to act in this case even if it involves unfair labor practice considering that the La Consolacion College is not a business enterprise but an educational institution not organized for profit.
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> "If the claim that petitioner is an educational institution not operated for profit is true, which apparently is the case, because the very court a quo found that it has no stockholder, nor capital then we are of the opinion that the same does not come under the jurisdiction of the Court of Industrial Relations in view of the ruling in the case of Boy Scouts of the Philippines vs. Juliana V. Araos, G.R. No. L-10091, decided on January 29, 1958."

It is noteworthy that the cases of the University of San Agustin, the University of Santo Tomas, and La Consolacion College, cited above, all involve charges of unfair labor practice under Republic Act No. 875, and the uniform rulings of this Court are that the Court of Industrial Relations has no jurisdiction over the charges because said Act does not apply to educational institutions that are not operated or maintained for profit and do not declare dividends. On the other hand, in the case of Far Eastern University vs. CIR, et al., G.R. No. L-17620, August 31, 1962, this Court upheld the decision of the Court of Industrial Relations finding the Far Eastern University, also an educational institution, guilty of unfair labor practice. Among the findings of fact in said case was that the Far Eastern University made profits from the school year 1952-1953 to 1958-1959. In affirming the decision of the lower court, this Court had thereby ratified the ruling

of the Court of Industrial Relations which applied the Industrial Peace Act to educational institutions that are organized, operated and maintained for profit.

It is also noteworthy that in the decisions in the cases of the Boy Scouts of the Philippines, the University of San Agustin, the University of Sto. Tomas, and La Consolacion College, this Court was not unanimous in the view that the Industrial Peace Act (Republic Act No. 875) is not applicable to charitable, eleemosynary or non-profit organizations — which include educational institutions not operated for profit. There are members of this Court who hold the view that the Industrial Peace Act would apply also to non-profit organizations or entities — the only exception being the Government, including any political subdivision or instrumentality thereof, in so far as governmental functions are concerned. However, in the Far Eastern University case this Court is unanimous in supporting the view that an educational institution that is operated for profit comes within the scope of the Industrial Peace Act. We consider it a settled doctrine of this Court, therefore, that the Industrial Peace Act is applicable to any organization or entity — whatever may its purpose when it was created — that is operated for profit or gain.

Does the University operate as an educational institution for profit? Does it declare dividends for its stockholders? If it does not, it must be declared beyond the purview of Republic Act No. 875; but if it does, Republic Act No. 875 must apply to it. The University itself admits that it has declared dividends.[3] The CIR in its order dated March 30, 1963 in CIR Case No. 41-IPA — which order was issued after evidence was heard — also found that the University is not for strictly educational purposes and that "It realizes profits and parts of such earning is distributed as dividends to private stockholders or individuals (Exh. A and also 1 to 1-F, 2-x 3-x and 4-x)."[4] Under this circumstance, and in consonance with the rulings in the decisions of this Court, above cited, it is obvious that Republic Act No. 875 is applicable to herein petitioner Feati University.

But the University claims that it is not an employer within the contemplation of Republic Act No. 875, because it is not an industrial establishment. At most, it says, it is only a lessee of the services of its professors and/or instructors pursuant to a contract of services

entered into between them. We find no merit in this claim. Let us clarify who is an "employer" under the Act. Section 2(c) of said Act provides:

> "Sec. 2. Definitions. — As used in this Act —
>
> (c) The term employer includes any person acting in the interest of an employer, directly or indirectly, but shall not include any labor organization (otherwise than when acting as an employer) or any one acting in the capacity or agent of such labor organization."

It will be noted that in defining the term "employer" the Act uses the word "includes", which it also used in defining, "employee" (Sec. 2[d], and "representative" (Sec. 2[h]); and not the word "means" which the Act uses in defining the terms "court" (See 2[a]), "labor organization" (Sec. 2[e]), "legitimate labor organization" (Sec. 2[f]), "company union" (Sec. 2[g]), "unfair labor practice" (Sec. 2[i]), "supervisor" (Sec. 2[k]), "strike" (Sec. 2[l]) and "lockout" (Sec. 2[m]) A methodical variation in terminology is manifest. This variation and distinction in terminology and phraseology cannot be presumed to have been the inconsequential product of an oversight; rather, it must have been the result of a deliberate and purposeful act, more so when we consider that as legislative records show, Republic Act No. 875 had been meticulously and painstakingly drafted and deliberated upon. In using the word "includes" and not "means", Congress did not intend to give a complete definition of "employer", but rather that such definition should be complementary to what is commonly understood as employer. Congress intended the term to be understood in a broad meaning because, firstly, the statutory definition includes not only "a principal employer but also a person acting in the interest of the employer"; and secondly, the Act itself specifically enumerates those who are not included in the term "employer", namely: (1) a labor organization (otherwise than when acting as an employer), (2) anyone acting in the capacity of officer or agent of such labor organization (Sec. 2[c]), and (3) the Government and any political subdivision or instrumentality thereof insofar as the right to strike for the purpose of securing changes or modifications in the terms and conditions of employment is concerned (Section 11). Among these statutory exemptions, educational institutions are not included; hence, they

can be included in the term "employer". This Court, however, has ruled that those educational institutions that are not operated for profit are not within the purview of Republic Act No. 875. [5]

As stated above, Republic Act No. 875 does not give a comprehensive but only a complementary definition of the term "employer". The term encompasses those that are in ordinary parlance "employers." What is commonly meant by "employer"? The term "employer" has been given several acceptations. The lexical definition is "one who employs; one who uses; one who engages or keeps in service;" and "to employ" is "to provide work and pay for; to engage one's service; to hire. (Webster's New Twentieth Century Dictionary, 2nd ed., 1960, p. 595). The Workmen's Compensation Act defines employer as including "every person or association of persons, incorporated or not, public or private, and the legal representative of the deceased employer" and "includes the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work but who, for reason that there is an independent contractor in the same, or for any other reason, is not the direct employer of laborers employed there." *(Sec. 39 (a) of Act No. 3428)* The Minimum Wage Law states that "employer includes any person acting directly or indirectly in the interest of the employer in relation to an employee and shall include the Government and the government corporations *(Rep. Act No. 602, Sec. 2[b])*." The Social Security Act defines employer as "any person, natural or juridical, domestic or foreign, who carries in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government." *(Rep. Act No. 1161, Sec. 8[c])*

This Court, in the cases of The Angat River Irrigation System, et al., vs. Angat River Workers' Union (PLUM), et al., G.R. Nos. L-10934 and 10944, December 28, 1957, which cases involve unfair labor practices and hence within the purview of Republic Act No. 875, defined the term employer as follows:

> "An employer is one who employs the services of others; one for whom employees work and who pays their wages or salaries *(Black Law Dictionary, 4th ed., p. 618).*
>
> "An employer includes any person acting in the interest of an employer, directly or indirectly. *(Sec. 2-c, Rep. Act 875)*"

Under none of the above definitions may the University be excluded, especially so if it is considered that every professor, instructor or teacher in the teaching staff of the University, as per allegation of the University itself, has a contract with the latter for teaching services, albeit for one semester only. The University engaged the services of the professors, provided them work, and paid them compensation or salary for their services. Even if the University may be considered as a lessee of services under a contract between it and the members of its Faculty, still it is included in the term "employer". "Running through the word "employ" is the thought that there has been an agreement on the part of one person to perform a certain service in return for compensation to be paid by an employer. When you ask how a man is employed, or what is his employment, the thought that he is under agreement to perform some service or services for another is predominant and paramount. *(Ballentine Law Dictionary, Philippine ed., p. 430, citing Pinkerton National Detective Agency vs. Walker, 157 Ga. 548, 35 A.L.P. 557, 560, 122 S.E. Rep. 202)*

To bolster its claim of exemption from the application of Republic Act No. 875, the University contends that it is not an industrial establishment within the scope of Sec. 2(c) of the Act. This contention can not be sustained. In the first place, Sec. 2(c) of Republic Act No. 875 does not state that the employers included in the definition of the term "employer" are only and exclusively "industrial establishments"; on the contrary, as stated above, the term "employer" encompasses all employers except those specifically excluded by the Act. In the second place, even the Act itself does not refer exclusively to industrial establishment and does not confine its application thereto. This is patent inasmuch as several provisions of the Act are applicable to non-industrial workers, such as Sec. 3, which deals with "employees right to self-organization"; Sections 4 and 5 which enumerate unfair labor practices; Section 8 which nullifies private contracts contravening employee rights; Section 9 which relates to injunctions

in any case involving a labor dispute; Section 11 which prohibits strikes in the government; Section 12 which provides for the exclusive collective bargaining representation for labor organizations; Section 14 which deals with the procedure for collective bargaining; Section 17 which treats of the rights and conditions of membership in labor organizations; Sections 18, 19, 20 and 21 which provide respectively for the establishment of conciliation service, compilation of collective bargaining contracts, advisory labor-management relations; Section 22 which empowers the Secretary of Labor to make a study of labor relations; and Section 24 which enumerates the rights of labor organizations. *(See Dissenting Opinion of Justice Concepcion in Boy Scouts of the Philippines vs. Juliana Araos, G.R. No. L-10091, January 29, 1958)*

This Court, in the case of Boy Scouts of the Philippines vs. Araos, supra, had occasion to state that the Industrial Peace Act "refers only to organizations and entities created and operated for profit, engaged in a profitable trade, occupation or industry". It cannot be denied that running a university engages time and attention; that it is an occupation or a business from which the one engaged in it may derive profit or gain. The University is not an industrial establishment in the sense that an industrial establishment is one that is engaged in manufacture or trade where raw materials are changed or fashioned into finished products for use. But for the purposes of the Industrial Peace Act the University is an industrial establishment because it is operated for profit and it employs persons who work to earn a living. The term "industry", for the purposes of the application of our labor laws should be given a broad meaning so as to cover all enterprises which are operated for profit and which engage the services of persons who work to earn a living.

> "The word 'industry' within State Labor Relations Act controlling labor relations in industry, cover labor conditions in any field of employment where the objective is earning a livelihood on one side and gaining of a profit on the other. Labor Law, Sec. 700 et. seq. State Labor Relations Board vs. McChesney, 27 N.Y.S. 2d 266, 868." *(Words and Phrases, Permanent Edition, Vol. 21, 1960 edition p. 510)*

The University urges that even if it were an employer, still there would be no employer-employee relationship between it and the striking members of the Faculty Club because the latter are not employees within the purview of Sec. 2(d) of Republic Act No. 875 but are independent contractors. This claim is untenable.

Section 2 (d) of Republic Act No. 875 provides:

> "(d) The term 'employee' shall include any employee end shall not be limited to the employee of a particular employer unless the act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment."

This definition is again, like the definition of the term "employer" [Sec. 2(c)], by the use of the term "include", complementary. It embraces not only those who are usually and ordinarily considered employees, but also those who have ceased as employees as a consequence of a labor dispute. The term "employee", furthermore, is not limited to those of a particular employer. As already stated, this Court in the cases of The Angat River Irrigation System, et al., vs. Angat River Workers' Union (PLUM) et al., supra, has defined the term "employer" as "one who employs the services of others; one for whom employees work and who pays their wages or salaries." Correlatively, an employee must be one who is engaged in the service of another; who performs services for another; who works for salary or wages. It is admitted by the University that the striking professors and/or instructors are under contract to teach particular courses and that they are paid for their services. They are, therefore, employees of the University.

In support of its claim that the members of the Faculty Club are not employees of the University, the latter cites as authority Francisco's Labor Laws, 2nd ed., p. 3, which states:

> "While the term 'workers' as used in a particular statute, has been regarded as limited to those performing physical labor, it

> has been held to embrace stenographers and bookkeepers. Teachers are not included, however."

It is evident from the above-quoted authority that "teachers" are not to be included among those who perform "physical labor", but it does not mean that they are not employees. We have checked the source of the authority, which is 31 Am. Jur., Sec. 3, p. 835, and the latter cites Huntworth vs. Tanner, 87 Wash 670, 152 P523, Ann Cas 1917 D 676. A reading of the last case confirms Our view.

That teachers are "employees" has been held in a number of cases *(Aebli vs. Board of Education of City and County of San Francisco, 145 P. 2d 601, 62 Col. App. 2d. 706; Lowe & Campbell Sporting Goods Co. vs. Tangipahoa Parish School Board, La. App., 15 So. 2d 98,100; Sister Odelia vs. Church of St. Andrew, 263 N. W. 111, 112, 195 Minn. 357, cited in Words and Phrases, Permanent ed., Vol. 14, pp. 806-807).* This Court in the Far Eastern University case, supra, considered university instructors as employees and declared Republic Act No. 875 applicable to them in their employment relations with their school. The professors and/or instructors of the University neither ceased to be employees when they struck, for Section 2 of Rep. Act 875 includes among employees any individual whose work has ceased as a consequence of, or in connection with a current labor dispute. Striking employees maintain their status as employees of the employer. *(Western Cartridge Co. vs. NLRB, C.C.A. 7, 139 F 2d 855, 858)*

The contention of the University that the professors and/or instructors are independent contractors, because the University does not exercise control over their work, is likewise untenable. This Court takes judicial notice that a university controls the work of the members of its faculty; that a university prescribes the courses or subjects that professors teach, and when and where to teach; that the professors' work is characterized by regularity and continuity for a fixed duration; that professors are compensated for their services by wages and salaries, rather than by profits; that the professors and/or instructors cannot substitute others to do their work without the consent of the university; and that the professors can be laid off if their work is found not satisfactory. All these indicate that the university has control over their work; and professors are, therefore,

employees and not independent contractors. There are authorities in support of this view.

> "The principal consideration in determining whether a workman is an employee or an independent contractor is the right to control the manner of doing the work, and it is not the actual exercise of the right by interfering with the work, but the right to control, which constitutes the test. *(Amalgamated Roofing Co. vs. Travelers' Ins. Co., 133 N.E. 259, 261, 300 I11. 487, quoted in Words and Phrases, Permanent ed., Vol. 14, p, 576)*
>
> "Where, under Employers' Liability Act, A was instructed when and where to work he is an employee, and not a contractor, though paid specified sum per square." *(Heine vs. Hill, Harris & Co., 2 La. App. 384, 390, in Words and Phrases, loc. cit.)*
>
> "Employees are those who are compensated for their labor or services by wages rather than by profits." *(People vs. Distributors Division, Smoked Fish Workers Union, Local No. 20377, Sup. 7 N. Y. S. 2d 185, 187 in Words and Phrases, loc. cit.)*
>
> "Services of employee or servant, as distinguished from those of a contractor, are usually characterized by regularity and continuity of work for a fixed period or one of indefinite duration, as contrasted with employment to do a single act or a series of isolated acts; by compensation on a fixed salary rather than one regulated by value or amount of work; *(Underwood vs. Commissioner of Internal Revenue, C.C.A., 66 F. 2d 67, 71 in Words and Phrases, op. cit., p. 579)*
>
> "Independent contractors can employ others to work and accomplish contemplated result without consent of contractee, while 'employee' cannot substitute another in his place without consent of his employer." *(Luker Sand & Gravel Co. vs. Industrial Commission, 23 P. 2d 225, 82 Utah, 188, in Words and Phrases, Vol. 14 p. 576)*

Moreover, even if university professors are considered independent contractors, still they would be covered by Rep. Act No. 875. In the case of the Boy Scouts of the Philippines vs. Juliana Araos, supra, this Court observed that Republic Act No. 875 was modeled after the Wagner Act, or the National Labor Relations Act, of the United States, and this Act did not exclude "independent contractors" from the orbit of "employees". It was in the subsequent legislation —the Labor Management Relation Act (Taft-Harley Act) —that "independent contractors" together with agricultural laborers, individuals in domestic service of the home, supervisors, and others were excluded. *(See Rothenberg on Labor Relations, 1949, pp. 330-331)*

It having been shown that the members of the Faculty Club are employees, it follows that they have a right to unionize in accordance with the provisions of Section 3 of the Magna Carta of Labor (Republic Act No. 875) which provides as follows:

> "Sec. 3. Employees' right to self-organization. —Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection."

We agree with the statement of the lower court, in its order of March 30, 1963 which is sought to be set aside in the instant case, that the right of employees to self-organization is guaranteed by the Constitution, that said right would exist even if Republic Act No. 875 is repealed, and that the employees are entitled to that right regardless of whether their employers are engaged in commerce or not. Indeed, it is Our considered view that the members of the faculty or teaching staff of private universities, colleges, and schools in the Philippines, regardless of whether the university, college or school is run for profit or not, are included in the term "employees" as contemplated in Republic Act No. 875 and as such they may organize themselves pursuant to the above-quoted provision of Section 3 of said Act. Certainly, professors, instructors or teachers of private educational institutions who teach to earn a living are entitled to the protection of our labor laws — and one such law is Republic Act No. 875.

The contention of the University in the instant case that the members of the Faculty Club can not unionize and the Faculty Club can not exist as a valid labor organization is, therefore, without merit. The record shows that the Faculty Club is a duly registered labor organization, and this fact is admitted by counsel for the University.[6]

The other issue raised by the University is the validity of the Presidential certification. The University contends that under Section 10 of Republic Act No. 875 the power of the President of the Philippines to certify is subject to the following conditions, namely: (1) that there is a labor dispute, and (2) that said labor dispute exists in an industry that is vital to the national interest. The University maintains that those conditions do not obtain in the instant case. This contention has also no merit.

We have previously stated that the University is an establishment or enterprise that is included in the term "industry" and is covered by the provisions of Republic Act No. 875. Now, was there a labor dispute between the University and the Faculty Club?

Republic Act No. 875 defines a labor dispute as follows:

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in proximate relation of employer and employee."

The test of whether a controversy comes within the definition of "labor dispute" depends on whether the controversy involves or concerns "terms, tenure or condition of employment" or "representation." It is admitted by the University, in the instant case, that on January 14, 1963 the President of the Faculty Club wrote to the President of the University a letter informing the latter of the organization of the Faculty Club as a labor union, duly registered with the Bureau of Labor Relations; that again on January 22, 1963 another letter was sent, to which was attached a list of demands consisting of 26 items, and asking the President of the University to

answer within ten days from date of receipt thereof; that the University questioned the right of the Faculty Club to be the exclusive representative of the majority of the employees and asked proof that the Faculty Club had been designated or selected as exclusive representative by the vote of the majority of said employees; that on February 1, 1963 the Faculty Club filed with the Bureau of Labor Relations a notice of strike alleging as reason therefor the refusal of the University to bargain collectively with the representative of the faculty members; that on February 18, 1963 the members of the Faculty Club went on strike and established picket lines in the premises of the University, thereby disrupting the schedule of classes; that on March 1, 1963 the Faculty Club filed Case No. 3666-ULP for unfair labor practice against the University, but which was later dismissed (on April 2, 1963 after Case 41-IPA was certified to the CIR), and that on March 7, 1966 a petition for certification election, Case No. 1183-MC, was filed by the Faculty Club in the CIR.[7] All these admitted facts show that the controversy between the University and the Faculty Club involved terms and conditions of employment, and the question of representation. Hence, there was a labor dispute between the University and the Faculty Club, as contemplated by Republic Act No. 875. It having been shown that the University is an institution operated for profit, that it is an employer, and that there is an employer-employee relationship, between the University and the members of the Faculty Club, and it having been shown that a labor dispute existed between the University and the Faculty Club, the contention of the University, that the certification made by the President is not only not authorized by Section 10 of Republic Act 875 but is violative thereof, is groundless.

Section 10 of Republic Act No. 875 provides:

> "When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order forbidding the employees to strike or the employer to lockout the employees, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment."

This Court had occasion to rule on the application of the above quoted provision of Section 10 of Republic Act No. 875. In the case of Pampanga Sugar Development Co. vs. CIR, et al., G. R. No. L-13178, March 24, 1961, it was held:

> "It thus appears that when in the opinion of the President a labor dispute exists in an industry indispensable to national interest and he certifies it to the Court of Industrial Relations the latter acquires jurisdiction to act thereon in the manner provided by law. Thus the court may take either of the following courses: it may issue an order forbidding employees to strike or the employer to lockout its employees, or, failing in this, it may issue an order fixing the terms and conditions of employment. It has no other alternative. It can throw the case out in the assumption that the certification was erroneous.
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> x x x
>
> "The fact, however, is that because of the strike declared by the members of the minority union which threatens a major industry the President deemed it wise to certify the controversy to the Court of Industrial Relations for adjudication. This is the power that the law gives to the President the propriety of its exercise being a matter that only devolves upon him. The same is not the concern of the industrial court. What matters is that by virtue of the certification made by the President the case was placed under the jurisdiction of said court." *(Emphasis supplied)*

To certify a labor dispute to the CIR is the prerogative of the President under the law, and this Court will not interfere in, much less curtail, the exercise of that prerogative. The jurisdiction of the CIR in a certified case is exclusive (Rizal Cement Co., Inc. vs. Rizal Cement Workers Union (FFW), et al., G. R. L-12747, July 30, 1960). Once the jurisdiction is acquired pursuant to the presidential certification, the CIR may exercise its broad powers as provided in Commonwealth Act 103. All phases of the labor dispute and the employer-employee relationship may be threshed out before the CIR, and the CIR may issue such order or orders as may be necessary to make effective the exercise of its jurisdiction. The parties involved in

the case may appeal to the Supreme Court from the order or orders thus issued by the CIR.

And so, in the instant case, when the President took into consideration that the University "has some 18,000 students and employed approximately 500 faculty members," that "the continued disruption in the operation of the University will necessarily prejudice the thousand of students", and that "the dispute affects the national interest,"[8] and certified the dispute to the CIR, it is not for the CIR nor this Court to pass upon the correctness of the reasons of the President in certifying the labor dispute to the CIR.

The third issue raised by the University refers to the question of the legality of the return-to work order (of March 30, 1963 in Case 41-IPA) and the order implementing the same (of April 6, 1963). It alleges that the orders are illegal upon the grounds: (1) that Republic Act No. 875, supplementing Commonwealth Act No. 103, has withdrawn from the CIR the power to issue a return-to-work order; (2) that the only power granted by Section 10 of Republic Act No. 875 to the CIR is to issue an order forbidding the employees to strike or forbidding the employer to lockout the employees, as the case may be, before either contingency had become a fait accompli; (3) that the taking in by the University of replacement professors was valid, and the return-to-work order of March 30, 1963 constituted impairment of the obligation of contracts; and (4) the CIR could not issue said order without having previously determined the legality or illegality of the strike.

The contention of the University that Republic Act No. 875 has withdrawn the power of the Court of Industrial Relations to issue a return-to-work order exercised by it under Commonwealth Act No. 103 can not be sustained. When a case is certified by the President to the Court of Industrial Relations the case thereby comes under the operation of Commonwealth Act No. 103, and the Court may exercise the broad powers and jurisdiction granted to it by said Act. Section 10 of Republic Act No. 875 empowers the Court of Industrial Relations to issue an order "fixing the terms of employment." This clause is broad enough to authorize the Court to order the strikers to return to work and the employer to readmit them. This Court, in the cases of the Philippine Marine Officers Association vs. The Court of Industrial

Relations, Compañia Maritima, et al; and Compañia Maritima, et al. vs. Philippine Marine Radio Officers Association and CIR et al., G. R. Nos. L-10095 and L-10115, October 31, 1957, declared:

> "We cannot subscribe to the above contention. We agree with counsel for the Philippine[*] Radio Officers' Association that upon certification by the President under Section 10 of Republic Act 875 the case comes under the operation of Commonwealth Act 103, which enforces compulsory arbitration in cases of labor disputes in industries indispensable to the national interest when the President certifies the case to the Court of Industrial Relations. The evident intention of the law is to empower the Court of Industrial Relations to act in such cases, not only in the manner prescribed under Commonwealth Act 103, but with the same broad powers and jurisdiction granted by that act. If the Court of Industrial Relations is granted authority to find a solution to an industrial dispute and such solution consists in the ordering of employees to return back to work, it cannot be contended that the Court of Industrial Relations does not have the power or jurisdiction to carry that solution into effect. And of what use is its power of conciliation and arbitration if it does not have the power and jurisdiction to carry into effect the solution it has adopted? Lastly, if the said court has the power to fix the terms and conditions of employment, it certainly can order the return of the workers with or without backpay as a term or condition of employment."

The foregoing ruling was reiterated by this Court in the case of Hind Sugar Co. vs. CIR, et al., G. R. No. L-13364, July 26, 1960.

When a case is certified to the CIR by the President of the Philippines pursuant to Section 10 of Republic Act No. 875, the CIR is granted authority to find a solution to the industrial dispute; and the solution which the CIR has found under the authority of the presidential certification and conformable thereto cannot be questioned. *(Radio Operators Association of the Philippines vs. Philippine Marine Radio Officers Association, et al., L-10112, Nov. 29, 1957, 54 O.G. 3218)*

Untenable also is the claim of the University that the CIR cannot issue a return-to-work order after a strike has been declared, it being

contended that under Section 10 of Republic Act No. 875 the CIR can only prevent a strike or a lockout - when either of this situation had not yet occurred. But in the case of Bisaya Land Transportation Co. Inc. vs. Court of Industrial Relations, et al., No. L-10114, Nov. 26, 1957, 50 O. G. 2518, this Court declared:

> "There is no reason or ground for the contention that Presidential certification of labor dispute to the CIR is limited to the prevention of strikes and lockouts. Even after a strike has been declared where the President believes that public interest demands arbitration and conciliation, the President may certify the case for that purpose. The practice has been for the Court of Industrial Relations to order the strikers to work, pending the determination of the union demands that impelled the strike. There is nothing in the law to indicate that this practice is abolished." *(Emphasis supplied)*

Likewise untenable is the contention of the University that the taking in by it of replacements was valid and the return-to-work order would be an impairment of its contract with the replacements. As stated by the CIR in its order of March 30, 1963, it was agreed before the hearing of Case 41-IPA on March 23, 1963 that the strikers would return to work under the status quo arrangement and the University would readmit them, and the return-to-work order was a confirmation of that agreement. This is a declaration of fact by the CIR which We cannot disregard. The faculty members, by striking, have not abandoned their employment but, rather, they have only ceased from their labor *(Keith Theatre vs. Vachon, et al., 187 A. 692)*. The striking faculty members have not lost their right to go back to their positions, because the declaration of a strike is not a renunciation of their employment and their employee relationship with the University *(Rex Taxicab Co. vs. CIR, et al., 40 O.G., No. 13, 138)*. The employment of replacement was not authorized by the CIR. At most, that was a temporary expedient resorted to by the University, which was subject to the power of the CIR to allow to continue or not. The employment of replacements by the University prior to the issuance of the order of March 30, 1963 did not vest in the replacements a permanent right to the positions they held. Neither could such temporary employment bind the University to retain permanently the replacements.

"Striking employees maintained their status as employees of the employer (Western Castridge Co. vs. National Labor Relations Board, C. C. A. 139 F. 2d 855, 858); that employees who took the place of strikers do not displace them as 'employees.'" *(National Labor Relations Board vs. A Sartorius & Co., C. C. A. 2, 140 F. 2d, 203, 206, 207).*

It is clear from what has been said that the return-to-work order cannot be considered as an impairment of the contract entered into by petitioner with the replacements. Besides, labor contracts must yield to the common good and such contracts are subject to the special laws on labor unions, collective bargaining, strikes and similar subjects *(Article 1700, Civil Code).*

Likewise unsustainable is the contention of the university that the Court of Industrial Relations could not issue the return-to-work order without having resolved previously the issue of the legality or illegality of the strike, citing as authority therefor the case of Philippine Can Company vs. Court of Industrial Relations, G. R. No. L-3021, July 13, 1950. The ruling in said case is not applicable to the case at bar, the facts and circumstances being very different. The Philippine Can Company, case, unlike the instant case, did not involve the national interest and it was not certified by the President. In that case the company no longer needed the services of the strikers, nor did it need substitutes for the strikers, because the company was losing, and it was imperative that it day off such laborers as were not necessary for its operation in order to save the company from bankruptcy. This was the reason of this Court in ruling, in that case, that the legality or illegality of the strike should have been decided first before the issuance of the return-to-work order. The University, in the case before Us, does not claim that it no longer needs the services of professors and/or instructors; neither does it claim that it was imperative for it to lay off the striking professors and instructors because of impending bankruptcy. On the contrary, it was imperative for the University to hire replacements for the strikers. Therefore, the ruling in the Philippine Can case that the legality of the strike should be decided first before the issuance of the return- to-work order does not apply to the case at bar. Besides, as We have adverted to, the return-to-work order of March 30, 1963,

now in question, was a confirmation of an agreement between the University and the Faculty Club during a pre-hearing conference on March 23, 1963.

The University also maintains that there was no more basis for the claim of the members of the Faculty Club to return to their work, as their individual contracts for teaching had expired on March 25 or 31, 1963, as the case may be, and consequently, there was also no basis for the return-to-work order of the CIR because the contractual relationships having ceased there were no positions to which the members of the Faculty Club could return to. This contention is not well taken. This argument loses sight of the fact that when the professors and instructors struck on February 18,1963, they continued to be employees of the University for the purposes of the labor controversy notwithstanding the subsequent termination of their teaching contracts, for Section 2(d) of the Industrial Peace Act includes among employees "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment."

The question raised by the University was resolved in a similar case in the United States. In the case of Rapid Roller Co. vs. NLRB, 126 F. 2d. 452, we read:

> "On May 9, 1939 the striking employees, eighty-four in number, offered to the company to return to their employment. The company, believing it had not committed any unfair labor practice, refused the employees' offer and claimed the right to employ others to take the place of the strikers, as it might see fit. This constituted discrimination in the hiring and tenure of the striking employees. When the employees went out on a strike because of the unfair labor practice of the company, their status as employees for the purpose of any controversy growing out of that unfair labor practice was fixed. Sec. 2 (3) of the Act. Phelps Dodge Corp. vs. National Labor Relations Board, 313 U.S. 177, 61 S. Ct. 845, 85 L. ed. 1271, 133 A. L. R 1217.
>
> "For the purpose of such controversy they remained employees of the company. The company contended that they could not be

> their employees in any event since the 'contract of their employment expired by its own terms on April 23, 1939.'
>
> "In this we think the company is mistaken for the reason we have just pointed out, that the status of the employees on strike became fixed under Sec. 2 (3) of the Act, because of the unfair labor practice of the company which caused the strike."

The University, furthermore, claims that the information for indirect contempt filed against the officers of the University (Case No. V-30) as well as the order of April 29, 1963 for their arrest were improper, irregular and illegal because (1) the officers of the University had complied in good faith with the return-to-work order and in these cases that they did not, it was due to circumstances beyond their control; (2) the return-to-work order and the order implementing the same were illegal; and (3) even assuming that the order was legal, the same was not yet final because there was a motion to reconsider it.

Again We find no merit in this claim of petitioner. We have already ruled that the CIR had jurisdiction to issue the order of March 30, 1963 in CIR Case 41-IPA, and the return-to-work provision of that order is valid and legal. Necessarily the order of April 6, 1963 implementing that order of March 30, 1963 was also valid and legal.

Section 6 of Commonwealth Act No. 103 empowers the Court of Industrial Relations or any Judge thereof to punish direct and indirect contempt as provided in Rule 64 (now Rule 71) of the Rules of Court, under the same procedure and penalties provided therein. Section 3 of Rule 71 enumerates the acts which would constitute indirect contempt, among which is "disobedience or resistance to lawful writ, process, order, judgment, or command or a court," and the person guilty thereof can be punished after a written charge has been filed and the accused has been given an opportunity to be heard. The last paragraph of said section provides:

> "But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

The provision authorizes the judge to order the arrest of an alleged contemner *(Francisco, et al. vs. Enriquez, L-7058, March 20, 1954, 94 Phil., 603)* and this, apparently, is the provision upon which respondent Judge Bautista relied when he issued the questioned order of arrest.

The contention of petitioner that the order of arrest is illegal is unwarranted. The return-to-work order allegedly violated was within the court's jurisdiction to issue.

Section 14 of Commonwealth Act No. 103 provides that in cases brought before the Court of Industrial Relations under Section 4 of the Act (referring to strikes and lockouts) the appeal to the Supreme Court from any award, order or decision shall not stay the execution of said award, order or decision sought to be reviewed unless for special reason the court shall order that execution be stayed. Any award, order or decision that is appealed is necessarily not final. Yet under Section 14 of Commonwealth Act No. 103 that award, order or decision, even if not yet final, is executory, and the stay of execution is discretionary with the Court of Industrial Relations. In other words, the Court of Industrial Relations, in cases involving strikes and lockouts, may compel compliance or obedience of its award, order or decision even if the award, order or decision is not yet final because it is appealed, and it follows that any disobedience or non-compliance of the award, order or decision would constitute contempt against the Court of Industrial Relations which the court may punish as provided in the Rules of Court. This power of the Court of Industrial Relations to punish for contempt an act of non-compliance or disobedience of an award, order or decision, even if not yet final, is a special one and is exercised only in cases involving strikes and lockouts. And there is reason for this special power of the industrial court because in the exercise of its jurisdiction over cases involving strikes and lockouts the court has to issue orders or make decisions that are necessary to effect a prompt solution of the labor dispute that caused the strike or the lockout, or to effect the prompt creation of a situation that would be most beneficial to the management and the employees, and also to the public — even if the solution may be temporary, pending the final determination of the case. Otherwise, if the effectiveness of any order, award, or decision of the industrial court in cases involving strikes and lockouts would be suspended pending appeal then it can happen

that the coercive powers of the industrial court in the settlement of the labor disputes in those cases would be rendered useless and nugatory.

The University points to Section 6 of Commonwealth Act No. 103 which provides that "Any violation of any order, award, or decision of the Court of Industrial Relations shall after such order, award or decision has become final, conclusive and executory constitute contempt of court", and contends that only the disobedience of orders that are final (meaning one that is not appealed) may be the subject of contempt proceedings. We believe that there is no inconsistency between the above-quoted provision of Section 6 and the provision of Section 14 of Commonwealth Act No. 103. It will be noted that Section 6 speaks of order, award or decision that is executory. By the provision of Section 14 an order, award or decision of the Court of Industrial Relations in cases involving strikes and lockouts are immediately executory so that a violation of that order would constitute an indirect contempt of court.

We believe that the action of the CIR in issuing the order of arrest of April 29, 1963 is also authorized under Section 19 of Commonwealth Act No. 103 which provides as follows:

> "SEC. 19. Implied condition in every contract of employment. — In every contract of employment whether verbal or written, it is an implied condition that when any dispute between the employer and the employee or laborer has been submitted to the Court of Industrial Relations for settlement or arbitration pursuant to the provisions of this Act and pending award, or decision by the Court of such dispute the employee or laborer shall not strike or walk out of his employment when so enjoined by the Court after hearing and when public interest so requires, and if he has already done so, that he shall forthwith return to it, upon order of the Court, which shall be issued only after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled; and if the employees or laborers fail to return to work, the Court may authorize the employer to accept other employees or laborers. A condition shall further be implied that while such dispute is pending, the employer shall refrain from accepting other

> employees or laborers, unless with the express authority of the Court, and shall permit the continuation in the service of his employees or laborers under the last terms and conditions existing before the dispute arose. A violation by the employer or by the employee or laborer of such an order or the implied contractual condition set forth in this section shall constitute contempt of the Court of Industrial Relations and shall be punished by the Court itself in the same manner with the same penalties as in the case of contempt of a Court of First Instance."

We hold that the CIR acted within its jurisdiction when it ordered the arrest of the officers of the University upon a complaint for indirect contempt filed by the Acting Special Prosecutor of the CIR in CIR Case V-30, and that order was valid. Besides those ordered arrested were not yet being punished for contempt; but, having been charged, they were simply ordered arrested to be brought before the Judge to be dealt with according to law. Whether they are guilty of the charge or not is yet to be determined in a proper hearing.

Let it be noted that the order of arrest dated April 29, 1963 in CIR Case V-30 is being questioned in Case G. R. No. L-21278 before this Court in a special civil action for certiorari. The University did not appeal from that order. In other words, the only question to be resolved in connection with that order in CIR Case V-30 is whether the CIR had jurisdiction, or had abused its discretion, in issuing that order. We hold that the CIR had jurisdiction to issue that order, and neither did it abuse its discretion when it issued that order.

In Case G. R. No. L 21462 the University appealed from the order of Judge Villanueva of the CIR in Case No. 1183-MC, dated April 6, 1963, granting the motion of the Faculty Club to withdraw its petition for certification election, and from resolution of the CIR en banc, dated June 5, 1963, denying the motion to reconsider said order of April 6, 1963. The ground of the Faculty Club in asking for the withdrawal of that petition for certification election was because the issues involved in that petition were absorbed by the issues in Case 41-IPA. The University opposed the petition for withdrawal, but at the same time it moved for the dismissal of the petition for certification election.

It is contended by the University before this Court, in G. R. No. L-21462, that the issues of employer-employee relationship between the University and the Faculty Club, the alleged status of the Faculty Club as a labor union, its majority representation and designation as bargaining representative in an appropriate unit of the Faculty Club should have been resolved first in Case No. 1183-MC prior to the determination of the issues in Case No. 41-IPA, and, therefore, the motion to withdraw the petition for certification election should not have been granted upon the ground that the issues in the first case were absorbed in the second case.

We believe that these contentions of the University in Case G. R. No. L-21462 have been sufficiently covered by the discussion in this decision of the main issues raised in the principal case, which is Case G. R. No. L-21278. After all the University wanted CIR Case 1183- MC dismissed, and the withdrawal of the petition for certification election had in a way produced the situation desired by the University. After considering the arguments adduced by the University in support of its petition for certiorari by way of appeal in Case G. R. No. L-21278, We hold that the CIR did not commit any error when it granted the withdrawal of the petition for certification election in Case No. 1183-MC. The principal case before the CIR is Case No. 41-IPA and all the questions relating to the labor disputes between the University and the Faculty Club may be threshed out, and decided, in that case.

In case G. R. No. L-21500 the University appealed from the order of the CIR of March 30, 1963, issued by Judge Bautista, and from the resolution of the CIR en banc promulgated on June 28, 1963, denying the motion for the reconsideration of that order of March 30, 1963, in CIR case No. 41-IPA. We have already ruled that the CIR has jurisdiction to issue that order of March 30, 1963, and that order is valid, and We, therefore, hold that the CIR did not err in issuing that order of March 30, 1963 and in issuing the resolution promulgated on June 28, 1963 (although dated May 7, 1963) denying the motion to reconsider that order of March 30, 1963.

IN VIEW OF THE FOREGOING, the petition for certiorari and prohibition with preliminary injunction in Case G. R. No. L-21278 is dismissed and the writs prayed for therein are denied. The writ of

preliminary injunction issued in Case G. R. No. L-21278 is dissolved. The orders and resolutions appealed from, in Cases Nos. L-21462 and L- 21500, are affirmed, with costs in these three cases against the petitioner-appellant Feati University. It is so ordered.

Concepcion, *C. J.*, Dizon, Regala, Makalintal, Bengzon, Sanchez and Castro., *JJ.*, concur.
Reyes, *J.B.L. J.*, concurs but reserves his vote on the teacher's right to strike.

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[1] As quoted from the writ of preliminary injunction issued by this Court.
[2] As quoted form the order of April 6, 1963.
[3] Petitioner's brief, p. 29; also pp. 8-9 petitioner's reply brief.
[4] See order as copied on p. 118 of petitioner's brief.
[5] We have pointed out that this is not a unanimous view of this court.
[6] See p. 140, Record of G. R. No. L-21278.
[7] Petitioner's Brief, pp. 1, 2, 3, 7 and 8.
[8] Words in quotation marks are as quoted from the letter of certification of the President dated March 21, 1963 addressed to the Presiding Judge of the CIR.
* Editor's Note: The word "Marine" should be added.
