Commonwealth of Puerto Rico
Labor Relation Board of Puerto Rico
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Puerto Rico Labor Relations Act

Law No. 130

May 8, 1945

"Transforming Puerto Rico towards Labor Peace"

§ 42. Right to organize—Use of force and violence

The employment of force, violence, intimidation or menace, or any form of coercion, by any person or by persons associated together, against any other person or persons, whether with the object of preventing them from freely pursuing their employments, professions or trades or whether with the object of influencing the price or remuneration paid for their work, shall be a misdemeanor, and any person convicted thereof shall be imprisoned not less than thirty (30) days nor more than one year, or fined not less than ten dollars ($10) nor more than five hundred dollars ($500), or both fined and imprisoned.—Mar. 1, 1902, p. 211, § 2.

§ 43. Solicitation of help during strike or lockout

When any employer or owner of a factory or agricultural estate, or mercantile or industrial establishment of any kind, or any of their agents or representatives, during a general strike of their laborers or employees of any class or during a lockout, advertises in the newspapers, or by means of bills or in any other form, for laborers or employees of any class, or employs agents to solicit or personally solicits persons to work in place of such strikers, he shall state clearly and precisely in all such advertisements, whether written or verbal, the fact that a strike or lockout exists.—Apr. 12, 1917, No. 17, p. 134, § 1, eff. 60 days after Apr. 12, 1917.

§ 44. Solicitation of help during strike or lockout—Penalties

Should any employer, director or owner of any factory, agricultural estate, or manufacturing, commercial or industrial establishment, or corporation, or any of its officers, agents, representatives, directors or employees, not comply in their advertisements, applications or business with the provisions of §§ 43 and 44 of this title, he shall be guilty of a misdemeanor and shall be punished with fine of from one [dollar] ($1) to a hundred dollars ($100) or jail not to exceed one hundred (100) days, or both, at the discretion of the court.—Apr. 12, 1917, No. 17, p. 134, § 2, eff. 60 days after Apr. 12, 1917.

HISTORY

Codification.

The English text version of this section has been revised to correspond to the Spanish.

Subchapter II. Labor Relations Law

§ 61. Short title

This subchapter shall be known and may be cited and referred to as the "Puerto Rico Labor Relations Act".—May 8, 1945, No. 130, p. 406, § 18.

HISTORY

Separability.

Section 16 of Act May 8, 1945, No. 130, p. 406, provides as follows: "If any clause, sentence, paragraph, or part of this act [this subchapter] or the application thereof to any person or circumstances, shall, for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included."

Prior law.

Act Nov. 30, 1917, No. 42, p. 336, eff. 90 days after Nov. 30, 1917, safeguarding the right of laborers in their right to organize, was repealed by Act Mar. 7, 1946, No. 7, p. 48, eff. Mar. 7, 1946, which cited the Puerto Rico Labor Relations Act as the reason for such repeal.

Act May 7, 1938, No. 143, p. 306, known as the "Insular Labor Relations Act", was amended by Act May 9, 1941, No. 134, p. 862, and repealed by § 19 of Act May 8, 1945, No. 130, p. 406, eff. May 8, 1945.

Cross references.

Constitutional guarantee to bargain collectively, see Const., Art. II, Secs. 17, 18, preceding Title 1.

National Labor Relations Act, see Act of Congress July 5, 1935, ch. 372, 49 Stat. 449, 29 U.S.C. § 151 et seq.

ANNOTATIONS

1. **Generally.** The clarification procedure for an appropriated unit covered by this jurisdiction is a calculation made by a federal mechanism used to add to an appropriated unit certain employees who at the time the petition is written are not part of the unit, but who should have belonged to it since they share in the same community of interests. Adm. de Terrenos v. U.I.E.A.T., 149 D.P.R. 65 (1999).

Factors for determining an appropriated unit may be summarized as follows: (1) community of interests; (2) organization level of the employees; (3) collective bargaining history; (4) category of employees involved; (5) terms and conditions of employment enjoyed by the workers, and (6) employer policy with reference to labor. Adm. de Terrenos v. U.I.E.A.T., 149 D.P.R. 65 (1999).

In deciding which employees are included in an appropriated unit, the Board needs to consider the fact that the Labor Relations Act excludes from its definition of "employee" executives and supervisors, and that further subdivision ["casuistica", Eds.] has added other excepted categories such as 'employees closely related to management" [trans. by eds.] and "confidential employees" [trans. by eds.]. Adm. de Terrenos v. U.I.E.A.T., 149 D.P.R. 65 (1999).

The term "confidential employee" [trans. by eds.] only includes those employees who act and assist in a confidential capacity persons who carry out management functions in the area of employer-worker relations. Adm. de Terrenos v. U.I.E.A.T., 149 D.P.R. 65 (1999).

The position of the Administration's Executive Management Secretary in an appropriated unit is not included since it is evident that the person holding it is a management employee who functions as a personal assistant to the Director of General Services and who is responsible for recommending employer-worker actions such as dismissals, raises and transfers of employees, among others, and in order to assist management in these tasks, the

Executive Management Secretary has direct or immediate access to all confidential documents prepared in relation to these matters. Adm. de Terrenos v. U.I.E.A.T., 149 D.P.R. 65 (1999).

Where the National Labor Relations Act is applicable, it would preempt the Puerto Rico statute. Wackenhut Corporation v. Calero, 362 F. Supp. 715 (1973).

In cases of concurrent powers over commerce, state law remains effective so long as Congress has not manifested an unambiguous purpose that it should be supplanted. Volkswagen de Puerto Rico v. L.R.B. of P.R. 331 F. Supp. 1043 (1970), affirmed, 454 F.2d 38 (1972).

This subchapter does not apply to the Medical Center Service Corporation, and thus personnel of the Corporation are not governed by it. 1963 Op. Sec. Jus. No. 17.

Our courts should apply our local laws on labor contracts when, as in this case, they are more suitable than the federal statute. Rodriguez v. Eastern Sugar Association, 82 P.R.R. 563 (1961).

Power of Congress to legislate for Puerto Rico emanated from the territorial clause of the Constitution, and was not restricted by the limitations of the commerce clause, and this being so, Congress could and did provide in the Wagner Act, 29 U.S.C. ch. 7, that it apply not only to employers whose operations affected interstate commerce, but also to employers who conducted purely local businesses wholly within the Island. Asociacion Empl. Bayamón Transit v. L.R., 70 P.R.R. 273 (1949).

The fact that this subchapter requires performance of certain obligations by employers, and not by employees, does not affect its validity. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

States and territories, by appropriate legislation, may correct unfair labor practices not included in the Federal Acts, familiarly known as Wagner and Taft-Hartley Acts, 29 U.S.C. ch. 7. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

§ 62. Declaration of public policy

The public policy of the Government of Puerto Rico as to employment relations and collective bargaining is declared to be as follows:

(1) It is a fundamental necessity of the people of Puerto Rico to develop its production to the maximum in order to establish the highest possible living standards for the ever-growing population; it is the obligation of the Government of Puerto Rico to adopt such measures as may be conducive to the maximum development of this production and remove the threat that a day might come when, with the continuous increase in the population and the impossibility of maintaining an equivalent increase in production, the people must confront, a hopeless catastrophe; and it is the aim of the Government to develop and maintain such production through the comprehension and education of all the elements composing the people as regards the fundamental necessity of raising production to the limit and of distributing this production as equitably as may be possible; and it is likewise the purpose of the Government to develop in practice the principle of collective bargaining, in such a manner that the basic problem of the necessity for maximum production can be solved.

(2) Industrial peace, adequate and regular salaries for the employees, and uninterrupted production of goods and services by means of collective

bargaining, are essential factors for the economic development of Puerto Rico. The achievement of these objectives depends to a large extent upon fair, friendly and mutually satisfactory relations between employers and employees, and upon the availability of adequate means for the peaceful solution of employer-employee controversies.

(3) By means of collective bargaining, terms and conditions of employment are to be established. For the purposes of such bargaining employers and employees shall have the right of forming organizations of their own choosing.

(4) It is the policy of the Government to eliminate the causes of certain labor disputes, by developing the practices and proceedings of collective bargaining and by establishing an adequate, efficient, and impartial tribunal which will carry out this policy.

(5) All existing collective bargaining contracts, as well as those hereafter executed, are hereby declared to be instruments for the promotion of the public policy of the Government of Puerto Rico in its efforts to develop production to the maximum; and it is declared that as such they are vested with a public interest. The exercise of the rights and the performance of the obligations by the parties to such collective bargaining contracts are therefore subject to such reasonable regulations as may be necessary to effectuate the public policies of this subchapter.—May 8, 1945, No. 130, p. 406, § 1; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Amendments—1946.

Act 1946 amended this section generally.

Cross references.

Courses in labor-management relations, see §§ 591–593 of Title 18.

ANNOTATIONS

1. Generally. In cases in which a subcontract is questioned for allegedly constituting an invasion of tasks of the appropriate unit, the controversy does not revolve around neither its composition nor its clarification; in consequence, it concerns an issue of the entire jurisdiction of the arbitration proceeding. A.E.E. v. UTIER, — D.P.R. —, 2007 TSPR 47 (2007).

In accordance with §§ 155 et seq. and 155*l* of this title, an employee is not obligated to exhaust all arbitration procedures established in a collective agreement. Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

Public policy favoring arbitration arising from an agreement between parties is generally recognized; nonetheless, there are some exceptions, as said arbitration is one of express legislative mandate. Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

As a general rule, parties should exhaust all contractual remedies before going to court, unless there is just cause. Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

Collective agreement is a contract which has the force of law between parties and should be observed before bringing the controversy to court. Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

Arbitration is an integral step in collective bargaining, the mechanism the parties have chosen as being proper for the resolution of their dispute, and which constitutes a more appropriate means than the courts for resolving disagreementes arising over the contractual relationship between the parties as it is more technical, more flexible and least onerous. *Pérez v. Autoridad de Fuentes Fluviales, 87 D.P.R. (1963).* Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

In Puerto Rico there exists a vigorous public policy in favor of worker-employer arbitration. Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

The legislative intent behind §§ 155 et seq. of this title is clear insofar as establishing that an employee suffering sexual harassment is not obligated to appeal to any administrative forum before going to a civil court, neither the State's, nor the employer's nor of any one who could serve as such by virtue of agreement. Vélez v. Serv. Legales de P.R., Inc., 144 D.P.R. 673 (1998).

A non-profit association or organization is that which was created for the benefit and protection of its members, considering the fact that having organized itself as a non-profit entity does not place it outside the ambit legislation concerning work relations. (*Reiterating the criterion expressed in the Opinion of the Secretary of Justice No. 1960-71.)* 1988 Op. Sec. Jus. No. 30.

Clauses of automatic renewal in collective bargaining agreements construed as providing extensions of indefinite duration therefor do not bar termination thereof by unilateral decision of one of the parties. A.M.A. v. L.R.B., 114 D.P.R. 844 (1983).

"Agreement of election by consent" bars employer from further questioning integration of work unit; otherwise, it would mean that parties could disregard binding agreements deliberately, and would defeat purposes of §§ 61 et seq. of this title. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

It is public policy in this jurisdiction that labor controversies have prompt adjudication and termination. L.R.B. v. P.R. Telephone Co., Inc., 107 D.P.R. 76 (1978); L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

It is public constitutional policy of Commonwealth of Puerto Rico not to favor strikes or dissensions in labor-management relations, but to ease them within climate of mutual respect and recognition of essential productive interdependence. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

Where a collective bargaining agreement contains clauses for the prosecution of complaints and grievances and for their decision or arbitration, said clauses should be observed by all those who intervene in the field of labor-management relations: workers, employers, unions, Labor Relations Boards, and courts. San Juan Mercantile Corp. v. L.R.B., 104 D.P.R. 86 (1975); Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

There is no legal bar to Puerto Rico Tourist Development Company using policy used by private corporations of including severance pay clauses in collective bargaining. 1975 Op. Sec. Jus. No. 7.

The legislative mandate to the effect that claims for wages shall not be unduly delayed should be respected by the courts and the attorneys. Martínez v. Commonwealth Oil Ref. Co., Inc., 92 P.R.R. 673 (1965), *cert. denied*, 383 U.S. 936 (1966).

A collective agreement constitutes the law between the parties executing the same. Luce & Co. v. L.R.B., 86 P.R.R. 402 (1962).

In the absence of special provisions in a collective agreement or of circumstances guaranteeing the same at law, neither party is obligated to negotiate with respect to the provisions of an agreement which are undoubtedly clear; nor may it be modified or altered unilaterally, nor is any party to an agreement obligated to negotiate changes in its content at the request of the other party. Luce & Co. v. L.R.B., 86 P.R.R. 402 (1962).

Where a collective agreement contemplates negotiation of modification thereof, there is an obligation to do so. Luce & Co. v. L.R.B., 86 P.R.R. 402 (1962).

§ 63. Definitions

When used in this subchapter:

(1) *Person.*—Includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or judicial administrators.

(2) *Employer.*—Shall include executives, supervisors and any person who carries on activities of an executive nature directly or indirectly in the interest of an employer, but shall not include, (except for corporate instrumentalities or the Government of Puerto Rico as hereinafter defined) the Government or any political subdivision of the same; Provided, That it shall also include any individual, association or organization intervening in behalf of the employer in any labor dispute or collective bargaining.

(3) *Employee.*—Shall include any employee and shall not be limited to employees of a particular employer, unless the act expressly provides to the contrary; and shall include any individual whose work has ceased as a consequence of or in connection with any labor dispute, or because of any unfair labor practice, but shall not include any person employed in the domestic service in the home of any family or person, or any person employed by his parents or spouse. The term shall not include executives or supervisors.

(4) *Representative.*—Shall be limited to labor organizations, as hereinafter defined, not established, maintained or aided by any unfair labor practice prohibited by this subchapter.

(5) *Unfair labor practice.*—Means any unfair labor practice as defined in § 69 of this title.

(6) *Labor dispute.*—Includes any controversy concerning terms, tenure, or conditions of employment, or concerning the organization or representation of employees, or concerning the negotiation, fixing, maintenance or change of or efforts to agree upon terms and conditions of employment, whether or not the disputants stand in the proximate relation of employer and employee.

(7) *All-union agreement.*—Shall mean an agreement between an employer and the representative of his employees in a collective bargaining unit whereby it is required as a condition of employment, that all the employees in such unit be members of a single labor organization.

(8) *Maintenance of membership agreement.*—Shall mean the agreement between an employer and the representatives of his employees in a collective bargaining unit whereby it is required as a condition of employ-

ment, of all the employees who are members of the union at the time of the execution of the agreement or at other times thereafter, and under such other conditions as may be specified in the agreement, that they maintain themselves in good standing as members of the union during the life of the contract.

(9) *Board.*—Refers to the Puerto Rico Labor Relations Board created by § 64 of this title.

(10) *Labor organization.*—Means any kind of organization, or any agency or committee representing employees or any group of employees acting in concert, or any plan in which employees participate, which exists for the purpose in whole or in part of dealing with an employer concerning grievances, disputes, wages, rates of pay, hours of work and/or conditions of labor.

(11) *Corporate instrumentalities.*—Refers to the following corporations which have properties belonging to or are controlled by the Government of Puerto Rico: the Land Authority, the Agricultural Company, the Development Bank, the Electric Power Authority, the Puerto Rico Industrial Development Company, the Ports Authority, the Communications Authority, and the subsidiaries of such corporations, and shall also include such similar enterprises and their subsidiaries as may be established in the future, as well as such other government agencies as are engaged or may hereafter engage in lucrative businesses or activities for pecuniary profit.

(12) If the technical office, or any other employees of the Puerto Rico Aqueduct and Sewer Authority should at the request of the Board of Directors of said Puerto Rico Aqueduct and Sewer Authority and with the approval of the Personnel Director, be included in the Competitive Service, said Puerto Rico Aqueduct and Sewer Authority shall, with regard to the remaining employees and workmen thereof, and for the purposes of subsections (2) and (11) of this section, be considered a corporate instrumentality of the Government of Puerto Rico, and the employees and workmen not included in the Competitive Service shall be entitled to the benefits of this subchapter.—May 8, 1945, No. 130, p. 406, § 2; Mar. 7, 1946, No. 6, p. 18, § 1; July 16, 1947, No. 31, p. 126, § 1.

HISTORY

Text references.

The Agricultural Company, cited in subsection (11), was abolished by Act June 30, 1955, No. 106, p. 622, § 10, see notes under §§ 1–23 of Title 5.

The Development Bank, cited in subsection (11), was dissolved, except inasmuch as needed to transfer its assets, and act creating thereof was repealed by § 3 of Act Sept. 23, 1948, No. 17, p. 290.

Present similar provisions, see §§ 551 et seq. of Title 7.

Communications Authority, cited in subsection (11), was created by Act May 12, 1942, No. 212, p. 1964, repealed by Act May 16, 1974, No. 25, Part 1, p. 136, § 19, as amended by Act

June 8, 1978, No. 3, p. 374, said repeal becoming effective when the transfer of all property of any nature, and assets of any kind are finally completely transferred from the Communications Authority to the Telephone Authority.

See note under § 291 of Title 27.

The Competitive Service and the Personnel Director, cited in subsection (12), were created by the Personnel Act of May 12, 1947, No. 345, p. 594, former §§ 641–678 of Title 3, repealed by § 10.2 of Act Oct. 14, 1975, No. 5, p. 720.

Present similar provisions, see §§ 1461–1468p of Title 3.

Codification.

"Puerto Rico Development Company" was changed to "Puerto Rico Industrial Development Company" upon authority of Act Apr. 5, 1946, No. 285, p. 658, § 2. See § 271 of Title 23.

Term "Insular Aqueduct and Sewer Service of Puerto Rico" was changed to "Puerto Rico Aqueduct and Sewer Authority" upon authority of Act May 3, 1949, No. 163, p. 430.

"Transportation Authority" was changed to "Ports Authority", pursuant to Act Apr. 19, 1955, No. 17, p. 66.

See note under § 331 of Title 23.

"Water Sources Authority" changed to "Electric Power Authority" pursuant to Act May 30, 1979, No. 57, p. 102, § 2.

See note under § 191 of Title 23.

Amendments—1947.

Subsection (12): Act 1947 added this subsection.

—1946.

Act 1946 amended this section generally.

Cross references.

Land Authority, see §§ 241 et seq. of Title 28.

ANNOTATIONS

1. Generally.
2. Employer.
3. Employees.
4. Independent contractor.

1. Generally. Puerto Rico Public Service Personnel Act statement of motives' phrase "consistent and in harmony with collective bargaining in that part of the public sector where it exists at present" should be construed as legislative preconception that said act should not interfere with Labor Relations Act. 1976 Op. Sec. Jus. No. 10.

The mere fact that an association or corporation is organized without pecuniary profits does not place it outside the operation of labor relations legislation. L.R.B. v. Club Deportivo, 84 P.R.R. 495 (1962).

Since corporate instrumentalities of the government, such as the "Junta Administrativa del Muelle de Ponce" and the "Junta Administrativa del Negociado de Lanchas, Ancones y Malecón de Ponce," are not subject to the Federal Taft-Hartley Act, 29 U.S.C. ch. 7, our Legislature had the power to include them in this subchapter. L.R.B. v. Junta de Muelles, 71 P.R.R. 143 (1950).

In referring to "other government agencies" in subsection (11) of this section, the Legislature meant to include every operation within the ambit of the entire Government of Puerto Rico—the municipal government included — which met the test of operating for profit as therein defined. L.R.B. v. Junta de Muelles, 71 P.R.R. 143 (1950).

In view of the municipal ordinances which create them, both the "Junta Administrativa del Muelle Municipal de Ponce" and the "Junta Administrativa del Negociado de Lanchas, Ancones y Malecón de Ponce" are "government agencies which are engaged or may hereafter engage in lucrative businesses or activities for pecuniary profit" within the meaning of this language in subsection (11) of this section and therefore are subject to this subchapter. L.R.B. v. Junta de Muelles, 71 P.R.R. 143 (1950).

2. **Employer.** To determine the liability of a successor employer it is necessary to consider the following questions, among others: (1) Whether the new employer was previously aware of the claim of the employee against its predecessor; (2) the relative capacity of each employer to satisfy a judgment in favor of the employee; (3) the benefit derived or which may be derived by each employer as a result of the action which is challenged. In these cases it is important to balance the respective interests and circumstances of the parties. Bruno López v. Motorplan, Inc. y otros, 134 D.P.R. 111 (1993).

Financial solvency is not a synonym for a for-profit business; the Teachers Retirement Board is a non-profit organization and is not an employer. J.R.T. v. Junta de Retiro para Maestros, 127 D.P.R. 621 (1990).

"Corporate instrumentality" is one dedicated to for-profit business or activities which produce a financial benefit. 1990 Op. Sec. Jus. No. 7.

The Government and its political subdivisions, except corporate instrumentalities organized as private businesses, are excluded from the concept of "employer". 1990 Op. Sec. Jus. No. 7.

The Administrative Board of the Ponce Municipal Wharf is a juridical entity dedicated to profitable enterprise and, as such, falls within the definition of "employer" in this section. J.R.T. v. Junta Adm. Muelles Mun. de Ponce, 122 D.P.R. 318 (1988).

The Symphony Orchestra Corporation is a corporate instrumentality and, as such, an employer, and its musicians have a constitutional and statutory right to collective bargaining. (*Reiterating the criteria of 1987 Op. Sec. Just. No. 17.*) 1987 Op. Sec. Jus. No. 26.

The Government of Puerto Rico and its subdivisions are not employers and are not within the reach of this subchapter. 1987 Op. Sec. Jus. No. 17.

Private enterprises and their agents, corporate instrumentalities of the Government of Puerto Rico and their subsidiaries and other agencies dedicated to businesses for profit are employers. 1987 Op. Sec. Jus. No. 17.

In *A.A.A. v. Union Empleados A.A.A., 105 D.P.R. 437 (1976)*, the Supreme Court listed the factors to be examined in determining what is a government agency which functions like a private enterprise within the meaning of §§ 17 and 18 of Art. II of the Constitution, but none of these factors is sufficient in and of itself for said determination. 1987 Op. Sec. Jus. No. 17.

In determining whether two entities constitute a sole employer for purposes of the Labor Relations Act, fact that they maintain separate payrolls and bank accounts and hold separate board of directors meetings does not weaken the existence of interrelated operations, nor is having collective bargaining contracts with separate effective dates a decisive factor. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

Two entities may be considered a sole employer for purposes of the Labor Relations Act if there is general control of the critical matters at labor policy levels, independent of the fact that the initial purpose of creating the organizational complex was not promoted by hostility towards the employees' labor union rights. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

Pursuant to this subchapter, neither Government nor its political subdivisions qualify as "employers", and so they remain outside of the jurisdiction thereof and out of reach of the law. Private businesses and their agents, corporate instrumentalities of the Government and subsidiaries thereof or other agencies of the Government which do or can dedicate themselves to lucrative businesses are employers. L.R.B. v. Asoc. Servs. Médicos Hosp., 115 D.P.R. 360 (1984).

In order for an employer to remain outside the jurisdiction of this subchapter, he must be considered Government or a political subdivision thereof, and may not be one of the corporate instrumentalities or agencies dedicated to lucrative businesses or other activities yielding pecuniary benefits. Government and its political subdivisions are its branches — executive, legislative and judicial—and all other departments, agencies, dependents and subsidiaries thereof created by law and excluded from this chapter and aforementioned constitutional precepts. L.R.B. v. Asoc. Servs. Médicos Hosp., 115 D.P.R. 360 (1984).

Fact that public employer agreed by service contract with Department of Health to administer public hospital does not exclude said employer from jurisdiction of this subchapter and constitutional provisions regarding employees rights to bargain collectively, strike, picket, and to carry out other concerted activities. L.R.B. v. Asoc. Servs. Médicos Hosp., 115 D.P.R. 360 (1984).

Holding in federal forum to the effect that an entity is not employer but Government under the federal Labor Relations Act does not bind our jurisdiction to make same interpretation, if said entity is an employer under this subchapter. L.R.B. v. Asoc. Servs. Médicos Hosp., 115 D.P.R. 360 (1984).

Fact that private employer provided health related services did not deprive employees of constitutional or statutory rights guaranteed to workers. In severe emergency where public health and security or essential public services are clearly and truly in danger, Constitutional Convention authorized legislative intervention, as well as intervention and regulation by the judiciary. L.R.B. v. Asoc. Servs. Médicos Hosp., 115 D.P.R. 360 (1984).

Retirement Board for School Teachers is not employer within meaning of this section. R.B.T. v. L.R.B., 108 D.P.R. 448 (1979).

Retirement Board for School Teachers—Puerto Rico school teachers as members—is not public corporative instrumentality of Government of Puerto Rico under provisions of this section, does not have any commercial function, does not operate for profit, nor is it designed or organized or empowered to function as private business or enterprise. Main purpose thereof is to administer annuity and pension system of teachers of Puerto Rico as service organization for its membership. R.B.T. v. L.R.B., 108 D.P.R. 448 (1979).

The definition of "employer" in the Puerto Rico Labor Relations Act does not include the Government of the Commonwealth of Puerto Rico nor any political subdivision thereof, with the exception of the corporative instrumentalities of the Government actually or potentially dedicated to lucrative operations or money-making activities. 1974 Op. Sec. Jus. No. 2.

Even though a person does not employ a worker directly or personally, he could be his employer upon allowing him to work in a business allegedly leased to a third party, if it is established by evidence that the alleged lease was an administration contract by virtue of which said person, as a matter of fact, operated the business in an indirect manner. Secretary of Labor v. Metropolitan Const. Corp., 92 P.R.R. 188 (1965).

Puerto Rico Medical Center Service Corporation does not meet statutory requirements; therefore, provisions of this subchapter do not apply thereto. 1965 Op. Sec. Jus. No. 40.

Where employer in this case was not engaged in the general construction business, or the real estate business, or office rental business and his labor activity was merely that of a proprietor who enlarged, repaired, and reconstructed his property, definition of this section does not apply thereto. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

Even for the purposes of collective bargaining a union may be considered as an employer. Medina v. Unión Obreros Cervecería Corona, 86 P.R.R. 609 (1962).

The term "employer" contained in labor relations laws should not be so construed as to defeat the objectives of statutes of this nature; and in cases of doubt—where the broadness of the definition of the term "employer" is an unequivocal sign of the legislative intent—the

courts should accord preference to that interpretation which is compatible with the economic reality sought to be improved, instead of limiting the same to the traditional concepts of the definition of "employer". L.R.B. v. Club Deportivo, 84 P.R.R. 495 (1962).

None of the definitions of "employer" or "employee" in the labor legislation in force in Puerto Rico excludes from its benefits the employees of nonprofit associations. L.R.B. v. Club Deportivo, 84 P.R.R. 495 (1962).

Actions of supervisory employee are imputable to his employer under this section, according to which such employee is included in term "employer" herein defined. L.R.B. v. Acevedo, 78 P.R.R. 515 (1955).

An employee who selects personnel on his employer's farm, assigns work to be performed, directs it, and performs in general duties of overseer, should be considered as supervisory employee, since his work identifies him with employer's interests and not with those of ordinary employees. L.R.B. v. Acevedo, 78 P.R.R. 515 (1955).

Testimony of manager of duly registered corporation showing that it employs workers in mattress and metal-bed factory, is sufficient to establish that corporation is an employer as defined in this section. L.R.B. v. Simmons Int'l, Ltd., 78 P.R.R. 360 (1955).

3. **Employees.** The definition of the term "employee", already mentioned in §§ 61 et seq., specifically excludes persons who work in domestic services, persons employed by their parents or spouses, and executives and supervisors. U.P.R. v. Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

Other exceptions have been establish by administrative or judicial interpretation and fall under the independent contractor, confidential employees, managerial employees and one that might present a conflict of interest. U.P.R. v. Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

The faculty members of the Río Piedras precinct of the University of Puerto Rico can be divided in two groups: the members, which are consider managerial employees, because of their direct performance in the administration, ruling and implementation of important aspects of the Institution and the rest of the Faculty members, that are also managerial employees due to their close relationship with the first group. U.P.R. v. Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

The managerial employee is one: (1) whose ideas, interests and attitudes are the same as of the company; (2) establish and implements policy guidelines and regulations for the company in his line of work, and (3) exercises discretion when implementing or making decisions on his own accord. U.P.R. v. Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

Although an employee is, by definition, a person who provides services to another for compensation, a consulting security agent who provides services for two or three hours a week for one company while working as a permanent employee for another company is not entitled to benefits under the life insurance policy of the first company. Nieves v. International Life Ins. Co. of P.R. 964 F.2d. 60 (1992).

Public employees, except those employed by agencies or corporations which function as private enterprises or are dedicated to for-profit activities, do not have a right to collective bargaining. 1990 Op. Sec. Jus. No. 7.

Our Bill of Rights recognizes the right to collective bargaining of employees of private business or of agencies and instrumentalities of the Government functioning as private businesses as well as to strike, picket, and to carry out other activities in concert. Sole employees not protected under Bill of Rights are government employees who carry out their duties in the Government itself or agencies and instrumentalities thereof not functioning as private businesses. L.R.B. v. Asoc. Servs. Médicos Hosp., 115 D.P.R. 360 (1984).

The right of public employees to organize into bona fide groups, and to have the contributions to those groups withheld from their salaries, cannot be construed to imply the

right to bargain collectively through those groups, working conditions and salaries, which are statutorily and not contractually determined. (*Reaffirming the criterion stated in the Opinions of the Secretary of Justice, Nos. 1960-3, 1965-31, 1974-2 and 1974-7.*) 1974 Op. Sec. Jus. No. 38.

The American jurisprudence defines 'employee' as any person who renders service to another in exchange for payment of salary or wages, being the element of control by the employer over him a determining one in the concept. 1973 Op. Sec. Jus. No. 3.

In order to decide whether or not a person is an employee within the scope of the Labor Relations Act, the characterization or connotation made by the parties respecting the nature of their relations is not determinative. Nazario v. Vélez, 97 P.R.R. 447 (1969).

From a constitutional and a statutory point of view the employees of the Government of Puerto Rico, with the exception of the employees of certain public agencies and instrumentalities which operate as private businesses and enterprises, do not have the right to bargain collectively or to employ strikes, pickets, etc., to obtain better working conditions. 1965 Op. Sec. Jus. No. 31.

In order to decide whether or not a person is an employee within the coverage of the Puerto Rico Labor Relations Act, the determination of his economic condition in relation to another carries weight, so that the purposes underlying the statute call for his protection; in other words, the economic facts may outweigh the traditional legal distinction of the common law. Landrón v. L.R.B., 87 P.R.R. 87 (1963).

The only employees exempt from the application of the Labor Relations Act are: (a) persons employed in the domestic service in the home of any family or person; (b) persons employed by their parents or spouse; (c) executives and supervisors; and (d) persons working in the Government and its political subdivisions, excepting the corporate instrumentalities of the Government of Puerto Rico referred to in the act. L.R.B. v. Club Deportivo, 84 P.R.R. 495 (1962).

4. **Independent contractor.** In determining who is an independent contractor, a court must not rely on how the contract signed by the parties is designated nor on any isolated factor, but the court must examine the entirety of the circumstances in which the relationship evolves. Bengochea v. Ruiz Torres, 103 D.P.R. 68 (1974).

To determine who is an independent contractor for the purposes of art. 3(d) of the Fair Labor Standards Act, a court must give special weight to the following criteria: (a) retaining of control by the lessor or franchise grantor; (b) who has authority to hire and fire employees; and, (c) the opportunity the contractor may have to derive profit. Bengochea v. Ruiz Torres, 103 D.P.R. 68 (1974).

There is no absolute rule to determine whether the relations between a taxi entrepreneur and a taxi driver who operates a taxicab on the basis of a so-called "lease contract" are those of employer employee or whether the taxi driver is an independent contractor, primordial attention should be paid to the economic realities rather than to technical classifications which might prevail in other areas of the law, but which do not lead to a fair solution when it is a question of applying remedial legislation for the benefit of the workers. Nazario v. Vélez, 97 P.R.R. 447 (1969).

The doctrine of the "independent contractor" developed in the field of extracontractual responsibility and originally elaborated in view of the need of stimulating industrial development will not be applied in this jurisdiction when in so doing workers and employees would be excluded from the scope of the remedial legislation which seeks the improvement of their working conditions for the purpose of achieving minimum standards for the general welfare. Nazario v. Vélez, 97 P.R.R. 447 (1969).

The Puerto Rico Labor Relations Act unlike the situation under the Taft-Hartley Act does not expressly exclude independent contractors from its provisions. Landrón v. L.R.B., 87 P.R.R. 87 (1963).

There is no uniform rule for determining whether a person is an independent contractor or an employee, but it is necessary to examine carefully the total situation of the facts and, in the end, to resort to the talismanic test prevailing in this field: that of "control retention", the test applied in common law. Landrón v. L.R.B., 87 P.R.R. 87 (1963).

The true status of racing agents in relation to the enterprise San Juan Racing Association, Inc., is that of independent contractors, having no right to the protection afforded by the Puerto Rico Labor Relations Act, since their situation is not one of economic dependence on the enterprise so that the latter practically controls the amount received for work performed; that is, that the determination of the independent contractor's income does not depend almost exclusively on the discretion of the enterprise. Landrón v. L.R.B., 87 P.R.R. 87 (1963).

Evidence that union made collective agreement with corporation and that former admits in its membership employees of latter, is sufficient to establish that union is labor organization as defined in this section. L.R.B. v. Simmons Int'l, Ltd., 78 P.R.R. 360 (1955).

§ 64. Labor Relations Board—Creation; Chairperson and members; rights and duties

(a) A Labor Relations Board is hereby created, constituted by a Chairperson and two (2) associate members appointed by the Governor with the advice and consent of the Senate of Puerto Rico for a term of ten (10) years. The Governor may remove any member of the Board upon prior notice and hearing, for negligence or malfeasance in the performance of his or her duties.

(b) The Chairperson of the Board shall receive the salary [set] annually by the General Budget Act, and the Associate Members shall each receive per diems of seventy-five dollars ($75) for each day of session, and for travel expenses to attend the Board's sessions, excluding those carried out within the metropolitan area of San Juan, which shall be reimbursed as specified in the law or applicable regulations for public officials and employees of the Department of the Treasury. As of January 1, 1997, the members of the Board shall receive per diems equal to the minimum per diems established in § 29 of Title 2 for members of the Legislature.

(c) The Chairperson shall be the executive officer of the Board and shall devote all of his time to the duties of his office as chairman, and during his incumbency he shall not engage in any private business, or in the practice of any profession or trade. The Chairperson shall appoint the necessary personnel for the performance of the functions and duties prescribed by this subchapter.

(d) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. After all the members of the Board are appointed, two members thereof shall constitute a quorum. Business of a purely administrative nature shall be attended to by the Chairperson.

(e) The central office of the Board shall be in the city of San Juan, but the Board may exercise any or all of its powers in any place in Puerto Rico. A member of the Board taking part in any conference, investigation, hearing or election shall not be prevented from subsequently taking part in a decision of the Board in the same matter or in any other matter in which the parties or one of them may be affected.

(f) The Board shall have authority to make, amend, and repeal such rules and regulations as may be necessary to carry out the provisions of this subchapter. Such rules and regulations shall have the force of law upon their due promulgation.

(g) The necessary appropriations to cover salaries, per diems, traveling expenses and other disbursements of the Board and its personnel shall be included in the General Budget of Expenses of the Government of Puerto Rico.

(h) The Board shall annually render to the Governor and the Legislature of Puerto Rico a report of its activities during the preceding year, including data and statistics and such recommendations as it may deem advisable.

(i) When the Chairperson of the Board is to be absent from his office, including the time authorized for his vacations or sick-leave, but in no case for a term exceeding two (2) months, the latter may delegate during said absence, provisionally, in an executive officer of the personnel under his direction, all or part of the executive functions of the office of Chairperson.—May 8, 1945, No. 130, p. 406, § 3; Mar. 7, 1946, No. 6, p. 18, § 1; May 14, 1947, No. 458, p. 994, § 1; Apr. 18, 1950, No. 49, p. 128, § 1; June 15, 1955, No. 71, p. 264; June 14, 1957, No. 62, p. 148; May 21, 1964, No. 30, p. 80, § 1; May 30, 1970, No. 70, p. 181; June 24, 1971, No. 114, p. 357, § 1; July 20, 1979, No. 128, p. 311; Aug. 12, 1996, No. 131, § 1; Dec. 28, 2000, No. 446, § 1.

HISTORY

Amendments—2000.

Subsection (a): Act 2000, substituted "Chairman" with "Chairperson" in the catchline and text and increased the term for associate members from 4 to 10 years.

—1996.

Subsection (b): Act 1996 increased the per diem from $50 to $75, deleted the maximum of $5,200 per year, substituted provision for 20-cent travel rate with the phrase "excluding...Treasury", and added the second sentence.

—1979.

Subsection (b): Act 1979 increased per diems of the Associate Members from $35 to $50, and increased per annum limit from $4,200 to $5,200; increased travel expenses from 12 to 20 cents per mile, and added Proviso that travel expenses within the metropolitan area are excluded.

—1971.

Subsection (i): Act 1971 added this subsection.

—1970.
Subsection (b): Act 1970 increased per diems from $25 to $35 per day, the maximum from $3,000 to $4,200 annually and travel expenses from 10 to 12 cents per mile traveled.

—1964.
Subsection (b): Act 1964 increased per diems from $20 to $25 and added last phrase establishing a rate of ten cents per mile for traveling expenses for attending meetings.
Subsections (d)–(h): Act 1964 designated subsections (ch)–(g) as (d)–(h).

—1957.
Subsection (a): Act 1957 deleted "in the Department of Labor".
Subsections (d)–(h): Act 1957 designated subsections (d)–(h) as (ch)–(g), and changed phraseology of English translation.

—1955.
Subsection (b): Act 1955 amended generally provisions on per diem.

—1950.
Subsection (b): Act 1950 increased the per diems for associate members from $10 to $20 and added "up to a maximum of $2,000 per year for each one" at the end.

—1947.
Subsection (b): Act 1947 substituted "An annual salary of six thousand dollars ($6,000)" with "the salary [set] annually by the General Budget Act".

—1946.
Subsection (b): Act 1946 added "or part of the day dedicated to work of the Board".
Subsection (d): Act 1946 substituted "In any moment the quorum of the Board" with "once appointed the totality of the Board, the quorum of the same".
Subsections (e) and (f): Act 1946 amended these subsections generally.
Subsection (g): Act 1946 added the Proviso and amended this subsection generally.

Statement of motives.
See Laws of Puerto Rico:
July 20, 1979, No. 128, p. 311.
Aug. 12, 1996, No. 131.
Dec. 28, 2000, No. 446.

Repealing clause.
Section 2 of Act June 24, 1971, No. 114, p. 357, provides: "All laws or parts of laws in conflict herewith are hereby repealed."

Appropriations.
Section 2 of Act Aug. 12, 1996, No. 131, provides: "The funds needed to carry out the purposes of this act [which amended this section] shall be included in the budget appropriated to the Puerto Rico Labor Relations Board."

Special provisions.
Section 2 of Act May 21, 1964, No. 30, p. 80, provides: "Every payment for traveling expenses authorized up to date for the associate members of the Puerto Rico Labor Relations Board is hereby validated."
Section 4 of Act May 14, 1947, No. 458, p. 994 declared vacant the office of Chairman of the Labor Relations Board as it existed on May 14, 1947, and provided for the appointment of a new Chairman.

Cross references.
Courses in labor-management relations, see §§ 591–593 of Title 18.
Salary of Chairman, see § 577 of Title 3.

ANNOTATIONS

1. Generally.
2. Jurisdiction.
3. Construction of agreements.

1. Generally. It is inappropriate for the Labor Relations Board to order the inclusion of certain employees in a bargaining unit in response to a petition for clarification by the union and utilizing only the classification procedure without consulting the affected employees. Pérez Maldonado v. J.R.T., 132 D.P.R. 972 (1993).

Labor Relations Board of Puerto Rico has exclusive powers to prevent any unfair labor practices, and these cannot be replaced or affected by any other means of adjustment or prevention, in normal circumstances. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

In accomplishing the purposes of the law which created it, the Labor Relations Board has power to: (a) fix, designate, and recognize remedies of an economical nature related with the deduction of dues, loss of wages due to discharge, and damages as a result of unlawful strike, and (b) to impose penalties for damages, attorney's fees, and interest provided in § 282 of this title. L.R.B. v. Marex Constr. Co., Inc., 103 D.P.R. 135 (1974).

The Labor Relations Board is a quasi-judicial body. L.R.B. v. Marex Constr. Co., Inc., 103 D.P.R. 135 (1974).

This Court shall take judicial notice of the decisions of the National Labor Relations Board. P.R. Telephone Co. v. L.R.B., 92 P.R.R. 247 (1965).

Upon examination of the special circumstances in this case, and in consideration of the rule set forth in *Gonzalez v. District Court, 62 P.R.R 152 (1943)*, the Court concludes that at the time the proceedings were ordered there existed a Labor Relations Board legally and properly constituted, and the actions of its President were valid. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

In the absence, in an act, of a holding over clause until the successor qualifies and assumes the position, said officer does not have the legal title thereto after its expiration, and from that time the Governor can make appointment to substitute him in his tenure, inclusive by a recess appointment. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

2. Jurisdiction. The determination of whether an employer unjustifiably intervened in or restrained a protected activity under § 65 of this title and whether said intervention constituted an unfair labor practice is within the authority of the Labor Relations Board and the jurisdiction of this entity is exclusive. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

Courts have no jurisdiction over cases of unfair labor practices. Said jurisdiction belongs exclusively to the Labor Relations Board. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

Integration of labor unit is matter for the exclusive jurisdiction of the Labor Relations Board. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

Jurisdiction bestowed by statute upon Labor Relations Board extends to certification of labor unit proceedings as well as to mechanisms created by legislator to guarantee workers' right to organization and collective bargaining. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

In case at bar, intervention of Labor Relations Board would be in conflict with constitutional rights of petitioner—elementary, intermediate and high school, of Catholic persuasion—pursuant to Art. II, § 3 of the Commonwealth Constitution. San Jorge Academy v. L.R.B., 110 D.P.R. 193 (1980).

Labor Relations Board of Puerto Rico has no jurisdiction to issue orders against Retirement Board for School Teachers on labor matters. R.B.T. v. L.R.B., 108 D.P.R. 448 (1979).

Rulings in *San Juan Mercantile Corp. v. L.R.B., 104 D.P.R. 84, (1975)* do not deprive Labor Relations Board of primary jurisdiction over enterprises not under federal law in order to prevent and remedy unfair labor practices enumerated in § 69 of this title, particularly where statute states clearly that jurisdiction should not be curtailed by any other means of adjustment and prevention. L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

Labor Relations Board is authorized to discard doctrine of "exhaustion of contractual remedies" and to assume primary jurisdiction over labor controversy where neither employer nor employees nor union makes any effort to implement remedies for grievances provided by contract, rather they deal informally with controversies among them following established practice L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

A worker whose union has a collective bargaining agreement with employer, cannot appeal directly to the Labor Relations Board with a complaint against his employer when he has not exhausted the remedies of complaints and grievances, and of arbitration expressly provided by the collective bargaining agreement to elucidate these matters. San Juan Mercantile Corp. v. L.R.B., 104 D.P.R. 86 (1975).

The Labor Relations Board is empowered to intervene in cases of violation of collective bargaining agreements, although the cases involve organizations operating in interstate commerce. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

Labor Relations Board is empowered to consider violation of collective agreements as an unfair labor practice, even in a case of an enterprise engaged in interstate commerce. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962); L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

3. **Construction of agreements.** Terms of collective bargaining agreement must be construed as a whole and parts thereof harmonized in order to determine the intention of the parties. S.I.F. v. L.R.B., 111 D.P.R. 520 (1981).

Even though this Court has deference towards the interpretations made by the Labor Relations Board regarding the provisions of a collective bargaining agreement—unless we consider them to be clearly erroneous—said jurisprudential rule is not applicable to the interpretation of the questions of law, over which we may exercise our independent judgment. González Padín Co., Inc. v. L.R.B., 103 D.P.R. 302 (1975).

§ 64a. Labor Relations Board—Publication of informative material

(a) The Chairman of the Labor Relations Board is hereby authorized to print, publish and dispose of the informative material in connection with the Puerto Rico Labor Relations Board, when in his judgment the knowledge of that information by the general public or by certain sectors of the citizenry promotes the objectives of this subchapter.

(b) These publications may be sold at cost of reproduction and the proceeds of the sales shall be covered into the General Fund of the Treasury. These publications shall be delivered gratis to the agencies of the Commonwealth and municipal governments and to the members of the Legislature of Puerto Rico; Provided, That the Chairman of the Labor Relations Board shall, in the case of each publication, determine whether same shall be sold or distributed gratuitously among private persons and entities.

(c) The Chairman of the Labor Relations Board is hereby authorized to promulgate the necessary rules and regulations to enforce the provisions of this section.—May 29, 1962, No. 18, p. 35, §§ 1–3.

HISTORY

Codification.

This section was not enacted as part of Puerto Rico Labor Relations Act, set out in this subchapter.

§ 65. Right of employees to organize and bargain

Employees have, among others, the right of self-organization; to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in concerted activities for the purpose of bargaining collectively or for other mutual aid and protection.—May 8, 1945, No. 130, p. 406, § 4; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Amendments—1946.

Act 1946 amended this section generally.

Cross references.

Right to organize and bargain collectively, see Const., Art. II, Sec. 17.

Right to strike, see § 41 of this title, and Const., Art. II, Sec. 18.

State Insurance Fund employees, see § 8 of Title 11.

ANNOTATIONS

1. Generally.
2. Public employees.
3. Concerted action.
4. Illegal strike

1. **Generally.** Attorneys assigned by the Aqueduct and Sewer Authority to some of its divisions do not have the right to organize and bargain collectively as they fulfill the requirements for managerial employees as well as for confidential employees. A.A.A. v. Unión de Abogados de la A.A.A., 158 D.P.R. 273 (2002).

In order for any person or group of persons to have the right to form a union and bargain collectively, they most be covered within the definition of the term employee, in accordance with §§ 61 et seq., of this title. U.P.R. v Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

All faculty members of the Río Piedras precinct of the University of Puerto Rico are consider managerial employees, and as such, they are not covered under collective bargaining guidelines. U.P.R. v Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

The right of employees to organize and to bargain collectively in Puerto Rico has constitutional roots and rank; hence the rules concerning application—including exemptions—of labor relations laws must be liberally construed in favor of protecting and promoting said rights, and one must always have in mind that these laws are part of a broad and far-reaching scheme intent on implanting the constitutional guideline. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

Right of workers to organize and collectively bargain with employer through representatives of their own free choice is fundamental in formulation of public policy regarding labor relations. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

A collective bargaining agreement executed either prior or subsequent to the enactment of a valid statute conferring rights on employees may not operate to impair said rights. Compania Popular v. Union de Empleados, 69 P.R.R. 167 (1948).

2. **Public employees.** The state may prohibit public employees working in hospital facilities from engaging in the following activities: (1) verbal solicitation during working hours; (2) solicitation during free time in areas of care proximate to patients; (3) in other areas if said solicitation would affect medical treatment or tranquillity of patients, or (4) distribution of informational material during working hours or free time in said areas of care. The state also has the authority to prohibit verbal solicitation and distribution of informational material by third persons (non-employees). U.N.T.S. v. Srio. de Salud, 133 D.P.R. 153 (1993).

The state may prohibit the oral solicitation and distribution of informative material by third parties who are not employees. U.N.T.S. v. Srio. de Salud, 133 D.P.R. 153 (1993).

Government employees, with the exception of workers of certain public agencies or instrumentalities which operate as private enterprises or businesses, are not guaranteed the right to bargain collectively or to strike or picket to obtain better working conditions. *(Reiterating Op. Sec. Just. No. 1967-17.)* 1983 Op. Sec. Jus. No. 13.

From a constitutional and statutory point of view, employees of the Government of Puerto Rico, except for workers in certain public agencies or instrumentalities which function as private enterprises or businesses, are not guaranteed the right to bargain collectively or to use the instruments of striking, picketing, etc., to better their working conditions. 1974 Op. Sec. Jus. No. 2; 1972 Op. Sec. Jus. No. 13; 1960 Op. Sec. Jus. No. 13.

The interns and residents of the School of Medicine do not have the right to bargain collectively even if it is understood that they are employees of the Department of Health, since this Department is evidently not a corporative agency or instrumentality of the Commonwealth, which functions as a private enterprise or is devoted to profitable business or to activities which have as an object a financial benefit. 1972 Op. Sec. Jus. No. 13.

3. **Concerted action.** The following factors should be considered in balancing interests in a controversy over the use of insignias: (1) whether the use of the insignia pursues a purpose protected by law; (2) the nature of the language used on the insignia; (3) the nature of the employer's rule and whether the rule existed previously and was applied by the employer or whether it came into existence as a result of the concerted action, and (4) the interest of the employer in maintaining discipline in the workplace. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

The analysis to be used in cases involving use of insignias by unionized employees is a balancing test in which the right of the employees to use the insignias as part of concerted action is weighed against the employer's right to maintain efficiency and discipline in the workplace. Under this analysis, the employer has the burden to prove that his policy restraining the use of insignias is justified by special circumstances. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

Two-day strike by teachers of Private School Cooperative Eugenio Hostos, causing termination of teaching contracts for striking personnel by Board of Directors of said institution, had no other purpose than protesting for dismissal of Director of said institution and pressing Board for her reinstatement, and had nothing to do with teachers' working conditions; therefore, this was not concerted activity of employees protected by Puerto Rico Labor Relations Act. L.R.B. v. School Coop. E. M. de Hostos, 107 D.P.R. 151 (1978).

Employees' protest resulting from disciplinary punishment of supervisor which caused work to stop, or protest against said supervisor, are not considered concerted activities protected under Puerto Rico Labor Relations Act; but strike would be considered protected if it resulted from impact of said supervisor's dismissal on labor interests of employees themselves. L.R.B. v. School Coop. E. M. de Hostos, 107 D.P.R. 151 (1978).

Under the provisions of the Labor Relations Act of Puerto Rico—this section—the employees have the right to engage in concerted activities for the purpose of bargaining collectively or for other mutual aid or protection. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

The concerted activity of the employees of an employer, protected by the Labor Relations Act, must be carried out by one or more employees in the name and for the benefit of more than one of a group of employees of which he or his co-workers form part. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

The fact that the concerted activity of employees is prompted by a spirit of reprisal against the employer — provided it is actually of mutual benefit for the employees, or that from a subsequent investigation it appears that it was without basis—does not imply that it ought to be considered outside the protection of the Labor Relations Act, unless it is shown that the activity also has as its purpose one to which a concerted activity of the employees of an employer cannot be devoted. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

The employer's prior knowledge of the concerted activity of his employees is an indispensable ingredient for his discriminatory action against an employee to constitute an unfair labor practice. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

4. Illegal strike. Where strike by teachers of private school violated their contract, lacked any union legitimacy, purpose or advancement of any of the rights protected by this section, was detached from any activity of said teachers to become an independent union, and had for sole purpose revolting against administrative decision of private school Board of Directors and exert pressure on its nominating authority, consideration of illegality of such strike does lie. L.R.B. v. School Coop. E. M. de Hostos, 107 D.P.R. 151 (1978).

Where findings show that strike by teachers of private school was not union activity protected by Puerto Rico Labor Relations Act, but rather a violation of service contracts, rescission of those contracts by Board of Directors of school did not constitute unfair labor practice. L.R.B. v. School Coop. E. M. de Hostos, 107 D.P.R. 151 (1978).

§ 66. Representatives and elections

(1) Representatives designated or elected for the purpose of collective bargaining by a majority of the employees in a unit appropriate for such purpose shall be the exclusive representative of all the employees in such collective bargaining unit; Provided, That any individual employee shall have the right at any time to present individual grievances to his employer.

(2) In order to insure to the employees the full enjoyment of the rights of self-organization and collective bargaining, and otherwise to carry out the purpose of this subchapter, the Board shall decide in each case the appropriate unit for the purposes of collective bargaining.

(3) Whenever a question concerning representation of employees arises, the Board may investigate and resolve the question. The Board may investigate and resolve such question by appropriate public hearing on due notice, or by secret election, or by both, or by any other appropriate method. Provided, That whenever one of the unions or labor groups in controversy concerning representation of employees does not agree with the decision of the Board, in the absence of an election, and its claim is supported by twenty percent (20%) of the employees in the unit for collective bargaining, the Board shall immediately decree an election among the employees in order to decide the question. In every such election, the ballot shall be so prepared as to permit a vote against

representation by anyone named on the ballot. The Board's findings, election procedure, resolution of the question concerning representation, unit determination, and certification of the results of any election so held, shall be final, and shall be subject to judicial review only in the manner hereinafter provided by subsection (4) of this section.

(4) Whenever an order of the Board made pursuant to § 70 of this title is based in whole or in part upon facts certified following an investigation or public hearing pursuant to subsection (3) of this section, and there is a petition for the enforcement and for the review of such order, the certification and the record of the investigation or hearing conducted pursuant to subsection (3) of this section, shall be included in the transcript of the entire record required to be filed under § 70 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleading, testimony, and proceedings set forth in such transcript.—May 8, 1945, No. 130, p. 406, § 5; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Amendments—1946.

Act 1946 amended this section generally.

ANNOTATIONS

1. **Generally.** In cases in which a subcontract is questioned for allegedly constituting an invasion of tasks of the appropriate unit, the controversy does not revolve around neither its composition nor its clarification; in consequence, it concerns an issue of the entire jurisdiction of the arbitration proceeding. A.E.E. v. UTIER, — D.P.R. —, 2007 TSPR 47 (2007).

The Center for Collection of Municipal Revenues is not an "employer" for collective bargaining purposes. C.R.I.M. v. Fed. Central de Trabajadores, 142 D.P.R. 968 (1997).

The nature of a public agency is more governmental that a private business, if it provides services that never have been given by private enterprises, but if its services are similar to those of private corporations, and its purposes are for profit, then its nature tends to be more like a private business. C.R.I.M. v. Fed. Central de Trabajadores, 142 D.P.R. 968 (1997).

If an employee's salary, employment security, vacation and other such conditions are protected by law then the agency or instrumentality tends to be governmental. If the employee had been protected by some normative state system he lacks the right to bargain collectively because it is understood that legal protection over work conditions are equivalent to what collective bargaining offers him as security. C.R.I.M. v. Fed. Central de Trabajadores, 142 D.P.R. 968 (1997).

When a group of employees is initially excluded from a bargaining unit it is necessary to consult with them before including them in said unit at a later time in order to protect their right to choose a representative for collective bargaining purposes, and a clarification petition is inadequate in these cases. Pérez Maldonado v. J.R.T., 132 D.P.R. 972 (1993).

Section 70 of this title, construed jointly with this section, authorizes the Labor Relations Board to appear before the Supreme Court, in cases in which it has issued an order regarding an unfair labor practice, to request the enforcement of an arbitration award and an order regarding the appropriate bargaining unit. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

The composition of an appropriate bargaining unit is a matter for the exclusive jurisdiction of the Labor Relations Board and a ruling on this matter should not be altered absent indications of partiality or prejudice on the part of the Board. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

As of the moment at which the Labor Relations Board recognizes that certain employees belong to the bargaining unit those employees are entitled to all rights arising from the law and the collective bargaining agreement. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

Determination of the Labor Relations Board that certain positions should be included in a bargaining unit means that the employer should apply to employees occupying those positions all applicable provisions of the collective bargaining agreement. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

The substantive parties in labor-management relations are the workers and the employers and not their respective agents or representatives. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

An employer may require an individual who purports to represent his employees to produce his credentials, but he has no standing to question whether or not the individual who purports to represent his employees or their union is the duly elected President of the Union. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

An employer who, in good faith is in doubt as to whether a particular union is the authorized representative of a majority of his employees, may question its authority at the time the demand is made that he bargain with it. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

If there is doubt as to whether a union designated by the Board as the appropriate bargaining unit, has the majority, the fact that the majority of the employees therein actually support a strike called by the union is evidence tending to show that the union represented a majority of the said employees. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

The Board has broad discretion to determine on a flexible and functional basis what constitutes an appropriate bargaining unit, and to that end it takes into consideration such matters as: (1) encouragement of collective bargaining; (2) the history of collective bargaining in the business of the particular employer and the industry as a whole; (3) integration of processes and management; (4) skills of employees involved, and (5) the desires of the employees. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

§ 67. Labor organization information and contracts filed with Board

(a) All labor organizations and employers' associations shall file with the Board a statement containing the official name and post office address of the organization. The Board may, in the exercise of its discretion, refuse to hear any labor organization that fails to comply with the provisions of this section in any proceeding being held under this subchapter.

(b) Certified copies of all collective bargaining contracts between employers and labor organizations, and any renewals, or modifications that shall be made of the same, shall be filed with the Board by employers and labor organizations. The Board, in the exercise of its discretion may refuse to hear in any proceeding conducted under this subchapter any employer or labor organization who may be a party to a collective bargaining contract and who has failed to comply with the provisions of this section.—May 8, 1945, No. 130, p. 406, § 6; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Amendments—1946.
Act 1946 added subsection (b), redesignating the former sole paragraph as subsection (a), and amended the present subsection (a) generally.

§ 68. Unfair labor practices—Powers of Board to investigate

(a) The Board shall have power in the manner hereinafter provided, to prevent any person from engaging in any of the unfair labor practices enumerated in § 69 of this title. This power shall be exclusive and shall not be affected by any other method of adjustment or prevention.

(b) The Board shall have the power to conduct a preliminary investigation of all the charges and petitions filed in accordance with the provisions of §§ 66 and 70 of this title, for the purpose of determining whether or not further proceedings shall be instituted and hearings held. If in the opinion of the Board, the charge or petition filed justifies the institution of further proceedings, the Board may proceed in its own name as is provided in § 66 or 70 of this title, as the case may be.

(c) For the purpose of all the hearings and investigations which in the opinion of the Board may be necessary and proper for the exercise of the powers granted to it by this subchapter, the Board or its agents or agencies duly authorized shall, at all reasonable times, for the purpose of examining and with the right to copy the same, have access to any evidence of any person under investigation or against whom proceedings have been instituted, which evidence is related to any matter under investigation by the Board or which is in controversy. Any member of the Board shall have the power to issue subpoenas requiring the appearance and statements of witnesses and the production of any evidence related to any matter under investigation or which is in controversy before the Board or before one of its members, agents or agencies that is holding a hearing or conducting an investigation. Any member of the Board or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. The said appearance of witnesses and production of evidence may be required from any place in Puerto Rico, to have effect in any place in Puerto Rico designated for the holding of hearings and investigations, according to the provisions of this subchapter.

(d) In the case of a failure or refusal to obey a subpoena issued against any person by the Board or one of its members, any part of the Court of First Instance of Puerto Rico within whose jurisdiction such person guilty or such failure or refusal may be found, resides or carries on a business shall, upon petition of the Board, have jurisdiction to issue an order against such person requiring him to appear before the Board or before one of its members, agent or agency to produce evidence if he shall be so ordered or

to testify concerning the matter under investigation or being heard; and any failure to obey such order of the court may be punished by the same as a contempt of court.

(e) No person shall be excused from appearing and testifying, or producing books, files, correspondence, documents or other evidence in obedience to the subpoena issued by the Board or any of its members, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual may be prosecuted or be subject to penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be forced, after claiming his privilege against self-incrimination, to testify or produce evidence, except that such individual who so testifies shall not be exempt from prosecution or punishment for perjury committed in so testifying.

(f) Complaints, orders, subpoenas or other documents of the Board, of any of its members, agent or agency may be served personally or by registered mail or by telegraph or by leaving a copy of the same in the principal office or place of business of the person, employer, or labor organization to be notified. An affidavit of the individual serving the same in which shall be stated the manner of service shall be proof of service and the return receipt from the postal or telegraph office, as stated above, shall also be proof of service. The witnesses summoned before the Board or before any of its members, agent or agency shall receive the same fees and mileage as are paid to witnesses in the courts of Puerto Rico, and the witnesses whose testimony is taken out of the hearings shall have the right to the same fees that are paid for similar services in the courts of Puerto Rico.

(g) All the process of any court in which a petition may be filed in accordance with this subchapter, may be served in the part of the court in which the person to be served resides or may be found.

(h) The various departments and agencies of the Government shall furnish to the Board, upon request from the same, all the records, documents, and reports they may have in connection with any matter pending before the Board.

(i) The Board is empowered to adopt an official seal. There shall be a presumption of regularity of all orders, communications, subpoenas, decisions, and certifications of the Board which, when issued over said seal, shall be recognized as official documents of the Board.—May 8, 1945, No. 130, p. 406, § 7; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Act Aug. 22, 2003, No. 201, known as the "2003 Judiciary Act", §§ 24–25r of Title 4.

Amendments—1946.

Act 1946 amended this section generally.

ANNOTATIONS

1. Generally.
2. Jurisdiction—National Board.
3. —Local Board.
4. —Conflict.
5. Exhaustion of contractual remedies, doctrine of.
6. Piercing the corporate veil, doctrine of.
7. Doctrine of successorship.
8. Doctrine of sole employer.

1. Generally. The Labor Relations Board has exclusive jurisdiction to avoid and remedy unfair labor practices such as claims for wages that arise from activities of employer allegedly violated the collective bargaining agreement. Martínez Rodríguez v. A.E.E., 133 D.P.R. 986 (1993).

Access to court on grounds to intervene in an issue whereby the Board denied the relief sought would create a subterfuge to review unfavorable notifications and undermine also the jurisdictional exclusive principle of the Board to render opinion on unlawful labor practices. Martínez Rodríguez v. A.E.E., 133 D.P.R. 986 (1993).

By express provision of law the Labor Relations Board has exclusive authority to avoid unlawful labor practices of employers who violate rights granted by § 61 et seq. of this title to unionized employees. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

If the activity of the workers is directly related to rights protected by the Labor Relations Law the activity is protected by said law and the Labor Relations Board has exclusive jurisdiction over worker-employer conflicts arising from said activity. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

The employer whose conduct aims at discouraging and restricting the exercise of the worker's legitimate labor union rights commits an unlawful labor practice. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

Two requisites are necessary to satisfy labor claim on supervisory staffing matter: (a) the protest must effectively refer to conditions of the employment, and (b) the protest must be reasonable. Puerto Rico Food Products Corp. v. N.L.R.B. 619 F.2d 153 (1980).

An employer is liable for failure to perform an order to cease and desist from unfair labor practices charged against the predecessor employer when it is established by proof that the second employer is in effect a successor of the first, that is to say, that the transaction by virtue of which the second employer comes into possession of the business is disguised or constitutes a concert or participation for the purpose of evading the order in question or that the second employer is proved to be an alter ego of the first. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

The successor or assignee of an employer is not liable for noncompliance with an order to cease and desist from unfair labor practices charged against the predecessor employer if said successor acquired the business in a bona fide manner, but said successor or assignee is liable when the evidence shows—as in N.L.R.B. v. Tempest Shirt Manufacturing Co., 285 F.2d 1 (1960)–a state of continuity in the operation which warrants concluding that, as a matter of fact, the original enterprise essentially continued in charge of the operation, notwithstanding the bona fide transaction. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

A complaint notified to a party in the name of the Labor Relations Board is the product of the investigation of said Board and not the product of the charge filed before the Board by an

interested party. It may be as ample and embracing as the public interest may require. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

2. **Jurisdiction—National Board.** In a worker-employer controversy, according to § 69(1)(k) of this title, the Board of Labor Relations has exclusive jurisdiction over said matters which the law has expressly conferred upon it; that is, the Board is empowered, in the exercise of its discretion and while it clarifies the controversy, to issue any order it deems necessary and appropriate to make its prerogatives effective. Plan de Salud v. A. A. A., 169 D.P.R. —; 2006 TSPR 178 (2006).

The composition of an appropriate bargaining unit is a matter of exclusive jurisdiction of the Labor Relations Board and a ruling in this matter should be only at a review level. If the case involves constitutional matters, a judicial novel issue, and the imminence of an irreparable damage, the Supreme Court has jurisdiction to review the decision and order ruled by the Board and determine the composition of the appropriate unit. U.P.R. v Asoc. Pur. Profs. Universitarios, 136 D.P.R. 335 (1994).

Complaint filed before Puerto Rico Labor Relations Board did not toll term to file complaint based on identical facts before National Labor Relations Board. Arriaga v. I.L.G.W.U. 656 F. Supp. 309 (1987), affirmed 835 F.2d 11 (1987).

Primary jurisdiction to resolve a labor dispute over working conditions between flight attendants and airline company is vested in the structure of arbitration provided by the Railway Labor Act (45 U.S.C. § 151 et seq.) and not in the courts. Gonzalez v. Eastern Air Lines, Inc. 668 F. Supp. 78 (1987).

Where unfair labor practice of interstate merchant employer consisting in discriminating against employee who filed charges, supplied information and testified against him is established by federal labor relations legislation, National Labor Relations Board has exclusive jurisdiction thereupon. Pradco Caribe, Inc. v. Tapia, 116 D.P.R. 121 (1985).

The National Labor Relations Board has jurisdiction over nonprofit hospitals since August 25, 1974, when an exception established by the Taft-Hartley Act was repealed. L.R.B. v. Hosp. de la Concepción, 114 D.P.R. 372 (1983), *cert. denied*, Hospital de la Concepción v. P.R.L.R.B., 465 U.S. 1021 (1984).

Federal Labor-Management Relations Act of 1947 is applicable to Puerto Rico. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

Opinion of National Labor Relations Board in *Jonesboro Grain Drying Cooperative, 110 N.L.R.B. 481, 488-484 (1954)* are applicable to Puerto Rico. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

Neither Puerto Rico courts nor those of any state are authorized to intervene in cases under jurisdiction of National Labor Relations Board. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

Independently of jurisdiction of National Labor Relations Board and by exception, state courts—Puerto Rico's included—are authorized to issue injunctions and even award recovery for damages whenever reprehensible labor conduct: (a) constitutes violence or crime; (b) constitutes violation of collective bargaining agreement which may also be unfair labor practice; (c) constitutes certain type of illegal strike or boycott when action for damages may be filed; (d) is peripheral to activities regulated by federal law, (e) constitutes reprehensible act about purely internal matters of labor union. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

A case of unfair labor practice in which it is alleged that a worker was discharged on account of his union activity is of the exclusive jurisdiction of the National Labor Relations Board—except in the cases when said Board has declined to assert its jurisdiction—when said practice occurs in the operations of an employer engaged in interstate commerce. Pantoja v. Esco Corp., 100 P.R.R. 50 (1971).

In a case concerning an unfair labor practice before the National Labor Relations Board—in the case at bar, the layoff of an employee as reprisal for attending a union meeting—if that practice is proved, the Board is not empowered to order the payment of any monthly pay whatsoever to said employee, but to order his reinstatement and the payment of his wages from the date of his layoff. Pantoja v. Esco Corp., 100 P.R.R. 50 (1971).

The Puerto Rico Labor Relations Board, even if it had power in law to intervene in a case of an alleged unfair labor practice on the part of an employer based on violations of a collective bargaining agreement, should refrain from exercising it—in the use of the sound discretion with which it is invested as a tutelary agency of labor relations in Puerto Rico—when the National Labor Relations Board has assumed jurisdiction in a case against the same employer where unfair labor practices were alleged under the Federal Act based on the same facts. P.R. Telephone Co. v. L.R.B., 92 P.R.R. 247 (1965).

The basic and decisive test for the intervention of the National Board in a labor-management controversy has been that of the effect or affectation of a fact, labor dispute or unfair labor practice on commerce, exercising its jurisdiction when it believes that commerce is affected or may be affected, and where said intervention is necessary to achieve the objects and purposes of Congress, or refusing to intervene when it has thought otherwise. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

The National Labor Relations Board should not assert or exercise its jurisdiction in a case against an employer for unfair labor practice consisting in having discharged an employee by reason of union activity, in which although the employer was buying construction materials in the interstate commerce when the labor dispute arose: (a) this was an occasional traffic, since the employer was not generally engaged in the construction enterprise; (b) the employer's activity was essentially of a local character, such as the reconstruction of his own building—the use of which was not related either to the interstate commerce—and (c) after the termination of the construction, it was improbable that said commerce would reproduce or continue indefinitely as usual and ordinary. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

The National Labor Relations Board will not exercise jurisdiction in a case where a private hospital or a real estate broker is charged with an unfair labor practice for the discharge of an employee by reason of union activity. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

Irrespective of the grounds at law explained in the opinion and which justify the exercise of jurisdiction by the Puerto Rico Labor Relations Board in this case, the National Board would not exercise jurisdiction therein since this is an employer operating a private hospital. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

When a labor-management activity may be arguably subject to § 7 or 8 of the National Labor Relations Act, the States as well as the federal courts must yield to the exclusive primary competence of the National Labor Relations Board in order to avert possible conflicts of interpretation in the application and administration of the national labor policy. P.R. Telephone v. Labor Relations Board, 86 P.R.R. 362 (1962).

Under the Taft-Hartley Act, 29 U.S.C. ch. 7, in the absence of a cession of its jurisdiction pursuant to said act, the National Board has exclusive jurisdiction in Puerto Rico, even as to cases where there is no conflict between this subchapter and the federal act, over all employers—except government corporations and those engaged in agriculture—who commit unfair labor practices covered by the federal act. This is not affected by the fact that the National Board has not asserted jurisdiction in the specific case under consideration. Asoc. Empl. Bayamón Transit v. Labor Relations Board, 70 P.R.R. 273 (1949).

Provision of § 2(6) of the Wagner Act, 29 U.S.C. § 152(6), that the National Board has jurisdiction over local businesses operating wholly within Puerto Rico was not modified by the Taft-Hartley Act, 29 U.S.C. ch. 7. Asoc. Empl. Bayamón Transit v. Labor Relations Board, 70 P.R.R. 273 (1949).

3. —**Local Board.** Complaint filed before Puerto Rico Labor Relations Board did not toll term to file complaint based on identical facts before National Labor Relations Board. Arriaga v. I.L.G.W.U. 656 F. Supp. 309 (1987), affirmed by 835 F.2d 11 (1987).

Fact that Puerto Rico Labor Relations Board had jurisdiction over complaint for employer violation of interstate collective bargaining agreement did not extend such jurisdiction over subsequent complaint of the exclusive jurisdiction of the National Labor Relations Board. Pradco Caribe, Inc. v. Tapia, 116 D.P.R. 121 (1985).

In cases of violation of interstate collective bargaining agreement where both national and local boards have jurisdiction, the federal law shall apply. Pradco Caribe, Inc. v. Tapia, 116 D.P.R. 121 (1985).

Puerto Rico Labor Relations Board cannot intervene in cases under the jurisdiction of the National Labor Relations Board. L.R.B. v. Hosp. de la Concepción, 114 D.P.R. 372 (1983), *cert. denied*, Hospital de la Concepción v. P.R.L.R.B., 465 U.S. 1021 (1984).

Fact determining jurisdiction of Puerto Rico Labor Relations Board over nonprofit hospitals is date when alleged unfair practice occurred—prior to August 25, 1974—and not date when complaint was filed. L.R.B. v. Hosp. de la Concepción, 114 D.P.R. 372 (1983), *cert. denied*, Hospital de la Concepción v. P.R.L.R.B., 465 U.S. 1021 (1984).

Jurisdiction of Labor Relations Board over cases involving unfair labor practices is exclusive and primary, and shall not be affected by any other means of adjustment or prevention. L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

Regulation by the Commonwealth of Puerto Rico of violation of a collective bargaining agreement is not barred by the jurisdiction of the National Labor Relations Board nor by section of the Labor Management Relations Act which vests federal courts with jurisdiction to entertain suit for damages for violation of bargaining agreement; therefore, the Puerto Rico Labor Relations Board had jurisdiction pursuant to the laws of Puerto Rico to conduct an administrative investigation of a complaint of unfair labor practices based on the violation of a bargaining agreement. Volkswagen de Puerto Rico v. L.R.B. of P.R. 331 F. Supp. 1043 (1970), affirmed 454 F.2d 38 (1972).

A trial examiner of the Labor Relations Board may, upon conclusion of the presentation of all the evidence, amend an original complaint of the Board—charging the employer with certain unfair labor practices—to include a new charge of unfair labor practice, when said amendment is based on the testimony of a witness of the employer himself, particularly when said trial examiner offered the employer the opportunity to explain or clarify his witness' testimony on which the charge by way of amendment to the complaint was based and the latter actually did not approve it. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

The Puerto Rico Labor Relations Board is not empowered to issue a complaint upon its own initiative against an employer who has engaged in or is engaged in an unfair labor practice. L.R.B. v. McConnie, 94 P.R.R. 460 (1967).

The Puerto Rico Labor Relations Board can take action in a controversy only when one or more charges are presented before it against a party. The filing of a charge before it, is, consequently, of jurisdictional nature. L.R.B. v. McConnie, 94 P.R.R. 460 (1967).

The Labor Relations Board is empowered to intervene in cases of violation of collective bargaining agreements, although the cases involve organizations operating in interstate commerce. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

The Puerto Rico Labor Relations Board has exclusive jurisdiction to take cognizance of a complaint charging as an unfair practice the violation of a collective agreement. L.R.B. v. Metropolitan Bus Authority, 91 P.R.R. 484 (1964).

Only in the absence of the Labor Relations Board intervention — which is not the situation in this case — may the courts intervene in disputes which, though involving private interests,

are pertinent and relevant to the Board's remedial power for the protection of the public interest. L.R.B. v. Metropolitan Bus Authority, 91 P.R.R. 484 (1964).

Where a labor-management dispute over which the National Labor Relations Board can exercise jurisdiction does not substantially affect the interstate commerce in general, nor is the intervention of said Board required for the furtherance of its national ends and purposes, the Puerto Rico Labor Relations Board—and this Court—may intervene and exercise jurisdiction. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

Where it is evident or it may fairly be presumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8 of said statute, the due recognition of the federal enactment requires that state jurisdiction must yield. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

State regulation of labor-management activities has been accepted when said regulation refers to an activity of merely peripheral concern of the National Labor Relations Act, or when the regulated conduct touches interests so deeply rooted in local feeling—especially when the activity involves the use of violence or is of a criminal nature—that in the absence of compelling congressional direction, it cannot be inferred that Congress has deprived the States of the power to act. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

In this jurisdiction the proper forum to compel compliance with the obligations contracted under a collective agreement is the State Labor Relations Board, by declaring that the violation of agreements by the employer as well as by the employee constitutes an unfair practice. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

Puerto Rico Labor Relations Act removed from the action of the courts the performance of collective agreements, although it reserved the field of litigation in matter of damages for the violation thereof. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

When the field of violation of collective agreements is not regulated by the Taft-Hartley Act, 29 U.S.C. ch. 7, as it is by this subchapter, there is no question whatsoever of jurisdiction of the National Board, whether exclusive or not, to grant any remedy whatsoever to prevent a violation of the contract. The jurisdiction to grant a remedy against said violation — that of exacting the compliance of the obligations under the contract — rests with the Insular Board and not with the National Board, which has no power — under the federal act to grant such remedy and is not affected by § 10(a) of the federal act, 29 U.S.C. § 160(a). L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

The Insular Labor Relations Board has jurisdiction only where: (1) the employer commits an unfair labor practice or engages in some other conduct not listed in the federal act, Taft-Hartley Act, 29 U.S.C. ch. 7, but included in this subchapter; (2) the business of the employer is exempt under the federal act but is subject to this subchapter, i.e., agriculture and government corporations; (3) the National Board cedes jurisdiction to the Insular Board pursuant to the Taft-Hartley Act, but the instant case does not fit into any of these three categories. Asoc. Empl. Bayamón Transit v. Labor Relations Board, 70 P.R.R. 273 (1949).

In the instant case, all the factors which lead some State Boards to exercise concurrent jurisdiction with the National Board are present, and under those circumstances this court assumes, without deciding, that while the Wagner Act was in effect, the Insular Board had jurisdiction to enter said order. Asoc. Empl. Bayamón Transit v. Labor Relations Board, 70 P.R.R. 273 (1949).

4. —**Conflict.** Purpose of constitutional principles on preemption theory is avoiding conflicting regulations of different administrative agencies with jurisdiction over specific subject matter. This reaffirmed norm responds to U.S. Congress' interest in avoiding possible conflicts in construction, implementation and administration of uniform labor policy. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

The decision of an arbitrator as to whether or not an employee was duly suspended temporarily from employment and wages is not binding to the Labor Relations Board when said Board considers whether the union to which he belongs incurred an unfair labor practice by going on strike because he had been disciplined, without exhausting before the proceedings provided for those cases by the collective bargaining agreement which governed the labor-management relations between it and its employer. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

This Court is not bound to decide whether the federal labor law or the local law should be applied, when as to the unfair practice charged, both laws coincide. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

The Puerto Rico Labor Relations Board should prevent clashes or conflicts of authority with the National Labor Relations board by applying a good discernment. P.R. Telephone Co. v. L.R.B., 92 P.R.R. 247 (1965).

Irrespective of the grounds at law explained in the opinion and which justify the exercise of jurisdiction by the Puerto Rico Labor Relations Board in this case, the National Board would not exercise jurisdiction therein since this is an employer operating a private hospital. L.R.B. v. Milares Realty Inc., 90 P.R.R. 821 (1964).

The Labor Relations Board of Puerto Rico, upon determining whether an employer not engaged in retail or retailers business has an annual outflow or inflow of interstate commerce of at least $50,000, whether that annual outflow or inflow is direct or indirect—in which case, if it is less than $50,000, the National Labor Relations Board does not intervene, and then our Board has jurisdiction—said Board cannot make a distinction, for the purpose of determining said amount, that certain articles and equipment acquired by the employer are capital investments, the cost of which cannot be considered in determining the total amount of said annual outflow or inflow. L.R.B. v. Milares Realty Inc., 90 P.R.R. 821 (1964).

The general jurisdictional rule of the Labor Relations Board invoked in the preceding headnote has been produced in terms of a whole group of employers and not of one in particular, and the same covers such employers who although not retailers, generally and usually are engaged in the interstate commerce with an annual volume of business of at least $50,000. L.R.B. v. Milares Realty Inc., 90 P.R.R. 821 (1964).

Having examined the evidence in this case, the Court concludes that the facts raised before the State Labor Relations Board are different from the facts raised before the National Labor Relations Board, for which reason there is no jurisdictional conflict between both administrative agencies. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

In order that the state jurisdiction may yield in labor-management activities, it is necessary that the activity be protected by § 7 or that it constitute an unfair practice as defined in § 8 of the National Labor Relations Act. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

The exclusive jurisdiction of the National Labor Relations Board is limited under the very terms of the Taft-Hartley Act, 29 U.S.C. ch. 7, to the scope of unfair labor practices stated in said act, and this being so the jurisdictional conflict that could arise from laws or actions of territorial boards in the field of labor management depends on the field that Congress may have covered in the exercise of its powers. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

The Insular Labor Relations Board may forbid that over which this subchapter was given power and over which none was granted to the National Board under the Taft-Hartley Act, 29 U.S.C. ch. 7, and there can be no conflict between this subchapter and federal act when regulation, in either jurisdiction, does not hinge on the same unfair labor practice, as the latter is statutorily defined. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

The Insular Board has power to forbid unfair labor practice—violation of a collective agreement—because said field is not occupied by the federal act. Insofar as this violation is

forbidden as a question of public policy by the Insular Legislature, it not only does not conflict with that of Congress under the Taft-Hartley Act, 29 U.S.C. ch. 7, but rather has as a starting point the place where the federal act failed to set forth the policy of Congress regarding violations of contracts. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

While the petition herein for review of the order of the Insular Board was pending, the Taft-Hartley Act, 29 U.S.C. ch. 7, became effective, and under § 10(a) of that act, 29 U.S.C. § 160(a), where an employer is subject to the act, the jurisdiction of the National Board as to unfair labor practices covered by the federal act is exclusive, and a state or Territorial Board may obtain jurisdiction thereof only if the National Board cedes jurisdiction pursuant to § 10(a); consequently, no local Board may now hear such cases without a cession of jurisdiction, merely because the National Board has not assumed jurisdiction and this subchapter is not in conflict with the Taft-Hartley Act as to the problem under consideration in the particular case. Asociacion Empl. Bayamon Transit v. L.R.B., 70 P.R.R. 273 (1949).

5. Exhaustion of contractual remedies, doctrine of. Labor Relations Board has adopted doctrine of exhaustion of administrative remedies. This means that, before parties file a complaint with the Board, all remedies provided in the collective bargaining agreement for resolution of the dispute should be exhausted. Otherwise, the Board will refuse jurisdiction unless said exhaustion would be a futile and empty gesture, or impossible, or the union is not complying with its obligation to provide fair representation. Martínez Rodríguez v. A.E.E., 133 D.P.R. 986 (1993).

The rule of exhaustion of arbitration does not apply in cases involving the Constitution. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

Although the Labor Relations Board has exclusive jurisdiction in cases of unlawful labor practices, said Board has adopted the doctrine of exhaustion of contractual remedies. Vega Colón v. Corporación Azucarera, 123 D.P.R. 859 (1989).

For purposes of determining Labor Relations Board jurisdiction over case, refusal of said Board to intervene in cases of violation of labor agreements when parties have not exhausted remedies provided by said documents to solve their problems is known as "doctrine of exhaustion of contractual remedies". L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

Notwithstanding its primary and exclusive jurisdiction over cases involving unfair labor practices, Labor Relations Board has adopted doctrine of exhaustion of contractual remedies. L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

As an exception and under extraordinary circumstances, Labor Relations Board may abandon its "exhaustion of contractual remedies doctrine" and assume primary jurisdiction over case when: (a) collective bargaining agreement itself makes utilization of remedies therein provided to solve grievances discretional or optional; (b) when respondent party does not allege, raise or prove at hearing that complaining party of grievance did not exhaust remedies provided by collective bargaining contract; (c) union violates contractual provisions—illegal strike—in protest for employer violation of collective bargaining contract; (d) either party has ignored demands from other side to submit grievances to Grievance Committee, (e) after controversy for violation of collective bargaining agreement by employer is presented to Grievance Committee integrated by four members, two representatives of each side, and said Committee reaches an impasse on solution of controversy and appointment of Fifth Member. L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

Labor Relations Board is authorized to discard doctrine of exhaustion of contractual remedies and to assume primary jurisdiction over labor controversy where neither employer nor employees nor union makes any effort to implement remedies for grievances provided by contract, rather they deal informally with controversies among them following established practice. L.R.B. v. A.A.C.A., 107 D.P.R. 84 (1978).

6. Piercing the corporate veil, doctrine of. The doctrine of piercing the corporate veil (alter ego) in the area of labor law is used when a corporation takes control of another entity which then usually disappears and when it is shown that the change in management was for unlawful purposes, would constitute a violation of public policy, and an injustice or fraud would be perpetrated thereby, or an obligation (in most cases a collective bargaining agreement) would not be fulfilled. The analysis under this doctrine requires a demonstration of the purposes or intentions to commit unlawful acts. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

By preventing employees from being left without remedies after corporate reorganizations, the doctrines of piercing the corporate veil and successorship protect important values: industrial peace, the right to collective bargaining and the employer's right to property. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

The doctrine of sole employer is generally used when dealing with co-existing companies, while the doctrines of piercing the corporate veil (alter ego) and successorship are utilized when one company substitutes for another. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

The doctrines of piercing the corporate veil (alter ego) and successorship have been adopted by the Supreme Court of Puerto Rico. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

7. Doctrine of successorship. The doctrine of successorship is used when there is a sale or transfer of shares or reorganization of a business, even though the employer has expressed no hostility against the union and there is no continuity of financial interest or managerial control. What is required is a substantial similarity in the operation of the business before and after the change; the new entity, in these circumstances and according to the doctrine of successorship, can be held responsible for the obligations to labor of its predecessor. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

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Doctrine of sole employer is generally used when dealing with coexisting companies, while the doctrines of piercing the corporate veil (alter ego) and successorship are utilized when one company substitutes for another. J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986).

8. Doctrine of sole employer. The doctrine of sole employer applies when two or more employers meet the following criteria: (1) interrelated operations; (2) centralized control of labor relations; (3) a common administration; and (4) common property. None of these is determining and it is not necessary that all of them occur. Whether several entities can or cannot be considered a sole employer depends upon the analysis of all the circumstances of the case. The most important thing is to determine whether a general control of the critical matters exists at the labor policy levels of the companies. J.R.T. v. Asoc. C. Plaza Azul I, 117 D.P.R. 20 (1986).

The doctrine of sole employer is generally used when dealing with co-existing companies, while the doctrines of piercing the corporate veil (alter ego) and successorship are utilized when one company substitutes for another. J.R.T. v. Asoc. C. Plaza Azul I, 117 D.P.R. 20 (1986).

§ 69. Unfair labor practices—Defined and enumerated

(1) It shall be an unfair labor practice for an employer acting individually or in concert with others:

(a) To interfere with, restrain or exercise coercion upon, or to attempt to interfere with, restrain or exercise coercion upon his employees in the exercise of the rights guaranteed in § 65 of this title.

(b) To initiate, create, establish, dominate, interfere with or attempt to initiate, create, establish, dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to the same; Provided, That an employer shall not be prohibited from deducting any sum of money from the salary, earnings or income of an employee for the payment of dues to a labor organization when such deduction is required by the terms of a collective bargaining contract entered into between the employer and a labor organization not established, maintained or supported by any action defined in this subchapter as an unfair labor practice, if such labor organization represents a majority of his employees as provided for by § 66(1) of this title in an appropriate unit covered by such contract.

(c) To encourage, discourage or attempt to encourage or discourage membership in any labor organization by discrimination in regard to hiring, firing, or in connection with the tenure or other terms or conditions of employment, including a lockout; Provided, That nothing herein contained prohibits an employer from making an all-union shop contract or a maintenance of membership agreement with any labor organization that has not been established, maintained or assisted by any action defined in this subchapter as an unfair labor practice, if such labor organization represents a majority of the employees in an appropriate unit with authority for collective bargaining.

(d) To refuse to bargain collectively with the representative of a majority of his employees in a unit appropriate for collective bargaining, subject to the provisions of § 66 of this title. For purposes of the collective bargaining, subcontracting shall be considered a mandatory issue for negotiation.

(e) To bargain or make a collective bargaining contract with a representative for the purpose of collective bargaining who does not represent a majority of the employees in a unit appropriate for collective bargaining.

(f) To violate the terms of a collective bargaining contract, including an agreement to accept an arbitration award whether the same is or is not included in a collective bargaining contract; Provided, however, That the Board may dismiss any charge in which there is alleged a violation of this subsection, if the union that is party to the contract is guilty of a current breach of the contract or has not complied with an order of the Board concerning any unfair labor practice as provided by this subchapter.

(g) To fail to maintain a neutral position before or during any election for the purpose of determining the representative for collective bargaining of his employees, by interfering with or attempting to influence his employees by making such statements or remarks, and engaging in such conduct as tend to coerce, restrain, discourage or hinder the free exercise by his employees of their right to select a representative for the purpose of collective bargaining according to the provisions of this subchapter.

(h) To discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony under the provisions of this subchapter.

(i) Fail to employ or reinstate to his former position, or, in the event of its nonexistence, to a substantially equivalent position, an employee who has been discharged in violation of subsection (2)(b) of this section.

(j) To discharge or otherwise discriminate against a supervisor because he refuses to assist, participate in or in any other manner engage, directly or indirectly, in activities on behalf of an employer in the commission of an unfair labor practice as defined in this subchapter.

(k) To stop or indicate the intention to stop the payments for the medical plans and insurance of the employees and their dependents while a new collective bargaining agreement is being negotiated or during a strike, provided there has been a prior written request by the union that represents the employees for the employer to continue said payments.

Provided, That if during the process of negotiating a new medical plan or to extend the one in effect the premiums fixed by the insurers increase, the employer shall not be bound to include the increase in his payments until the union or the workers agree to defray the difference in the cost of their contributions, if any, until the new agreement is signed.

(2) It shall be an unfair labor practice for a labor organization acting individually or in concert with others:

(a) To violate the terms of a collective bargaining contract including an agreement to accept an arbitration award whether the same is or is not included in a collective bargaining contract; Provided, however, That the Board may dismiss any charge in which there is alleged a violation of this subsection if the employer that is a party to the contract is guilty either of a current breach of the contract or has not complied with an order of the Board concerning any unfair labor practice as provided by this subchapter.

(b) To unjustifiably exclude or suspend from the membership of a labor organization any employee in a collective bargaining unit on whose behalf the labor organization has executed an all-union or maintenance of membership agreement. For violation of this subsection, the Board may, in its discretion, order the temporary suspension or the permanent termina-

tion of such clause of the collective bargaining contract that requires all the employees in said bargaining unit, as a condition of employment, to belong to one sole labor organization or that the members of said organization maintain themselves in good standing as members of the same during the life of the contract.—May 8, 1945, No. 130, p. 406, § 8; Mar. 7, 1946, No. 6, p. 18, § 1; June 22, 1965, No. 68, p. 139; July 15, 1988, No. 97, p. 402.

HISTORY

Amendments—1988.

Subsection (1): Act 1988 added clause (k) to this subsection.

—1965.

Subsection (1): Act 1965 added a second sentence to clause (d) of this subsection.

—1946.

Act 1946 amended this section generally.

Statement of motives.

See Laws of Puerto Rico:

June 22, 1965, No. 68, p. 139.

July 15, 1988, No. 97, p. 402.

ANNOTATIONS

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1. **Generally.** In a worker-employer controversy, the Board of Labor Relations has exclusive jurisdiction over said matters which the law has expressly conferred upon it, because the lawsuit charged an illegal work practice over which the court of instance did not have jurisdiction to issue the requested injunction. Plan de Salud v. A. A. A., 169 D.P.R. —; 2006 TSPR 178 (2006).

To promote, propitiate, and safeguard the industrial peace is a public purpose of vital importance in this jurisdiction. Volkswagen de Puerto Rico v. L.R.B. of P.R. 331 F. Supp. 1043 (1970), affirmed 454 F.2d 38 (1972); Buena Vista Dairy, Inc. v. L.R.B., 94 P.R.R. 596 (1967); Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

To establish a violation of this section, it must be shown, by substantial evidence, that: (a) the employer had knowledge or knew that the discharged employee was engaged in some activity protected by law; (b) that the employee was discharged because of his participation in union activities, and (c) that the discharge had the effect of encouraging or discouraging membership in a labor organization. L.R.B. v. Bankers Club of P.R., Inc., 94 P.R.R. 573 (1967).

A worker cannot pretend to avail himself of certain clauses of a collective agreement and reject others. Rivera v. Land Authority, 83 P.R.R. 251 (1961).

The Legislative Assembly of Puerto Rico has the right, in exercising its police power, to regulate the practice of collective bargaining as an illicit work practice. P.R. Telephone v. J.R.T., 86 D.P.R. 382 (1962); J.R.T. v. I.L.A., 73 D.P.R. 616 (1952).

Except when Congress has legislated to cover the entire field, states and territories are free to characterize any wrong on the part of employers or employees, whether statutorily created or known to the common law, as an unfair labor practice. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

Provision of subsection (1)(d) of this section requiring employer to bargain collectively with the representative of a majority of his employees, does not give employers the right to inquire into the internal affairs of the union, and that provision refers ordinarily to a union which represents the employees, and not to the identity of the officers or bargaining committee of the union. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

2. **Unfair labor practices—Seniority.** Under the "seniority" clause of the collective bargaining agreement in the case at bar, the Court concludes that the petitioner employer was bound to: (a) determine the seniority of the employees within the department where the discharge was going to be made; (b) to evaluate the efficiency of the employee who was going to be discharged vis-à-vis the efficiency of the other employees of the department and, (c) to proceed to discharge that employee of the department who was the least efficient. If it turned out that there was one or more employees who were equally efficient, the one having less time would be discharged. González Padín Co., Inc. v. L.R.B., 103 D.P.R. 302 (1975).

3. **—Promotion.** Appointment of higher rank employee to fill vacant position—when opening should be covered by promotion—instead of appointing a lower rank employee, did not constitute unfair labor practice. S.I.F. v. L.R.B., 111 D.P.R. 520 (1981).

4. **—Duty of fair representation.** In cases of inadequate representation by the union, when it is alleged that the employer violated the collective bargaining agreement, for the suit against the union to succeed, it is necessary to show beforehand that the employer violated the agreement. Nevertheless it is not necessary to include the employer as a party in a suit against a union for failing its duty of representation. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

The union's duty of fair representation is not fulfilled merely by obtaining a favorable judgment for those it represents, but also by diligently and vigorously making the judgment a reality. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

After an award was unsuccessfully contested before the Superior Court and other proceedings between the employer and the union before the Labor Relations Board ended in

failure to enforce compliance with the award, the union was obligated under its duty of fair representation to resort to Superior Court to have the employer declared in contempt. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

The duty of fair representation does not require a union to pursue every employees' complaint, but it does require that once the mechanism of complaints and grievances has commenced the union should not process the complaint in a perfunctory, hostile or arbitrary manner. The duty of fair representation is intended to encompass a reasonable, diligent and responsible representation. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

Duty of fair representation of labor union is essentially fulfilled by providing services in good faith, without discrimination or arbitrariness, to all its members. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

Request by union that employer exclude from the labor unit certain workers without informing them or allowing them to be part in proceedings violated duty of fair representation. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

Duty of fair representation is case law holding that any labor union should serve in good faith, without any discrimination or arbitrary act, the interest of all its members. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Labor union has a large degree of discretion to decide which grievances should be processed and taken to binding arbitration. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Labor union cannot intentionally, arbitrarily, capriciously or discriminatingly dismiss a grievance. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Labor union which refused to take to binding arbitration grievance from member against employer after due consideration, in the proper use of discretion, without intervention of fraud or bad faith, did not violate duty of fair representation. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Opinion of Labor Relations Board in this jurisdiction is not valid to determine whether union did fulfill or not duty of fair representation, and said Board should be bound by the norms stated in Vaca v. Sipes, 389 U.S. 171 (1967). L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Differences of opinion regarding merits of grievance filed by employee against employer is not sufficient grounds to determine violation of duty of fair representation by labor union. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Where labor union incurred in error of judgment regarding merits of grievance filed by member against employer, having acted in its trust relationship on that grievance dismisses any possibility of violation of duty of fair representation. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Where labor union represented member in proceedings for the adjudication of grievance against employer, without due diligence or proper defense, duty of fair representation was violated. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

Fact that grievance filed by union member against employer had no precedence, and that compensation requested had never been raised before, did not constitute valid defense for union against liability for violation of duty of fair representation. L.R.B. v. U.T.I.G., 110 D.P.R. 237 (1980).

5. —**Withholdings from employees.** Withholding by employer of dues for union which no longer represents workers constituted unfair labor practice. L.R.B. v. W.R.A., 108 D.P.R. 818 (1979).

6. —**Strike.** The limitations to the constitutional right to strike agreed upon by the contracting parties in a collective bargaining agreement are valid. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

A union which calls a strike because of a dispute which is subject to the grievance procedure agreed upon in the collective bargaining agreement, violates said agreement and, therefore, said union incurs an unfair labor practice even if the collective bargaining agreement does not contain an express no-strike clause. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

A union is not entitled to call a strike against its employer in violation of a no-strike clause in its collective agreement, when the purpose of said strike is to obtain economic benefits—in this case the union's contention that a certain change in the method for harvesting tomatoes within an incentive system to increase the yield in production—was prejudicial to some of its affiliates. L.R.B. v. Union Local 847, 91 P.R.R. 750 (1965).

When workmen declare a work stoppage in violation of a no-strike clause in the collective agreement executed with their employer—alleging that the latter uses a machine for cutting cane and that he has refused to negotiate the use thereof—after the stoppage has taken place the employer is not obligated to negotiate the use of that machine, particularly when the stoppage was not the result of and in protest against employer's unfair labor practice involving the use of the machine for cutting cane nor against its justified refusal to negotiate such use. Luce & Co. v. L.R.B., 86 P.R.R. 402 (1962).

The violation of a no-strike clause in a collective agreement is an unfair labor practice under this subchapter, over which the Insular Board may act and supply a remedy, notwithstanding that the means to carry out the violation of an agreement constitutes an unfair labor practice under the Taft-Hartley Act, 29 U.S.C. ch. 7. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

It is an unfair labor practice under this subchapter to call a strike, when by the very will and determination of the union it bound itself in a collective bargaining agreement, not to resort to strike during the existence of the agreement, and since said strike is neither prohibited nor authorized by the Taft-Hartley Act, 29 U.S.C. ch. 7, the state or territory may, in the exercise of its police power, legislate on the matter and offer reliefs against it. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

7. —**Intervention, restriction or coercion.** Labor Relations Board did not err in concluding that the employer in this case violated subsection (1)(a) of this section in threatening its employees during their examination by express or implied threats of reprisals, coercing and intimidating said employees in the exercise of their right to organize themselves into a union of their own choosing. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

The Court, after examining the evidence in the case at bar, concludes that the employer exercised coercion upon its employees in the exercise by the latter of the rights guaranteed in § 65 of this title, said employer committing an unfair labor practice within the meaning of subsection (1)(a) of this section. L.R.B. v. Banker's Club of P.R., Inc., 94 P.R.R. 573 (1967).

Although expressions of opposition on the part of an employer to an outside union and his indication of preference for another, by themselves, do not constitute acts of coercion upon its employees in the exercise of their rights to organize among themselves and join labor unions, or in other way constitute a violation of subsection (1)(a) of this section, when said acts are considered in conjunction with others showing the purpose of said employer of supporting and dominating a union, such behavior constitutes a violation of said section. L.R.B. v. Banker's Club of P.R., Inc., 94 P.R.R. 573 (1967).

Although it is true that the fact that an employer questions an employee about union activities does not constitute a violation of the Puerto Rico Labor Relations Act, said activity violates the statute in question when it is accompanied—as in the case at bar—by threats and reprisals, express or implied, on the part of said employer upon his employees. L.R.B. v. Banker's Club of P.R., Inc., 94 P.R.R. 573 (1967).

It is an unfair labor practice for an employer to interfere with, restrain, exercise coercion upon, or attempt to interfere with, restrain, or exercise coercion upon, his employees in the

exercise of their right to bargain collectively or engage in activities for other mutual aid or protection. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

For the purposes of determining whether an employer interfered with, restrained or exercised coercion upon the concerted activities of his employees, it is immaterial whether the employer believed in good faith, when he discriminated against the employee, that the latter was not engaged in a concerted activity to which reference is made in the Labor Relations Act. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

The joint action of two employees in taking steps with the Department of Labor to claim from an employer compensation for extra hours and seventh days worked constitutes a concerted activity covered by the Labor Relations Act, and if at the time of proceeding against both employees the employer knew of the above-mentioned joint action—as in this case—he is guilty of engaging in an unfair labor practice. L.R.B. v. Morales, 89 P.R.R. 760 (1964).

8. **—Refusal to negotiate.** In the absence of evidence of discrimination an impasse in negotiations does not necessarily signify bad faith. J.R.T. v. Velázquez, 126 D.P.R. 645 (1990).

It constitutes unfair labor practice on the part of an employer to refuse to negotiate with a certified union, on the basis that a labor-management relationship does not exist between employer and employees because the latter are "independent contractors" and not employees of the company, when, by virtue of a consent election signed by the employer with the union — providing that the determinations of the Official Examiner would be final — said official determined that said alleged "independent contractors" constituted the appropriate unit, in the absence of evidence that the examiner acted arbitrarily, capriciously or contrary to the policy of the Board or of the Labor Relations Act. L.R.B. v. Manhattan Taxi Cabs Corp., 92 P.R.R. 422 (1965).

An employer who deprives a union of its freedom to negotiate a collective agreement—through the employment of dilatory tactics to refuse to discuss the agreement, letting the crop season come to an end without negotiating it—may not invoke the free character of collective bargaining whenever the Board issues an order requiring him to bargain collectively with the union of his employees, and requiring him affirmatively to give retroactive effect to any agreement subscribed by him to a period prior to the date of such order. L.R.B. v. Ceide, 89 P.R.R. 659 (1963).

Refusal of employer to negotiate a plain and clear clause regarding its scope, contents and meaning did not constitute unfair labor practice. Luce & Co. v. L.R.B., 86 P.R.R. 402 (1962).

Refusal to negotiate changes in working schedule proposed by employer, when counterpart alleged reasons to oppose them are that circumstances justifying them pursuant to collective agreement have not arisen yet, did not constitute unfair labor practice. Luce & Co. v. L.R.B., 86 P.R.R. 402 (1962).

9. **—Refusal to hire.** Evidence that on particular day there was work available on respondent's farm, that several applicants were hired, and that respondent's former employees, who were qualified for work for which other laborers were hired on that day, were rejected, is sufficient to show that respondent was engaged in unfair labor practice charged by employing other laborers in place of those rejected. L.R.B. v. Acevedo, 78 P.R.R. 515 (1955).

In order to establish violation of subsection (1)(c) of this section for discriminatory refusal to hire it is not necessary to prove that laborer allegedly discriminated against had been previously hired by employer. L.R.B. v. Acevedo, 78 P.R.R. 515 (1955).

10. **—Withholding of payments.** It constitutes an unfair labor practice by an employer to fail to deliver—at the end of a grinding season—contributions to a union with which it signed a collective agreement according to which it agreed to pay to a Welfare Retirement Fund, such action not being justified by the fact that it deposited said amount in court, because there were

conflicting claims between two unions on the amount of money deposited. Comminuted Agrícola Bianchi v. L.R.B., 92 P.R.R. 665 (1965).

11. —Suspension or discharge of employees. In cases of discharge arbitrators have generally held that the burden to prove good cause falls on the employer since this justification is an affirmative defense. J.R.T. v. Hato Rey Psychiatric Hospital, 119 D.P.R. 62 (1987).

In cases of discharge, as in other cases involving disciplinary actions, it is the employer who, ordinarily, is in control and possession of all information necessary to resolve the issue. J.R.T. v. Hato Rey Psychiatric Hospital, 119 D.P.R. 62 (1987).

Employer cannot utilize mechanism of creating indefinite openings to be filled with temporary personnel in order to eliminate workers of contracting unit when that practice violates collective bargaining agreement. L.R.B. v. Communications Authority, 108 D.P.R. 776 (1979).

There are no provisions in this jurisdiction other than penal and compensatory ones of the Puerto Rico Labor Relations Act, granting remedies for dismissed employee, or punishing employer for violations of right of employee to become organized in order to improve his working conditions; however, as an exception, civil liability of employer is recognized for monetary damages suffered by employee suspended from work due to affiliation with certain political party. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

Due to absence of all legal provisions to that effect, courts in Puerto Rico cannot award compensation for mental anguish and suffering of employee hired for undetermined period of time and of his family, resulting from dismissal in violation of §§ 7 and 8 of Federal Labor Relations Act—unfair labor practices of employer—after said employee had recovered all compensations awarded him by said statute, including salaries not collected while he was unfairly dismissed. Rivera v. Security Nat. Life Ins. Co., 106 D.P.R. 517 (1977).

Labor union delegate may be discharged by employer, for such condition neither gives additional rights to nor takes them from such worker. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

Phrase "just cause to suspend or discharge an employee" used in collective labor agreement means "excluding discharge for mere whims or caprice, but including right to discharge for reasons such as theft, repeated absence and tardiness, destruction of company property, fighting and similar situations." S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

There is no practical utility whatsoever in that under color of public interest an employer be required by the Labor Relations Board to reinstate an employee against the latter's will. Nothing is gained either by forcing the employer to pay more than what it was agreed in compromise with the worker for wages he would have earned had he not been dismissed, particularly if there are special circumstances involved. Ponce Gas Service Corp v. L.R.B., 104 D.P.R. 698 (1976).

The Puerto Rico Labor Relations Act does not compel employers to employ anyone, or to retain an incompetent employee, nor does it interfere with the right to discharge any employee for any cause deemed proper by the employer, except for union activity or for advocacy of collective bargaining. L.R.B. v. Banker's Club of P.R. Inc., 94 P.R.R. 573 (1967).

A finding that the discharge of an employer is discriminatory cannot be sustained by speculation drawn from the flimsy evidence that the company knew of his union activity. L.R.B. v. Banker's Club of P.R. Inc., 94 P.R.R. 573 (1967).

The Puerto Rico Labor Relations Board has jurisdiction in cases of violations of collective bargaining agreements even when the parties have not exhausted the remedies provided by the agreement itself for the solution of such problems, when one of the parties establishes—as in the case at bar—that it has taken all the reasonable steps which could fairly be expected for the purpose of giving effect and culminating the grievance procedure established in the

collective bargaining agreement, but due to circumstances beyond his control it could not attain compliance with said procedure. L.R.B. v. McConnie, 94 P.R.R. 460 (1967).

Although the employer is bound to offer work or the lease of taxis to the drivers who were discharged, however, it is not bound to compensate said drivers for any loss in income they might have suffered due to the layoff—pecuniary penalty in retrospection highly speculative and unduly onerous—considering that each taxi driver did not receive a certain fixed wage, the compensation consisting of the sum of money he would produce over $8.50 or $10.50 in each period of twelve hours of leasing the vehicle. Commonwealth Transp. Co. v. L.R.B., 93 P.R.R. 96 (1966).

An employer who refuses to discuss before the corresponding Grievance Committee the right to salaries of an employee who was unjustifiedly suspended—power vested on the committee in the collective bargaining agreement signed by said employer and the union—violates the collective agreement signed and engages in an unfair labor practice. L.R.B. v. Caribbean Container Co., 89 P.R.R. 726 (1964).

An employer is entitled to discharge employees for good cause, or for no cause at all, including mere caprice, but not for union considerations, as the latter are discriminatory and violative of subsection (1)(c) of this section. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

An employer who has discharged employees under a union security clause must show that its conduct was protected by the proviso in subsection (1)(c) of this section in order to avoid the contention that the discharges were discriminatory and violative of said subsection (1)(c). Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

An employer's responsibility is greater under a maintenance of membership clause than under a closed shop or union shop clause; under the last two clauses, employer must at the request of the union discharge an employee who is not, or has ceased to be, a member of the union; under the first clause, employer may not discharge at such request unless he makes a reasonable investigation to determine if employee involved is covered by said clause, and where employee discharged without such an investigation is not within the clause, the discharge is discriminatory and violative of subsection (1)(c) of this section rather than within the proviso of said subsection (1)(c). Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

Where under a maintenance of membership collective bargaining agreement, a union requests the employer to discharge some employees and, without a reasonable investigation as to whether or not they were members of the union, the employer discharges them and it later appears that when said agreement was signed they were not members of the union and that thereafter they never joined it, the employer committed an unfair labor practice in violation of subsection (1)(c) of this section. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

An employer who has voluntarily signed a maintenance of membership collective bargaining agreement is bound thereby and cannot discharge an employee at the request of the union without previously making a reasonable investigation as to the status of the employee as member of the union. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

Where under a collective agreement the workman is entitled to request that his discharge by his employer be submitted to a grievance committee and instead of doing so he resorts to the courts requesting that he be reinstated in his employment and claiming damages, the employer is not bound to resort to any committee before defending himself in the courts if nothing in the collective agreement imposes on him the duty to do so. Cadilla v. Condado Beach Hotel, 70 P.R.R. 869 (1950).

The provision in a collective agreement by virtue of which the employer should give a trial for some time to employees sent by the union in order to make sure of their responsibility or skill in the work, merely foresees cases of employees whose work records are unknown to the employer; but when said work record is known and shows that on various occasions the

employee had been tried and found guilty of acts and conduct which speak unfavorably of his efficiency and behavior, the employer is not bound to let him prove his acceptability or inefficiency and it may or may not within the reasonable use of discretion, accept him. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

When under the terms of a collective agreement based on closed shop the employer is bound to suspend a laborer from work after the union has excluded said laborer from membership, upon the member being expelled by the union from membership, it is not the concern of the employer to investigate and decide whether said suspension ordered by the union was justified or not; the task is entrusted to the Labor Relations Board under subsection (2)(b) of this section. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

Where a workman, upon being expelled by his labor union and suspended from his employment by his employer, pursuant to a collective agreement requiring membership in the union as a condition of such employment, resorts to a Grievance and Adjustment Committee, constituted in accordance with the terms of that agreement, and said committee, after holding hearings with the appearance of the labor organization, which introduces evidence therein to justify its action, renders an award reversing the expulsion, such an award is valid, and the employer, as well as the labor organization, must abide by it. Ríos v. Puerto Rico Cement Corp., 66 P.R.R. 446 (1946).

12. —Terms of collective bargaining agreement, violation. In cases of violations of collective bargaining agreements and the duty of adequate representation there is concurrent jurisdiction in the federal and the local courts. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

Employer who reneges on his obligation to pay leave of absence for work-related accident during a strike did commit unfair labor practice. E.E.A. v. L.R.B., 113 D.P.R. 234 (1982).

The violation of a collective agreement constitutes, under Puerto Rican law, an unfair labor practice. L.R.B. v. A.C.A.A., 107 D.P.R. 84 (1978); L.R.B. v. Unión Local 847, 91 P.R.R. 750 (1965).

After examining the circumstances in the record of this case—in which two unions severally claimed from each one of their employers the payment of the fees deducted from their employees' wages, to each one, excluding the other—the Court concludes that it is not proper to find the employers guilty of an unfair labor practice for the violation of the agreements executed with their respective unions. Seafarers Int. Union of P.R. v. L.R.B., 94 P.R.R. 668 (1967).

Employer did not commit the unfair labor practice of refusing to appear before a Grievance Committee thus precluding said Committee from meeting to consider the controversy which gave rise to this case. Buena Vista Dairy, Inc. v. L.R.B., 94 P.R.R. 596 (1967).

Employer in this case did not violate the collective bargaining agreement signed with its employees' union. Hernández García v. L.R.B., 94 P.R.R. 21 (1967).

After examining the four collective bargaining agreements signed by the employer and his workers' unions, as well as the arbitration award on wages rendered in connection with the first one of said agreements—which was legally rendered, there being no legal ground to impeach it—the court concludes that the aforesaid arbitral determination is not binding as to the form and manner of computing the wage increases to certain workers agreed upon in the agreements subsequent to the first. United Steelworkers v. Paula Shoe Co., Inc., 93 P.R.R. 645 (1966).

Fact that violations of collective bargaining agreement terms do not constitute unfair labor practices under federal law does not bar Puerto Rico Labor Relations Board to have jurisdiction in these cases. El Mundo, Inc. v. L.R.B., 92 P.R.R. 814 (1965), *cert. denied* 384 U.S. 939 (1966).

An order of the Labor Relations Board charging the employer with the commission of an unfair labor practice—consisting in the employer refusing and continuing to refuse to participate in an arbitration proceeding with the union to which his employees belong—cannot be sustained when the evidence admitted at the hearing held before the Trial Examiner of the Board establishes that at no time did the parties reach an agreement on the submission of the question which was to be submitted to the arbitrator, an agreement which was suggested by the latter official. Ponce Ready Mix Co. v. L.R.B., 90 P.R.R. 399 (1964).

13. **Collective bargaining agreement—Generally.** Both federal and Puerto Rico law are applicable to collective bargaining agreements which order the resolution of conflicts according to the law of both jurisdictions. Dorado Beach Hotel v. Unión de Trabajadores, 959 F.2d 2 (1992).

An employer waived his right to claim preeminence of federal law over state law when the applicability of state law was not limited in the collective bargaining agreement. Dorado Beach Hotel v. Unión de Trabajadores, 959 F.2d 2 (1992).

Upon approving a version in English of a collective bargaining agreement which provided that version would apply in controversies litigated in federal courts, the union obligated itself to follow the terms of that version. Congreso de Uniones Indus. v. V.C.S. Nat'l Packing, 953 F.2d 1 (1992).

Where clause in collective bargaining agreement provided its automatic extension through subsequent years unless one of the parties would give the other written notice of desire to modify it at least six months prior to expiration, steps taken by union more than six months before expiration of said agreement in order to be certified by Labor Relations Board as new representative of employees of defendant tolled automatic extension clause of said agreement. L.R.B. v. W.R.A., 108 D.P.R. 818 (1979).

Notice required by clause of collective bargaining agreement in order to toll automatic extension, or amendments thereof, may be done not only by union but also by workers themselves. L.R.B. v. W.R.A., 108 D.P.R. 818 (1979).

Relinquishment by union of application for certification as representative of certain workers before Labor Relations Board without prejudice did not invalidate notice regarding nonrenewal of collective bargaining agreement. L.R.B. v. W.R.A., 108 D.P.R. 818 (1979).

Clause for automatic renewal of collective bargaining agreement stating "...and shall continue in force through subsequent years with all its premises..." did not hinder rights of workers to consider it expired and to hold new elections. L.R.B. v. W.R.A., 108 D.P.R. 818 (1979).

Provision in collective bargaining agreement whereby employer agrees not to freeze any position falling under contracting unit without notifying union regarding motivation for such freeze, and also recognizes right of union to request investigation and to file complaint in case of disagreement, takes into consideration legitimate interest of union in verifying merits of freeze and resorting to complaint procedure when freeze is considered unreasonable or arbitrary, and promotes harmony in labor relations, the main objective of collective bargaining. L.R.B. v. Communications Authority, 108 D.P.R. 776 (1979).

Clause of collective bargaining agreement providing for payment of Christmas bonus to employees in lieu of annual paid vacation time they are entitled to is valid, unless violation of Constitution or statute thereby is proved. Secretary of Labor v. Hull Dobbs Co., 107 D.P.R. 441 (1978).

The provisions of a collective bargaining agreement signed between the Puerto Rico Water Resources Authority and the U.T.I.E.R.—in force between July 1, 1967 and June 30, 1970—having been examined, established valid contractual obligation for the employees of said Authority to work in excess of the regular time schedule under certain circumstances. W.R.A. v. L.R.B., 101 D.P.R. 670 (1973).

Rights accrued during the effectiveness of a collective bargaining agreement outlive the date of its expiration. Servicios Médicos Hosp. v. L.R.B., 98 P.R.R. 103 (1969).

In the analysis of the clauses of a collective bargaining agreement this Court shall not favor such interpretation whose practical effect would result in that the parties would have incorporated to the agreement a completely inoperative provision. Servicios Médicos Hosp. v. L.R.B., 98 P.R.R. 103 (1969).

Under the provisions of a clause of a collective bargaining agreement which provides that an employee shall be entitled to "twenty-three-calendar-day annual vacations with full pay," and after the intention of the parties has been determined, as well as the circumstances under which the clause was made, the employer is not bound to pay to each one of his workers the full pay for each one of said days, but he is only bound to pay for each working day—excluding Saturdays, Sundays, and holidays—included in said period of twenty-three days. Medina v. P.R. Telephone Co., 96 P.R.R. 717 (1968).

After interpreting correctly the collective bargaining agreements applicable in the case at bar, provisions thereof do not compel the employer to pay immediately to the employee claimant, herein, the wage earned by an employee in charge of a kitchen, who was substituted in said position by said claimant. Rodríguez v. Caribe Hilton Hotel Corp., 94 P.R.R. 646 (1967).

In the absence of an express provision in a collective bargaining agreement limiting the term to submit a problem to the Grievance Committee to a definite number of days, said term must be a reasonable one. Buena Vista Dairy, Inc. v. L.R.B., 94 P.R.R. 596 (1967).

A term of six months—counted as of the date when the term for the discussion of a matter by the union and the employer expired—is unreasonable for a union to appeal to a Grievance Committee from a unilateral determination of the employer refusing to agree to the petition of the union, in the absence of an express agreement as to said term in the corresponding collective bargaining agreement. Buena Vista Dairy, Inc. v. L.R.B., 94 P.R.R. 596 (1967).

The mere fact that the National Labor Relations Board—where a collective bargaining agreement exists between the employer and the worker's union—certifies a new union as representative of said workers does not automatically rescind the existing agreement upon said Board certifying the new union representative of the workers. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

A collective agreement of unreasonable long duration is not a bar to an election among the workers of an employer or to a bargaining of a new collective agreement. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

An existing collective agreement between an enterprise and its workers is not automatically abolished by the mere fact of a replacement of an employer by another, or of a representative of the workers by another. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

There exists a labor-management relation between the parties—a taxi enterprise and the drivers who drove its vehicles under lease contracts—when an employer signs along with a union a stipulation to govern part of their labor relations of the nature and with the effects of a collective bargaining agreement. Commonwealth Transp. Co. v. L.R.B., 93 P.R.R. 96 (1966).

The prospective ruling established in *Pérez v. Water Resources Authority, 87 P.R.R. 110 (1963)*, is not applicable to a claim under § 14 of Act No. 379 of May 15, 1948—as amended by Act No. 121 of June 27, 1961—which provides for the compensation at double rate for work performed during mealtime, when said right does not arise from a collective agreement but from said act, even though it is an enterprise covered by the federal legislation of Fair Labor Standards. Martínez v. Commonwealth Oil Ref. Co., Inc., 92 P.R.R. 673 (1965), *cert. denied*, 383 U.S. 936 (1966).

The prospective ruling established in *Pérez v. Water Resources Authority, 87 P.R.R. 110 (1963)*—to the effect that when by a collective agreement there is established a mechanism to

deal with grievances and compulsory arbitration of disputes, the claim arising pursuant to said agreements shall not be elucidated directly in the courts without utilizing said mechanism—is applicable without distinction to enterprises covered by the labor laws of Puerto Rico and to those covered by the Federal Fair Labor Standards Act. Martínez v. Commonwealth Oil Ref. Co., Inc., 92 P.R.R. 673 (1965), *cert. denied*, 383 U.S. 936 (1966).

The remedy of judicial deposit of certain amount of money by an employer, without any proceeding before the Labor Relations Board, is appropriate only when the conflicting claims by two unions over the money deposited arise from the same collective agreement but not from two different agreements. Comminuted Agrícola Bianchi v. L.R.B., 92 P.R.R. 665 (1965).

An agreement for a consent election is a contract between the employer and the union and unless otherwise contrary to law it is binding upon the parties thereto according to its terms. L.R.B. v. Manhattan Taxi Cabs Corp., 92 P.R.R. 422 (1965).

The expiration of a collective agreement does not have the effect of putting an end to the procedures for arbitration initiated while said agreement was in force. L.R.B. v. P.R. Telephone Co., 91 P.R.R. 883 (1965).

Inasmuch as the compensation fixed by collective bargaining for government personnel is not exempted from the provisions of Act Mar. 7, 1951, No. 9, former §§ 679–684 of Title 3, said compensation must be determined pursuant to the provisions of said act. 1965 Op. Sec. Jus. No. 23.

A valid collective agreement binds an employer as well as a union and its members individually. Rivera v. Land Authority, 83 P.R.R. 251 (1961).

Under a closed shop clause a man seeking a job must be a union member before he can be hired and he must remain such for the duration of the contract; under a union shop clause the employer retains the right to employ any one he wishes, whether or not he is a member of the union, but the employees are required to join the union within a certain time and thereafter to remain such for the duration of the contract; under a maintenance of membership clause an employee need not be a member of the union at the time the contract is signed, and he is not obliged to join the union to retain his employment; under this clause the only requirement is that if an employee is a member of the union on a certain date after the agreement is executed or thereafter joins it, he must remain such for the duration of the contract. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

14. —**Strike provisions.** Where a collective bargaining agreement is invalidated by the National Labor Relations Board as to a closed-shop clause contained therein and as to the obligations contracted thereunder, the inclusion of such a clause in the collective agreement does not invalidate the whole agreement and hence does not affect the no-strike clause also contained therein. L.R.B. v. I.L.A., 76 P.R.R. 777 (1954).

Where a collective bargaining agreement is signed in which the right to strike is waived, a strike called in violation of said agreement is illegal; said strike is neither protected nor prohibited by the Taft-Harley Act, 29 U.S.C. ch. 7, which although it recognizes the right to strike—provided it is a lawful strike—does not operate to legalize a strike in violation of a collective bargaining agreement even though it be adopted pursuant to the federal act. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

It is an unfair labor practice under this subchapter to call a strike, when by the very will and determination of the union it bound itself in a collective bargaining agreement, not to resort to strike during the existence of the agreement and, since said strike is neither prohibited nor authorized by the Taft-Hartley Act, 29 U.S.C. ch. 7, the state or territory may, in the exercise of its police power, legislate on the matter and offer reliefs against it. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

The violation of a no-strike clause in a collective agreement is an unfair labor practice under this subchapter, over which the Insular Board may act and supply a remedy, notwithstanding

that the means to carry out the violation of an agreement constitutes an unfair labor practice under the Taft-Hartley Act, 29 U.S.C. ch. 7. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

15. —Substitution of parties. For the purpose of determining the continuity and identity of a succeeding employer—in order to decide whether the latter assumes the obligations contracted by virtue of a collective bargaining agreement signed by the previous employer—the courts should consider the following factors: (a) the existence of a substantial continuation in the same business activity; (b) the utilization of the same operating plant; (c) the employment of the same or substantially the same labor force; (d) to maintain the same supervisory personnel; (e) to use the same equipment and machinery and to employ the same methods of production; (f) the production of the same products and the rendering of the same services; (g) continuity of identity; and(h) operation of the business during the transfer period. L.R.B. v. Cooperativa Azucarera, 98 P.R.R. 307 (1970).

The Cooperativa Azucarera Central Juncos is a successor employer which assumes the obligations contracted by the former employer by virtue of a collective bargaining agreement signed by the latter with the representatives of the workers of the enterprise. L.R.B. v. Cooperativa Azucarera, 98 P.R.R. 307 (1970).

An existing collective agreement between an enterprise and its workers is not automatically abolished by the mere fact of a replacement of an employer by another, or of a representative of the workers by another. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

16. Arbitration—Generally. Given the existence of a broad arbitration clause the parties have the obligation to arbitrate disputes even if they arise after the expiration of the agreement. P.R.T.C. v. Unión Indep. Emp. Telefónicos, 131 D.P.R. 171 (1992).

An arbitration clause in an agreement would have no meaning if its implementation depended on the will of each party to present its case, since the party which did not want a change in the existing situation could annul the arbitration simply by refusing to appear at the hearing. J.R.T. v. Hato Rey Psychiatric Hospital, 119 D.P.R. 62 (1987).

In the labor arbitration process, the law between parties is establish by the mutual agreement of submission presented to the arbitrator with the collective bargaining agreement that provides that the arbitrator will decide according to law. J.R.T. v. Hato Rey Psychiatric Hospital, 119 D.P.R. 62 (1987).

The parties in a labor arbitration proceeding must come to the same with "clean hands". Husa International, Inc. v. Teamsters Union of P.R. Local 901, 666 F. Supp. 13 (1987).

Due process of law in the area of labor arbitration refers to the opportunity to be heard and the adequate notification of the claim to the defendant, giving him the opportunity to produce the evidence he deems suitable to sustain his position. J.R.T. v. A.E.E., 117 D.P.R. 222 (1986).

Valid agreement in collective bargaining to submit to arbitration any controversy regarding rights pursuant to special legislation cannot be construed as waiver thereof. Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

Holding in *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1981), as to when any claim may be filed in court directly disregarding collective bargaining agreement arbitration clause, has mere persuasive value in Puerto Rico. Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

In the absence of just cause, grievance procedure established in a collective bargaining agreement cannot be waived, whether right in controversy is based upon Constitution or statute. Arbitration award shall be final regarding determinations of fact, and it may be challenged before court only for reasons stated in *L.R.B. v. N.Y. & P.R. SS Co., 69 P.R.R. 730 (1949)*, and more recent cases connected therewith. Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

Either party may petition the court to challenge an arbitration award for fraud, improper conduct, lack of due process of the law, violation of public policy, lack of jurisdiction, that the award does not resolve all the controversial issues that were submitted, and to review its award, judicial validity, and correctness. Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

Parties to collective bargaining agreement cannot ignore arbitration clause thereof. L.R.B. v. W.R.A., 111 D.P.R. 837 (1982).

All controversies between parties are covered by arbitration clause save those specifically excluded therefrom. L.R.B. v. W.R.A., 111 D.P.R. 837 (1982).

Procedural provisions developed for civil and criminal cases are not strictly applied to arbitration. L.R.B. v. Securitas, Inc., 111 D.P.R. 580 (1981).

As a rule, Labor Relations Board and courts should not intervene with arbiters' awards where collective bargaining agreement established arbitration proceedings to solve any dispute arising thereof. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

As an exception to the rule, courts may exercise jurisdiction over arbitration awards when labor union violated its duty to provide adequate representation to its members. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

Labor Relations Board which refused to entertain point regarding clarification of appropriate work unit, and exclusion of certain workers from a particular one, where point submitted by parties to its consideration was exclusively to determine whether employer and employees had incurred in unfair labor practices, was not in error. S.I.F. v. L.R.B., 111 D.P.R. 505 (1981).

There is no conflict between arbitration award regarding advertising work vacancies and notice to union regarding frozen positions, and another award regarding contracting grantees to replace service with automated one rendering first award purely academic. L.R.B. v. Communications Authority, 108 D.P.R. 776 (1979).

Employee who appeals to Labor Relations Board for execution of arbitrator's award reinstating him in his employment more than a year after award was entered incurs in laches. L.R.B. v. P.R. Telephone Co., 107 D.P.R. 76 (1978).

Laches of employee requesting execution of reinstatement pursuant to arbitrator's award do not totally benefit employer who did not take initiative in said reinstatement, but they do justify loss of back pay during time between award and Supreme Court order of execution. L.R.B. v. P.R. Telephone Co., 107 D.P.R. 76 (1978).

Employer is responsible for taking first steps in reinstatement of dismissed employee, reinstated by arbitrator's award. L.R.B. v. P.R. Telephone Co., 107 D.P.R. 76 (1978).

Arbitration procedure where all norms about notice to employee and instruction about charges filed by employer, hearing and opportunity to present evidence are fulfilled to arrive at just and reasonable award, meets all standards of due process of law. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

The doctrine of recrimination does not operate automatically, and the Labor Relations Board, in the exercise of its quasijudicial duty, should determine in each case whether or not it should apply it. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

An arbitration award cannot violate the public policy established in State laws. Beauchamp v. Dorado Beach Hotel, 98 P.R.R. 622 (1970).

Since the Puerto Rico Labor Relations Board and the federal courts have concurrent jurisdiction over alleged violations of collective bargaining agreements, and since statute regulating removal does not contemplate removal from administrative agencies but is limited to civil actions originating in state courts, the exercise by the Board of jurisdiction over complaint of unfair labor practices in connection with alleged violations of a collective bargaining agreement, did not deprive the employer of any right of removal to federal court.

Volkswagen de Puerto Rico v. L.R.B. of P.R. 331 F. Supp. 1043 (1970), affirmed 454 F.2d 38 (1972).

An employer is bound to obey an arbitration award when the same was issued within the authority and jurisdiction of the arbitrator and the ruling therein decides definitively all the questions in dispute which were submitted to said officer. L.R.B. v. Presbyterian Hospital, Inc., 96 P.R.R. 557 (1968).

A union cannot disregard the arbitration procedure stipulated in the collective bargaining agreement entered into with the employer, and resort directly to an arbitrator provided in said agreement to submit a unilateral determination of the employer, disregarding the Grievance Committee created in said agreement. Buena Vista Dairy, Inc. v. L.R.B., 94 P.R.R. 596 (1967).

To determine as to the arbitrability of a labor-management controversy is one of the functions of the arbitration committees created by virtue of the collective bargaining agreements. L.R.B. v. Central Mercedita, Inc., 94 P.R.R. 477 (1967).

After an employer consents to the demand for arbitration of the union with which it has entered a collective bargaining agreement, said employer cannot go back upon his own steps rejecting said demand when the result of the arbitration award has been adverse to him. L.R.B. v. Central Mercedita, Inc., 94 P.R.R. 477 (1967).

When a controversy on the jurisdiction of a Grievance Committee as to a certain matter is submitted to the arbitration proceeding prescribed in the corresponding collective bargaining agreement, the parties waive their right to litigate before the courts the question properly submitted to the arbitrator, the latter being the proper forum to settle the controversy submitted to him by the corresponding voluntary submission agreement of the parties. L.R.B. v. Central Mercedita, Inc., 94 P.R.R. 477 (1967).

An award rendered by an arbitrator on a date subsequent to the expiration of a collective bargaining agreement, requiring an employer to pay to a union certain amounts of money for the exclusive use of its employees—Welfare Plan—when said amounts have already been paid to said employer through a Chapter of said union, is not an award rendered according to law. L.R.B. v. Heirs of Serralles, 94 P.R.R. 325 (1967).

This Court cannot enforce an award ordering an employer to make payments to a union for its Welfare Plan—and for the exclusive use of specifically determined members of the union—when, according to the facts, the employer made the payments to the person authorized to receive them, and for the benefit of those in whose favor the obligation was established in the corresponding collective bargaining agreement. L.R.B. v. Heirs of Serralles, 94 P.R.R. 325 (1967).

Supreme Court lacks authority to set aside an arbitration award on the basis of an error of fact or of law of the arbitrator when, upon the question in dispute being submitted to arbitration, a provision is not included to the effect that the arbitrator should decide according to law—in which case he should follow rules of law and make his award in accordance with the prevailing legal doctrines—and the arbitrator did not commit the error of fact charged. United Steelworkers v. Paula Shoe Co., Inc., 93 P.R.R. 645 (1966).

A court is not authorized to order that a claim for wages against an employer be previously submitted to arbitration, where the collective bargaining agreement signed by the employer and his workers does not contain an arbitration clause, and it does not appear from the record that said workers accepted that according to the agreement their claim should be arbitrated. United Steelworkers v. Paula Shoe Co., Inc., 93 P.R.R. 645 (1966).

When a labor-management controversy as to the unjust discharge of an employee is submitted to the Fifth Member of a Grievance Committee by the remaining four members of said Committee—as provided by the collective agreement—the vote of the Fifth Member in favor of one or the other contention actually becomes the decision of the Committee three to two. L.R.B. v. P.R. Telephone Co., 91 P.R.R. 883 (1965).

It is not necessary that the Fifth Member of the Grievance Committee—to whom a labor-management controversy has been submitted for decision by the other four members of said Committee—hold an additional hearing after the controversy has been submitted to him, when at the time such hearing was requested by the employer's representatives, said Fifth Member makes it clear that he would hold it if after examining all the documents submitted he considered it necessary. L.R.B. v. P.R. Telephone Co., 91 P.R.R. 883 (1965).

In a labor-management dispute neither party may thwart the purpose of the arbitration provisions established by them to mediate and settle complaints and grievances by means of a procedure to declare that a particular dispute between the parties is not arbitrable. L.R.B. v. Caribbean Container, 89 P.R.R. 694 (1963).

Act No. 376 of May 8 1951 which regulates commercial arbitration does not apply to arbitration between employers and employees. Seafarers Int'l Union v. Superior Court, 86 P.R.R. 762 (1962).

When a labor-management controversy on the interpretation of an agreement is submitted to the Fifth Member of a Grievance Committee at an arbitration hearing—after one of the two representatives of the employer and one of the two members representing the employees had expressed their views on the question—said controversy is considered submitted to the committee in full and the decision of the Fifth Member either in favor or against one of the contentions actually becomes the decision of the majority of said committee. L.R.B. v. Orange Crush, 86 P.R.R. 618 (1962).

The term "third member"—referring to the Fifth Member of a Grievance Committee composed also of two representatives of the employer and two representatives of labor—means the third party who intervenes between two or more persons for the settlement or execution of a thing, whether good or bad. L.R.B. v. Orange Crush, 86 P.R.R. 618 (1962).

An arbitrator's award rendered by virtue of a collective bargaining agreement which an employer as well as his employees had agreed to accept is neither a contract nor a judgment, however, it partakes of the nature of both. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

17. —Arbitrator's powers. To make an arbitration award conditional on its conforming to law indicates that the arbitrator may not disregard the interpretive norms of law established by the Supreme Courts of the U.S. and Puerto Rico with regard to labor law and that decisions of trial courts, agencies and other arbitrators will be held persuasive. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

When overtime payment claim is taken up to arbitration, arbitrator's function is limited to determining whether work was performed in excess of contracted labor regular schedule. The form of payment for extra time, however, is established by law. Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

Arbitrator who construes collective bargaining agreement taking into consideration clauses thereof and purpose of salary increase for seniority did not exceed powers bestowed upon him by said agreement. L.R.B. v. E.E.A., 113 D.P.R. 564 (1982).

Award may be voided only for fraud, improper conduct, lack of due process of law, violation of public policy, lack of jurisdiction or where it does not cover all points in controversy. L.R.B. v. E.E.A., 113 D.P.R. 564 (1982).

Functus officio doctrine does not bar arbitrator from correcting material or mathematical computation errors, provided they are obvious. L.R.B. v. E.E.A., 112 D.P.R. 169 (1982).

Functus officio doctrine bars arbitrator from reexamining any question once he has issued award and decision thereupon. L.R.B. v. E.E.A., 112 D.P.R. 169 (1982).

When construing clauses of collective bargaining agreements, arbitrator is not restricted to contents thereof and may use other sources provided the essential lines of the agreement are respected. L.R.B. v. National Packing Co., 112 D.P.R. 162 (1982).

In arbitration proceedings, procedural points raised may be decided by arbitrator. L.R.B. v. W.R.A., 111 D.P.R. 837 (1982).

Legislation concerning compensation for discharge without just cause, §§ 185a et seq. of this title, did not bar arbitrator from ordering reinstatement of discharged employee with back pay and interest thereof. L.R.B. v. Securitas, Inc., 111 D.P.R. 580 (1981).

Where arbitrator awarded recovery for damages to union when coming to conclusion that employer acted unreasonable against said union by intervening in decertification action filed against said union by its members, notwithstanding that such remedy had not been stipulated in arbitration or collective bargaining agreements, authority was not exceeded, because, in such situation, the power for said award is implicitly included among those of arbitrator. Sonic Knitting Industries v. I.L.G.W.U., 106 D.P.R. 557 (1977).

Labor arbitrator has no authority to award punitive damages for violations of collective bargaining agreements or labor statutes unless it is expressly established by law or by parties a priori. Sonic Knitting Industries v. I.L.G.W.U., 106 D.P.R. 557 (1977).

Arbitrator has implicit authority, in labor arbitration proceedings, to award recovery for damages, even though it has not been expressly stipulated in arbitration or collective bargaining agreements. Sonic Knitting Industries v. I.L.G.W.U., 106 D.P.R. 557 (1977).

In adjudication of labor controversy, arbitrator has role similar to trial court of first instance; therefore, decisions can be taken to higher jurisdictions on appeal. Sonic Knitting Industries v. I.L.G.W.U., 106 D.P.R. 557 (1977).

Phrase "arbitrator award pursuant to law" means that arbitrators cannot ignore substantive labor statutory rules as constructed by U.S. and Puerto Rico Supreme Courts, decisions of first instance courts, administrative agencies or awards and findings and papers written by arbitrators of great skill and reputation in the field. Sonic Knitting Industries v. I.L.G.W.U., 106 D.P.R. 557 (1977).

Where discharge of employee—union delegate—by employer was submitted to arbitration under provisions of collective labor agreement entered into by parties, arbitrator was empowered—once found that discharge was justified but management sanction was not—to amend decision and validly reduce sanction and award that employee was entitled to return to work with no back pay, provided he resigned the union position. Such award is valid, reasonable and necessary in order to facilitate labor-management relations within a "climate of mutual respect and reciprocal recognition of their essential productive interdependence". S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

Judges and arbitrators exercising jurisdictional functions or in arbitration procedures must decide and adjudicate rights of parties, including setting their specific limits. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

In an arbitration proceeding, the law for the parties is established by the submission agreement submitted to the arbitrator, together with the collective bargaining agreement which specifies that the arbitrator is bound to decide according to law. L.R.B. v. Caribbean Towers, Inc., 99 P.R.R. 578 (1971).

An arbitrator shall decide according to law a submission agreement submitted by the parties when it is thus stipulated in the corresponding collective bargaining agreement — which permits judicial review of the award for errors of law — and said agreement is not waived by the employer's representative, assuming that he was invested with delegated powers to waive conditions stipulated in said collective bargaining agreement. L.R.B. v. Heirs of Serralles, 94 P.R.R. 325 (1967).

An arbitrator cannot draft, as part of an arbitration award, a collective agreement binding the parties—which constitutes a quasi-legislative award regulating prospectively the relations, rights and duties of the parties during certain time—when there does not exist a

submission agreement between the parties which contains a clear and specific authorization free of all doubt and ambiguity authorizing such thing. L.R.B. v. Valencia Baxt Express, 86 P.R.R. 267 (1962), cert denied, 373 U.S. 932 (1963).

The collective bargaining agreement providing for arbitration of labor disputes or submission agreement are the determining factors of the jurisdiction of the arbitrators, but where neither expressly prohibits the arbitrators from modifying a disciplinary action taken by the employer against the employees involved, the arbitrators can modify the penalty, and there being in the submission agreement herein no express provision to the contrary, the Committee herein had power to find that even if the facts on which the employer predicated the discharge of the employees involved were true, the discharge was too drastic a penalty, and to modify said penalty to a one week suspension. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

Where the controversy in issue is submitted to arbitration as to the necessity of a cleaning shift which, although established for some time, the employer eliminated as unnecessary, and the arbitrator impliedly delegates his powers to determine the question to a health officer who, after making an investigation of the parties, rendered a report on which the arbitrator based his award, the award rendered under these circumstances cannot be upheld and enforced. L.R.B. v. Compañia Popular, 69 P.R.R. 723 (1949).

18. —**Conciliation service.** Where there is a disagreement which authorizes the use of the Conciliation Service pursuant to the agreement, it is necessary for the parties by arbitration, or for the appellee Board, by interpretation of the agreement in the light of the facts, to decide first that the use of the Conciliation Service was proper at the stage it was required by the union, and that it was proper only at the request of one of the parties in the Grievance Committee in order that the final conclusion of violation of the agreement by the company may be upheld. P.R. Telephone Co. v. L.R.B., 92 P.R.R. 247 (1965).

An order of the Board to seek the intervention of a conciliator to help the parties decide a controversy already settled has no practical purpose. P.R. Telephone Co. v. L.R.B., 92 P.R.R. 247 (1965).

19. —**Scope of award.** Where parties in negotiation agreed beforehand that arbitration award should be final, not to be subject to appeal or decided according to law, award rendered under such premises should be upheld as a rule by the Supreme Court, independently from its possible different conclusion on facts had these been submitted. L.R.B. v. National Packing Co., 112 D.P.R. 162 (1982).

Where parties to collective bargaining agreement did not exclude from scope of arbitration clause certain procedural points, arbiter did not exceed authority by adjudicating for the employee a complaint that the employer did not resolve within a certain term. L.R.B. v. W.R.A., 111 D.P.R. 837 (1982).

After complying with an arbitration award which decreed the reinstatement of a workman and payment of back wages, the employer is not bound by said award as to a controversy which subsequently arises and is not nor could have been the subject matter of the previous arbitration. L.R.B. v. Thon, 69 P.R.R. 694 (1949).

20. —**Validity.** An arbitration award awarded in compliance with the collective bargaining agreement cannot be vacated unless it violated or modified the provisions of said agreement. Dupont Plaza v. Asociación de Empleados de Casino, 681 F. Supp. 117 (1988).

An arbitration award should be annulled if it is arrived at by using different standards in evaluating the evidence of the employer and that of the worker's union. Asociación de Señoras Damas v. Unidad Laboral, 672 F. Supp. 54 (1987).

The only ground for judicial review of an arbitration award on its merits is for such a gross error in reasoning that no judge could have arrived at such a conclusion or which involved the

consideration of a fact that in reality never existed. Asociación de Señoras Damas v. Unidad Laboral, 672 F. Supp. 54 (1987).

Where collective bargaining agreement established arbitration as sole procedure to solve all labor grievances definitely, judicial review of arbitrator's awards does lie only where they are not based on tangible reasons and facts, or are the result of a reasoning process so erroneous that no one in his right mind would arrive at such conclusion, or are based on assumptions not supported by facts of case in question. *In re* Hotel Da Vinci, 797 F.2d 33 (1986).

Courts may hold arbitration award null and void when any of these circumstances concur: (a) fraud; (b) improper conduct; (c) lack of due process of the law; (d) violation of public policy; (e) want of jurisdiction, or (f) award does not resolve all points in controversy. L.R.B. v. National Packing Co., 112 D.P.R. 162 (1982).

Clause establishing automatic finding for the employee in labor dispute whenever employer does not adjudicate grievance within a certain term is valid. L.R.B. v. W.R.A., 111 D.P.R. 837 (1982).

Arbitration award in violation of due process is null and void. L.R.B. v. Securitas, Inc., 111 D.P.R. 580 (1981).

Refusal by arbiter to have party represented by attorney at hearing did not constitute damaging error deserving reversal. L.R.B. v. Securitas, Inc., 111 D.P.R. 580 (1981).

Statute of limitations to request execution of arbitrator's award to reinstate employee unduly dismissed is not fifteen years. (*Labor Relations Board v. Long Const. Co., 73 D.P.R. 252 (1952)*, overruled regarding statute of limitations stated therein.) L.R.B. v. P.R. Telephone Co., Inc., 107 D.P.R. 76 (1978).

An arbitration award modifying a penalty imposed by an employer is valid and binding on the parties, when neither in the submission agreement nor in the collective bargaining agreement there exists any provision whatsoever precluding the arbitrator from modifying said penalty. L.R.B. v. Caribbean Towers, Inc., 99 P.R.R. 578 (1971).

Where the procedure commenced while the agreement was in effect, all subsequent actions are the result of the machinery set in motion when the matter was submitted to the Grievance Committee at the union's request, and the expiration of the agreement cannot have the effect of putting an end to the procedures already initiated. L.R.B. v. P.R. Telephone Co., 91 P.R.R. 883 (1965).

The fact that the award was signed by the Fifth Member only and not by all the members of the Committee does not render it invalid, since the decision of the Fifth Member definitely solved the controversy, and his vote resulted in a majority decision. L.R.B. v. P.R. Telephone Co., 91 P.R.R. 883 (1965).

The concurrence of the regular representatives of a union in the Grievance Committee is sufficient—under the terms of the collective agreement which is construed in this case—to consider that the union is acting through them and that the question raised to said Committee may be considered as submitted by the union, a previous agreement of said union not being necessary to complete the authority vested on the delegates or representatives by the agreement itself, for the purposes of submitting a question or dispute, as well as any controversy that might arise on account of the interpretation and applicability of the said collective agreement. López v. Destilería Serrallés, 90 P.R.R. 241 (1964).

It is unnecessary to consider the validity of an arbitration award challenged because it was rendered after the term fixed in the agreement for rendering it had expired, when the award is of such a nature that the fact that the decision was rendered outside the term fixed in the agreement causes no prejudice to the defeated party, particularly when the Grievance Committee was never requested to render it within the five days stipulated therefor. L.R.B. v. Orange Crush, 86 P.R.R. 618 (1962).

When a group of workmen who go to their jobs are prevented from working because of lack of material available in the job, and when their claim for minimum compensation under Article 5 of Mandatory Decree No. 11 of the Minimum Wage Board is submitted to arbitration, an award is rendered granting the workmen's complaint, which reveals that not only there was no force majeure but also that there was no just cause for the lack of available material, said award is not contrary to law. L.R.B. v. Long Const. Co., 73 P.R.R. 242 (1952).

Where a labor dispute is submitted to arbitration in connection with the discharge of a workman whose reinstatement was sought by the union to which he was affiliated the fact that a member of the Arbitration Committee or the Committee itself recommends a reprimand to the workman does not mean that the award rendered is void. L.R.B. v. Eastern Sugar, 69 P.R.R. 763 (1949).

As regards an arbitrator's award made by arbitrators designated according to a collective bargaining agreement or by virtue of an agreement between a union and an employer this subchapter requires only an agreement to arbitrate, not that said agreement be made by a public deed in order to render the award valid. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

The fact that an arbitrator's award is partly void does not necessarily vitiate the entire award, since in such a case, the valid portion may be enforced, provided the award is severable, and the reinstatement provision of the award herein being valid and severable from the void provision for retroactive pay, said valid portion is enforced. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

An arbitrator's award which, as to rate of back pay, does not clearly settle the issue under the submission agreement nor make a final disposition of said issue, is void as to said issue. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

21. —**Term.** In worker's claim for salary increase due to seniority, defense of forfeiture did not lie albeit time elapsed until its filing, because of nature of claim, cause of action for which is renewed with each periodic salary payment. The only effect of delay could be on retroactivity of award, pursuant to collective bargaining agreement. L.R.B. v. E.E.A., 113 D.P.R. 564 (1982).

Whether or not party incurred in laches regarding petition to Supreme Court for implementation of arbitrator's award is a matter of fact, that has to be discerned upon consideration of all factors involved. L.R.B. v. E.E.A., 113 D.P.R. 564 (1982).

Where collective bargaining agreement provided that all complaints regarding dismissals should be filed no later than ten days thereafter, submission of employer to arbitration on complaint filed after such term constituted waiver to rights derived from such clause and extension of said term. L.R.B. v. Securitas, Inc., 111 D.P.R. 580 (1981).

Pursuant to provisions of Puerto Rico Labor Relations Act, there is no time limit to request intervention of Labor Relations Board or for this Board to file request for execution of arbitrator's award. L.R.B. v. P.R. Telephone Co., 107 D.P.R. 76 (1978).

This subchapter does not establish a fixed term to render an arbitration award, said term being left open to the agreement of the parties and the fifteen-day term fixed in the collective agreement signed by the parties began to run on the day of the complaint and not on the day the case was submitted to the arbiter appointed as the seventh member of the Arbitration Committee pursuant to said agreement. L.R.B. v. Corona Brewing Corp., 83 P.R.R. 40 (1961).

Where the parties impliedly extend the time within which to adjudicate a labor-management dispute upon their submitting the question to arbitration after the term fixed in the collective agreement signed by them has expired, such conduct constitutes a waiver of that term, if the latter is compulsory and not directive. L.R.B. v. Corona Brewing Corp., 83 P.R.R. 40 (1961).

22. **Union administration—Generally.** A union is not bound to follow the proceedings prior to arbitration indicated in the collective bargaining agreement signed with the employer, when the latter alleges that there was no existing agreement because it had expired. Beaunit of Puerto Rico v. L.R.B., 93 P.R.R. 496 (1966).

Where standards established by a labor union organization for its internal administration and the rights of employees guaranteed by this subchapter are in conflict, the latter rights must prevail over such standards. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

23. **—Discipline of members.** Where a member of a union is summoned to appear at a General Assembly of said union for a hearing of his appeal from a punishment for contempt imposed on him by the Board of Directors and the Assembly discussed not the case of contempt but the charges pending against him of treason and disloyalty and which were not set to be heard then and on which the evidence presented mainly centered, the fact that evidence in connection with the charge of contempt was incidentally presented does not mean that he was given a reasonable and an impartial opportunity to defend himself from said charge. L.R.B. v. Unión de Chóferes, 73 P.R.R. 920 (1952).

24. **—Exclusion, expulsion, suspension or withdrawal from membership.** In the absence of any provision in the regulations of a labor union fixing the requirements with which its members must comply in order to withdraw from the union, the acts of members of said union in not paying dues, in not attending meetings, and in verbally notifying the leaders of the union of their withdrawal therefrom, constitute a sufficient presentation of their resignation as members of the union. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

A provision in the internal regulations of a labor union that for withdrawal as member therefrom the resignation must be in writing and approved by the Directors, is a single integrated whole, and the two steps—writing and acceptance—not being independent and hence not separable as to legality, the provision must stand or fall as a whole. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

Since voluntary associations may not validly provide that an indispensable requisite for withdrawal therefrom is acceptance of a resignation, a provision in the internal regulations of a labor union that for a valid withdrawal as member the resignation must be in writing and accepted by the Directors is null as a whole. Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

Insofar as subsection (2)(b) of this section does not define what constitutes the unjustified exclusion or suspension of an employee from membership of a labor organization, its determination has been left to the Labor Relations Board in the first instance, according to the facts in each particular case. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

Where a workman, who has been expelled from a labor organization and suspended from his employment by his employer in accordance with a collective agreement requiring membership in the labor organization as a condition of such employment, resorts to a grievance and adjustment committee for a final determination of the matter of his suspension under said agreement, and the committee reverses the suspension, such a reversal is an implied acknowledgment that his expulsion from membership in the labor organization was unjustified; and the order for his reinstatement in his employment carries with it his reinstatement in such membership. Rios v. Puerto Rico Cement Corp., 66 P.R.R. 446 (1946).

25. **Polygraph tests.** Contrary to the majority of the states of the United States, which have passed legislation to prohibit or limit the use of polygraph tests in the employer-worker context, Puerto Rico has no specific regulation in this area. Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986).

During a lie detector test, worker can be asked questions unrelated to matter under investigation or of no legitimate interest to employer; improper, privacy-invading questions

which employee would not normally be obliged to answer, dealing with matters such as political or trade union activity, sexual preference, religious beliefs, previous criminal record or other past conduct which person might not wish to divulge. Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986).

Distinct from situation presented by questionnaire or verbal interrogation in which person may object to or not answer questions which, in content, are either not pertinent or invade protected areas, lie-detector test intervenes directly with thoughts and ideas of person who has no control over what is divulged even though he or she remains silent. Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986).

Even though the right of privacy is a fundamental right, it is not absolute and other circumstances, if there are no other effective alternatives, could justify that the State by specific legislature, with the necessary safeguards, allows the use of Polygraph tests at the employer-worker level. For example, the case of public security agencies and pharmaceutical industries that produce control substances and could have the immediate need to protect their social interests against the right of privacy of an employee. Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986).

When a person seeking employment consents to submit to a polygraph examination required by an employer, it should not be inferred that the job-seeker has voluntarily waived his right to privacy when said consent is required to retain or obtain a job. The risk of losing or not obtaining a job and the disadvantageous position which the worker occupies vis-à-vis the employer are impediments to a truly free and voluntary waiver. Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986).

An employer's rule which calls for the suspension or dismissal of an employee who refuses to take a polygraph test is an unconstitutional violation of the right to privacy. It is equally unconstitutional to require an employee to take such a test as a condition of employment. Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986).

26. Subcontracting. In every collective bargaining contract to which an employer and a labor organization agree, the subject of subcontracting should be properly regulated according to the clauses and conditions the parties stipulate. J.R.T. v. A.E.E., 117 D.P.R. 222 (1986).

When a collective bargaining contract forbids an employer to subcontract work except in certain and determined circumstances, once the union shows that the collective bargaining contract establishes as much, and that the employer has carried out or proposes to carry out the prohibited subcontract, it is the burden of the employer to show that the subcontract at issue does not constitute a violation of said contract because it falls under one of the exceptions which the same establishes. The employer must produce evidence as to whether the subcontract is in agreement with the contract or not. J.R.T. v. A.E.E., 117 D.P.R. 222 (1986).

27. Right to hearing. Due process of law requires that the State carry out a just and equitable procedure upon intervening in a person's propietary interest, as is the case with the retention of a job protected by law or when there exists an expectation of continuing in the same job. U. Ind. Emp. A.E.P. v. A.E.P., 146 D.P.R. 611 (1998).

As a corollary to the constitutional right of due process, the U.S. Supreme Court recognizes the right of public employees with propietary interest in their jobs to be notified of the charges against them and an informal hearing prior to dismissal. U. Ind. Emp. A.E.P. v. A.E.P., 146 D.P.R. 611 (1998).

The purpose of an informal hearing prior to dismissal is to keep the administrative agency from making the wrong decision and thereby depriving the employee of his gainful employment. U. Ind. Emp. A.E.P. v. A.E.P., 146 D.P.R. 611 (1998).

When a plaintiff-employee is dismissed the law is clear insofar as the governmental authority's obligation to hold an informal hearing prior to dismissal and insofar as to the sort of hearing it should be. U. Ind. Emp. A.E.P. v. A.E.P., 146 D.P.R. 611 (1998).

Notification is vitally important in that it informs the employee that it is to occur so that he may prepare for it. U. Ind. Emp. A.E.P. v. A.E.P., 146 D.P.R. 611 (1998).

The point of notification is lost if an employee is not informed of prohibited acts that could lead to dismissal and a hearing is to be held. U. Ind. Emp. A.E.P. v. A.E.P., 146 D.P.R. 611 (1998).

§ 70. Unfair labor practices—Power of Board to prevent; Supreme Court proceedings

(1) Charges of the existence of an unfair labor practice may be submitted to the Board for its action in the manner and for the purposes provided by this subchapter.

(a) Whenever it is charged that any person, employer, or labor organization has engaged in or is engaging in any unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have the power to investigate such charge and cause to be served upon such person, employer or labor organization a complaint in the name of the Board stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five (5) days after service of the said complaint. Any such complaint may be amended by the member of the Board, agent or agency conducting the hearing, or by the Board, in its discretion, at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the time and place [set] in the notice of hearing. All allegations of any complaint so issued which are not denied shall be deemed admitted and the Board may thereupon make findings of fact and conclusions of law with respect to such undenied portions of the complaint. At the discretion of the member of the Board, agent, or the agency conducting the hearing, or of the Board, any other person may be allowed to intervene and to present testimony in said proceedings. In any such proceedings the rules of evidence prevailing in the courts of law or equity need not be controlling.

(b) The testimony taken by said member, agent or agency, or by the Board in the hearings shall be [put in] writing and shall be filed with the Board. The Board may, in its discretion, afterwards take additional evidence or hear further argument. If, according to all the testimony taken, the Board is of the opinion that any person, employer or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the Board shall make its findings of fact and of law and issue

its order, and shall cause the same to be served upon such person, employer or labor organization, requiring it to cease and desist from said unfair labor practice and to take such affirmative action as shall effectuate the purpose of this subchapter, including, but not limited to, reinstatement of employees with or without back pay, the posting or transmittal by mail of appropriate notices, and the termination of collective bargaining contracts in whole or in part; or make any other order against such person, employer, party, or labor organization, that shall effectuate the purposes of this subchapter. The order may likewise require such person, employer or labor organization to submit a report from time to time showing the extent to which he has complied with the same. If, according to the testimony taken, the Board is of the opinion that none of the persons mentioned in the complaint has engaged in or is engaging in an unfair labor practice, then the Board shall make its findings of fact and shall issue an order dismissing the complaint.

(2)(a) The Board may petition the Supreme Court of Puerto Rico, or, if the Supreme Court is in vacation, the judge sitting in vacation [sic], for the enforcement of the order of the Board, and may also ask the said court to make any other appropriate temporary relief or restraining orders, and it shall certify and file in the court a transcript of the entire record in the proceedings, including the pleading and testimony upon which such order was entered, and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon the person to whom the order is addressed, and thereupon shall have jurisdiction of the proceedings and of the question to be determined therein, and it shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleading, testimony and proceedings set forth in the transcript, a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the Board. No objection that has not been raised before the Board or any of its members, agent or agency, shall be considered by the court, unless the failure or neglect to raise such objection be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing held before the Board or any of its members, agent, or agency, the court may order such additional evidence to be taken before the Board or any of its members, agent, or agency and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file

such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the Supreme Court of Puerto Rico shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the full membership of the Supreme Court of Puerto Rico if application was made to a judge of said court sitting in vacation as hereinabove provided.

(b) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in the Supreme Court of Puerto Rico, by filing in such court a written petition praying [sic] that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceedings certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. The Board shall issue the certified transcript of the proceedings free of all charge or fees when the petitioner is insolvent. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under clause (2)(a) of this subsection, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by the evidence, shall in like manner be conclusive.

(c) In order to promote collective bargaining, the Board may, in the exercise of its discretion, aid in the enforcement of arbitration awards issued by competent arbitration agencies, whether designated according to the terms of any collective bargaining contract executed between an employer and a labor organization or by virtue of any agreement signed by a labor organization and an employer. Upon the issuance of an arbitration award, the Board may give advice at the request of any party to such award or may, if requested to do so, file in the name of the party so requesting, the proper judicial proceeding in the Supreme Court of Puerto Rico to enforce such award or arbitration.

(d) The commencement of proceedings under clause (2)(a) or (b) of this subsection shall not, unless specifically so ordered by the court, operate as a stay of the Board's order.

(e) Until a transcription of the record of the case is filed in court, the Board may at any time, upon reasonable notice and in the manner it deems proper, modify or revoke in whole or in part any findings made or order issued by it.

(f) Petitions filed in the Supreme Court of Puerto Rico under this subchapter to enforce the orders of the Board shall have preference over any civil cause of a different nature pending before said court, and shall be heard expeditiously and if possible within ten (10) days after the filing of the petition.

(g) A substantial compliance with the procedure provided for by this subchapter shall be sufficient to give effect to the orders of the Board, and they shall not be declared inapplicable, illegal or void for any omission of a technical nature.—May 8, 1945, No. 130, p. 407, § 9; Mar. 7, 1946, No. 6, p. 19, § 1.

HISTORY

Amendments—1946.
Act 1946 amended this section generally.

Cross references.
Review of rulings of Labor Relations Board by Supreme Court, see § 24s of Title 4.

I. COMPLAINTS BEFORE THE BOARD

1. Generally.
2. Jurisdiction.
3. Proceedings.
4. Examiners.
5. Conclusions.
6. Orders.
7. Compensation of employees.
8. Errors.
9. Limitation.

1. Generally. The principal purpose of this statute is that a worker can enjoy his/her employment without discrimination, therefore it is preferable in cases of termination by discrimination that a worker retain his employment position whenever this is possible. López Vicil v. ITT Intermedia, Inc., 142 D.P.R. 857 (1997).

Although as a general rule the procedure established in an agreement for processing complaints and grievances should be strictly followed, it is not necessary when to do so would be futile. Hermandad Unión de Empleados v. F.S.E., 112 D.P.R. 51 (1982).

The absence of one of the parties in a hearing on labor arbitration proceedings does not violate due process, when it is due to unreasonable and stubborn behavior of the absent party. Hermandad Unión de Empleados v. F.S.E., 112 D.P.R. 51 (1982).

Consolidation of several complaints based on the same facts does not violate the award. Hermandad Unión de Empleados v. F.S.E., 112 D.P.R. 51 (1982).

If the complaint does not affect the appropriate unit of work, the complaint committee *ad hoc* has jurisdiction and not the Labor Relations Board. Hermandad Unión de Empleados v. F.S.E., 112 D.P.R. 51 (1982).

In the absence of any statute, collective bargaining agreement or individual contract authorizing it, the imposition of penalties for unfair labor practices does not lie when it does not constitute remedial measure. L.R.B. v. W.R.A., 108 D.P.R. 818 (1979); U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970); L.R.B. v. Ceide, 89 P.R.R. 659 (1963); Berrios v. Eastern Sugar Associates, 85 P.R.R. 113 (1962).

Even though the Labor Relations Board can investigate the validity or legality of a stipulation where a compromise is made over rights recognized to an employee by virtue of a decision and order of the Board, said agency has gone beyond its powers by failing to approve the stipulation between the employer and its employee compromising the latter's rights, since it was not established that the compromise was null or contrary to law. Ponce Gas Service Corp. v. L.R.B., 104 D.P.R. 698 (1976).

The Labor Relations Board administers not private law, but public law, that is, to effectuate the public purposes of the Labor Relations Act, its orders being devised to vindicate public, not private, interests. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970); L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964); L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

The powers which the Labor Relations Act sets forth and delegates on the Labor Relations Board are not expressly stated. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

The Labor Relations Board is authorized to sanction the conduct of an employer who incurs the unfair labor practice of violating a collective bargaining agreement upon refusing to meet in the Grievance Committee to discuss the violations and complaints which arose, deciding in favor of a unilateral rescission of said collective bargaining agreement. L.R.B. v. Cadillac U. and L. Supply, Inc., 98 P.R.R. 97 (1969).

The Labor Relations Board lacks power to render judgment ordering an employer to pay to a certain union the dues contributed by its employees under the provisions of the corresponding bargaining agreement when, apart from being contrary to said agreement, said order has the inevitable legal effect of deciding a dispute concerning representation and affiliation of laborers in interstate commerce, effect which is contrary to law because such determination corresponds to the National Board, more reasonably when the Labor Relations Board—in the assumption that it had power therefor—does not have before itself the elements of evidence necessary to decide such dispute in favor of one of the two claimant unions. Seafarers Int. Union of P.R. v. L.R.B., 94 P.R.R. 668 (1967).

2. Jurisdiction. In a worker-employer controversy, according to § 69(1)(k) of this title, the Board of Labor Relations has exclusive jurisdiction over said matters which the law has expressly conferred upon it; that is, the Board is empowered, in the exercise of its discretion and while it clarifies the controversy, to issue any order it deems necessary and appropriate to make its prerogatives effective. Plan de Salud v. A. A. A., 169 D.P.R. —; 2006 TSPR 178 (2006).

In cases of violations of collective bargaining agreements and the duty of adequate union representation, there is concurrent jurisdiction in the federal and the local courts. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

In labor cases jurisdiction is concurrent in federal and state courts and federal law is applicable in the latter including matters of prescription. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

Concurrent jurisdiction between federal and state courts in labor matters prevails when it is not excluded either expressly or by implication due to incompatibility arising from the peculiar nature of the case. J.R.T. v. Unión de Tronquistas, 117 D.P.R. 790 (1986).

Puerto Rico Labor Relations Board in conducting unfair labor practice proceedings acts as a court and, therefore, said proceedings are removable to federal district court. Volkswagen de Puerto Rico, Inc. v. P.R.L.R.B. 454 F.2d 38 (1972).

If the employer does not comply with a collective agreement, the Labor Relations Board has exclusive jurisdiction to deal in the matter as an unfair labor practice, and such jurisdiction cannot be curtailed or suspended by the fact that said employer has taken the matter to court—making a judicial deposit of certain amount of money in litigation between two unions—regarding the matter which constitutes said unfair practice. Comunidad Agrícola Bianchi v. L.R.B., 92 P.R.R. 665 (1965).

This Supreme Court has no jurisdiction to issue a temporary injunction to prevent a strike. L.R.B. v. U.T.A.M.A., 92 P.R.R. 361 (1965).

The National Labor Relations Board will not exercise jurisdiction in a case where a private hospital or a real estate broker is charged with an unfair labor practice for the discharge of an employee by reason of union activity. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

The Puerto Rico Labor Relations Board has no jurisdiction in cases of violation of collective agreements when the parties have not exhausted the remedies provided by the agreement itself for the solution of such problems. Pérez v. Water Resource Authority, 87 P.R.R. 110 (1963).

In absence of a declination of jurisdiction, National Labor Relations Board has exclusive jurisdiction where the conduct in question is subject to Taft-Hartley Act, either in an unfair labor practice or representation proceeding. L.R.B. v. Ortega, 79 P.R.R. 714 (1956).

Courts need not automatically direct obedience to every subpoena of our Labor Relations Board, but substantial question of whether local Board has power to act when National Board has declined to assert jurisdiction must be litigated before local Board and not in an ancillary proceeding filed in court to enforce obedience to subpoena of our Board. L.R.B. v. Ortega, 79 P.R.R. 714 (1956).

Proceeding in which gist of question is whether or not an employer committed an unfair labor practice under act is one which involves a public right, protection of which is within exclusive jurisdiction of Labor Relations Board. Asociación de Guardianes v. Bull Line, 78 P.R.R. 680 (1955).

Exclusive jurisdiction of Labor Relations Board to protect public rights under act does not bar suit in court by employees of an employer to enforce their private rights, in this case against and alleged unjustified discharge, particularly if Board has taken no action in connection with public right involved. Asociación de Guardianes v. Bull Line, 78 P.R.R. 680 (1955).

Violation of collective bargaining agreement being an unfair labor practice under act rather than under federal act, Labor Relations Board and not National Board has jurisdiction to take cognizance of cases involving such unfair practice, even if industry involved is covered by federal act. L.R.B. v. Simmons Int'l, Ltd., 78 P.R.R. 360 (1955).

Fact that Federal Labor Management Relations Act (Taft-Hartley) vests federal courts with jurisdiction to take cognizance of actions involving violations of collective bargaining agreements, does not bar application of local law or regulation on this matter to industries covered by federal act. L.R.B. v. Simmons Int'l, Ltd., 78 P.R.R. 360 (1955).

Local Labor Relations Board does not lose jurisdiction over complaint charging an employer with an unfair labor practice in violation of collective bargaining agreement, on ground that agreement contains an arbitration proceeding for settling dispute which was not used. L.R.B. v. Simmons Int'l, Ltd., 78 P.R.R. 360 (1955).

The fact that an appeal taken by a member of the union from an order of its Board of Directors by virtue of which he is suspended from membership is pending before the General Assembly of said union, does not preclude the Labor Relations Board from having jurisdiction over a complaint filed by said member against the union accusing it of unfair labor practices in removing him from membership unjustifiedly. L.R.B. v. Unión de Chóferes, 73 P.R.R. 920 (1952).

Assuming that under the Wagner Act, 29 U.S.C. ch. 7, the Insular and Federal Boards had concurrent jurisdiction in this case, § 10(a) of the Taft-Hartley Act, 29 U.S.C. § 160(a), deprived the Insular Board of such jurisdiction, and it applied in that manner to orders of the Insular Board entered as here prior to passage of the Taft-Hartley Act and which were pending review in this court when the latter act went into effect. Asoc. Empl. Bayamón Transit v. L.R.B., 70 P.R.R. 273 (1949).

3. **Proceedings.** In the proceedings of the Labor Arbitration Board, regarding complaints, the burden of proof rests on the Board's attorneys. Morales Torres v. J.R.T., 119 D.P.R. 286 (1987). J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

Neither the law nor the regulations of the Labor Relations Board recognizes an absolute right of a private lawyer to intervene and participate in the proceedings before the Board, and it is the Board's lawyer who represents the aggrieved workers. Morales Torres v. J.R.T., 119 D.P.R. 286 (1987).

A petition to arbitrate a complaint does not necessarily have to be in writing. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

The Labor Relations Board exceeded itself in the exercise of its discretion in denying respondent — after having ordered a default entry against it—the reopening of the case and in failing to grant a hearing of the case on the merits to said party. L.R.B. v. Missy Mfg. Corp., 99 P.R.R. 781 (1971).

Neither the Labor Relations Act nor the applicable regulations provide the holding of a hearing before the Labor Relations Board after the report of the trial examiner has been rendered and previous to the decision of a complaint by said Board. Servicios Médicos Hosp. v. L.R.B., 98 P.R.R. 103 (1969).

A complaint having been filed before the Labor Relations Board, if the respondent does not deny the allegations contained therein, the Board may deem them as admitted, and thereupon make findings of fact and conclusions of law with respect to the same. Graficart Corp. v. L.R.B., 97 P.R.R. 461 (1969).

The trial examiner of the Labor Relations Board as well as the Board itself have ample discretion to allow amendments to a complaint in order to conform it to the evidence presented. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

In a valid complaint charging an unfair labor practice it is only required that there be a plain statement of the things claimed to constitute said unfair labor practice—as defined in the Labor Relations Act—so that respondent may be put upon his defense. The act does not require the particularity of the pleading nor the elements of a cause like a declaration at law or a bill in equity. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

The proceeding commenced with the filing of charges with the Labor Relations Board and the subsequent issuance of complaints by the latter is of a remedial nature which is made in the general interest. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

In a proceeding before the Labor Relations Board to determine whether an employer has committed an unfair labor practice upon discharging some workers, the latter's union—which appeared in said proceeding—is not bound to justify that it has been certified as a labor entity to bargain collectively in the name and representation of the employees of the employer. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

In considering a charge of unfair labor practice, Board may exercise its administrative discretion in deciding whether or not corresponding complaint should be issued. Luce & Co. v. L.R.B., 82 P.R.R. 92 (1961).

In proceedings before Labor Relations Board, determination of degree of credibility deserved by the witnesses of either party is an exclusive function of Board. L.R.B. v. Simmons Int'l., Ltd., 78 P.R.R. 360 (1955).

An employer who has refused to bargain collectively with a union for an improper reason or for reasons having no legal basis, cannot thereafter contend for the first time in the proceedings before the Labor Relations Board that said union was not the authorized representative of his employees. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

4. **Examiners.** Supreme Court is not limited when evaluating findings resulting from documentary evidence submitted to Labor Relations Board examiner, whether agreeing with

either examiner or Board evaluation, by deference to better perception or immediate contact with facts that officer presiding hearing had. L.R.B. v. School Coop. E. M. de Hostos, 107 D.P.R. 151 (1978).

The fact that the Labor Relations Board fails to repeat in its decision as its own the finding of fact and the conclusions of law made by the trial examiner designated by it to intervene in a case does not constitute error of the Board when said organism states in said document that it adopts them and to what extent it adopts them. W.R.A. v. L.R.B., 99 P.R.R. 884 (1971).

The Labor Relations Board is empowered to remand a case to the trial examiner who intervened in it to consider evidence on the damages sustained, if any, by some of the employer's employees as a consequence of the latter's intervention with the union rights of said employees. W.R.A. v. L.R.B., 99 P.R.R. 884 (1971).

After the corresponding report of a trial examiner containing the recommendations as to the manner of deciding a complaint has been filed, without the party aggrieved by said report having filed exceptions thereto nor requested a hearing, the Labor Relations Board may, on the basis of the record submitted, decide immediately the corresponding complaint following the recommendations contained in the report or in any other manner, particularly when, considering the allegations in relation to the complaint, the holding of a hearing before the Board would not have had any decisive efficacy whatsoever. Servicios Médicos Hosp. v. L.R.B., 98 P.R.R. 103 (1969).

A party may not assign as error in a proceeding before a trial examiner of the Labor Relations Board the fact that said officer, in his report to the Board, took judicial notice of certain evidence which said party allegedly did not have occasion to contradict, when the latter consented to the presentation of part of said evidence and did not object to the presentation of the rest thereof. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

The conclusions of a trial examiner of the Puerto Rico Labor Relations Board, erroneous as a question of law, cannot be accepted by said Board. Seafarers Int. Union of P.R. v. L.R.B., 94 P.R.R. 667 (1967).

The findings of fact contained in the report of a trial examiner of the Labor Relations Board adopted by said Board are conclusive when said findings are supported by the evidence presented. L.R.B. v. Banker's Club of P.R., Inc., 94 P.R.R. 573 (1967).

The conclusions and recommendations contained in a report of a trial examiner of the Labor Relations Board do not bind the latter, said Board having the authority to decide on the questions in controversy on the basis of its own appreciation of the record. Hernández García v. L.R.B., 94 P.R.R. 21 (1967).

If the trial examiner of the Labor Relations Board has not heard or observed the witnesses who testified at the hearing of an administrative case, the validity of his report to said body depends upon the fact that said official has previously read and considered the whole record. Hernández García v. L.R.B., 94 P.R.R. 21 (1967).

It does not lie to set aside a decision of the Labor Relations Board rendered after the latter designated an examiner to prepare a report as to the disposition of a case, on the basis of evidence heard by another examiner—assuming that said action constitutes a violation of the Regulations of the Board—in the absence of evidence to establish that such action caused prejudice to appellant, the latter having failed to establish that the substitution did not lie because the credibility evaluation of the witnesses was such that it constituted a pertinent factor for the purposes of the report of the Board's examiner. Hernández García v. L.R.B., 94 P.R.R. 21 (1967).

In the absence of a regulation to that effect, the Labor Relations Board is empowered to designate an examiner to prepare and submit, on the basis of evidence heard by another examiner, the corresponding report containing the findings of fact and conclusions of law as

well as its recommendations as to the disposition of the case. Hernández García v. L.R.B., 94 P.R.R. 21 (1967).

Where a complaint charging an employer with the commission of an unfair labor practice has been referred to a trial examiner of the Labor Relations Board, and said examiner ceases in his functions on the Board, the latter may transfer the case to itself by special order and prepare a Draft of Decision and Order concluding that the employer has not violated the Labor Relations Act of 1945—draft which does not constitute the final disposition of the case—and after examining the objections to the proposed order said Board may set aside the conclusions contained in the Draft of Decision and Order and conclude lastly that the employer is guilty of the unfair labor practice charged against him. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

This Court shall be more strict than usual in examining the record of a case before the Labor Relations Board when the Board issues a decision and order without a prior report of a trial examiner. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

The recommendations made by a trial examiner in his report are not binding on the Labor Relations Board even though the parties affected by the report filed no exception thereto, since the report is but a mere recommendation which the Board, according to this subchapter creating it and to its own Regulation, has discretion to alter. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

5. Conclusions. The findings of fact formulated by the Labor Relations Board are final and conclusive, provided that said findings are supported by evidence and Supreme Court cannot question them. L.R.B. v. Marex Constr. Co., Inc., 103 D.P.R. 135 (1974); L.R.B. v. Acevedo, 78 P.R.R. 515 (1955); Rivera v. L.R.B., 70 P.R.R. 320, 70 P.R.R. 5 (1949).

6. Orders. A determination of the Labor Relations Board holding that an employer intervened with the union rights of his employees is a determination of a quasi-judicial nature. W.R.A. v. L.R.B., 99 P.R.R. 884 (1971).

Whenever an unfair labor practice is charged, the Board enters a decision in which it finds whether or not the employer has committed the unfair labor practice and if necessary it orders it to desist and to take such affirmative action as shall effectuate the purpose of this subchapter. These orders are mandatory. L.R.B. v. Cadillac U. and L. Supply, 98 P.R.R. 97 (1969); Graficart Corp. v. L.R.B., 97 P.R.R. 461 (1969); L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964); Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950); Rivera v. L.R.B., 70 P.R.R. 5 (1949); L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

An order to cease and desist from an unfair labor practice should state specifically the conduct restricted to the party to whom it is directed, since the violation thereof subjects him to punishment for contempt. L.R.B. v. Ceide, 89 P.R.R. 659 (1963).

7. Compensation of employees. There is no legal basis in our jurisdiction that justifies receiving separate compensations for the same damage. López Vicil v. ITT Intermedia, Inc., 142 D.P.R. 857 (1997).

An employer having categorically denied in his answer to a complaint that he owed any amount for monthly pay on account of an unjustified layoff, it is incumbent upon the worker to adduce specific evidence of the salary which he earned at the time of his layoff from his work so that it would serve as basis for the court to determine the wages claimed. Pantoja v. Esco Corp., 100 P.R.R. 50 (1971).

Where the Labor Relations Board does not fix, in the order issued, the exact amounts that the workers are entitled to receive by reason of loss of wages as a consequence of the employer's unfair labor practice, any legal interest granted by said Board in its order will be computed starting from the date on which the Board should fix said exact amounts and notify the employer. L.R.B. v. Milares Realty, Inc., 90 P.R.R. 821 (1964).

The Labor Relations Act being remedial, not punitive, upon computing the back pay of employees while they were out of their jobs on account of an unfair labor practice of the employer, the sums of money corresponding to the period comprised between the date of the issuance by the Labor Relations Board of its Proposed Findings of Fact and Conclusions of Law — concluding that the employer had not committed any violation of the act — and the date which said Board set aside such conclusion and decided that the employer had committed an unfair labor practice upon arbitrarily discharging said employees, should be excluded. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

The method employed by the Labor Relations Board in computing the back pay of employees who were out of their jobs on account of employer's unfair labor practice is a discretionary question of said Board, which practice will not be reviewed by this court in the absence of a showing of misuse of such discretion. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

This subchapter being remedial, not punitive, in computing compensation of employees for loss of pay while out of their employment because of the employer's unfair labor practices, deductions must be made of any sums earned by them from other employers for whom they worked during this period. Berrios v. Eastern Sugar Associates, 85 P.R.R. 113 (1962); Rivera v. L.R.B., 70 P.R.R. 5 (1949).

The Board has power under this subchapter to compel an employer who has committed unfair labor practices to pay back wages to employees. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

The Board may provide for compensation of employees for loss of pay because of their employer's unfair labor practices, by orders couched in general terms, and the determination of the exact amount due is left to the Board, with the cooperation of the employer, whose payrolls serve as basis for the final computation. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

8. Errors. Alleged legal errors in labor arbitration, where collective bargaining agreement did not require awards pursuant to law, cannot be reviewed by the Supreme Court. L.R.B. v. Securitas, Inc., 111 D.P.R. 580 (1981).

The findings of fact made by the Labor Relations Board are conclusive when they are supported by the evidence presented. W.R.A. v. L.R.B., 99 P.R.R. 884 (1971).

When the Board based on the grounds expressed by it holds that the definitive suspension of petitioner from membership of the union was not unjustified, it commits no error, as a question of law, in upholding the authority of the union, under the latter's Regulations, to impose the fine which it imposed on petitioner, and it was his attitude of noncompliance with the sanction, notwithstanding his having accepted it, that caused the further action of the union of suspending him definitively from membership, which the union is likewise authorized to do under its regulations. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

A clause in a collective bargaining agreement which is to be in force for only eleven months, providing for 15 days' vacation with pay for employees who worked continuously for a year and a day, cannot be construed to mean that vacations are earned only by virtue of work beginning on the effective date of the agreement, as this would deprive said clause of any effect whatsoever, hence, a ruling of the Labor Relations Board, ordering vacations for employees who worked a full year and a day after the agreement went into effect, even though this course requires them to work beyond the termination date of said agreement, gives effect to said clause and is valid. L.R.B. v. Namerow, 69 P.R.R. 77 (1948).

Finding of fact of Labor Relations Board that the employer herein elected to treat the collective bargaining agreement as remaining in effect, despite its breach by the employees, being supported by the evidence, the Board's ruling that under those circumstances the terms of the agreement with reference to vacations of employees continued to bind the employer was proper, as a matter of law, and its order to grant such vacations is valid. L.R.B. v. Namerow, 69 P.R.R. 77 (1948).

9. **Limitation.** The doctrine of laches should not be invoked in opposition to a petition to enforce a certain order and decision of the Labor Relations Board since said order issues as a matter of public interest and the employer did not allege substantial prejudice. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

Terms of limitation for actions pursuant to §§ 5291 and 5305 of Title 31 do not apply to petition by Labor Relations Board to implement arbitration award pursuant to subsection (2)(c) of this section. Hilton Int'l Co. v. L.R.B., 112 D.P.R. 689 (1982); L.R.B. v. P.R. Telephone Co., Inc., 107 D.P.R. 76 (1978).

II. JUDICIAL ENFORCEMENT AND REVIEW OF ORDERS

101. Generally. The party in whose favor an arbitration award is granted has the option of petitioning the court to implement the same or may petition the Labor Relations Board for implementation. J.R.T. v. A.E.E., 133 D.P.R. 1 (1993).

The Labor Relations Board need not repeat the hearing process before examining officials and adopt another decision prior to petitioning the Supreme Court for an enforcement order. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

Agreements as to arbitration should be complied with strictly if the submission is clear and without ambiguity, supporting the public policy that encourages arbitration as a less formal and more rapid means of adjudication. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

Arbitration proceedings and arbitration wards within labor law, enjoy special benefits before the courts for providing the ideal form for resolving employer-worker's disputes in a rapid, economical and confortable way. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

Arbitration award is similar in nature to court judgment or order, and may be reviewed on appeal. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

In judicial review of arbitration not pursuant to law, arbiter's award should deserve great consideration by the courts. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Where federally and state protected labor rights are involved in the controversy over which both national and local Boards have jurisdiction, decision of Puerto Rico Supreme Court on appeal has no effect upon right of employee to sue employer pursuant to federal law. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Courts, as a rule, should not engage in reproducing and deciding issues already adjudicated by arbitrator's award. As an exception, courts may intervene and review whether covenant or agreement states that award must be according to law—as in the present case—and, then, only regarding the laws applied. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

In the absence of extraordinary circumstances in which the public interest or some other analogous considerations is involved, ordinarily, this court shall abstain from going beyond its

classic function of appellate court, leaving the trial courts, as primary judicial forums, to entertain any further petition of the Labor Relations Board tending to render effective and execute—by obtaining an Order for a Writ of Attachment or any other remedy—our final judgment. L.R.B. v. Aranas, 103 D.P.R. 786 (1975).

The courts are prevented from entertaining at first instance the merits of a labor-management controversy when the parties have agreed to settle it by arbitration. Seafarers Int'l Union v. Superior Court, 86 P.R.R. 762 (1962).

Action of Board in ratifying action of its President in dismissing a petition of an employer to prefer charges of unfair labor practices against a workers' union is not reviewable as a final order of Board, and petition to review action of Board should be dismissed. Luce & Co. v. L.R.B., 82 P.R.R. 92 (1961).

Where cease-and-desist order is entered against an employer by virtue of stipulation made by latter and Labor Relations Board, whereby parties agree that the Board may petition Supreme Court to enforce such order, employer has no right to object now to Board's petition. L.R.B. v. García, 78 P.R.R. 423 (1955).

Since the violation of the no-strike clause contained in the collective bargaining agreement constitutes an unfair labor practice in violation of the agreement under local law, the local Labor Relations Board was justified in rendering its order to cease and desist from such practice, and this court must enforce, as it does hereby enforce, the decision and order of the Board in question. L.R.B. v. I.L.A., 76 P.R.R. 777 (1954).

Where a proceeding is pending before the National Board involving the validity of the closed-shop clause in a collective agreement—closed shop which is proscribed in those agreements by the Taft-Hartley Act, 29 U.S.C. ch. 7, and the integrity of which once adopted, our insular act tends to maintain—this court shall not enforce an order of the Insular Board in connection with said collective agreement if the fate of the agreement may depend on the determination of the National Board in the proceeding before it as well as on the scope of the order it may issue in the exercise of its power. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952).

Where an order was entered by the Insular Board prior to the effective date of the Taft-Hartley Act, 29 U.S.C. ch. 7, and was pending before us on petition for review when the latter act took effect, if the order as here calls for collective bargaining in the future, the order cannot be enforced if such bargaining is no longer required under the supervening provisions of the Taft-Hartley Act. Asoc. Empl. Bayamón Transit v. L.R.B., 70 P.R.R. 273 (1949).

102. Findings, review of. Legislative intent in creating the Court of Appeals and granting it jurisdiction over decisions of Labor Relations Board was that said court would review all matters arising from the Board that had previously been heard by the Superior Court, including petitions to implement an arbitration award. J.R.T. v. A.E.E., 133 D.P.R. 1 (1993).

A single allegation of error without foundation should not be the basis for review or modification of an arbitration award or the decision of a trial court. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

In judicial review of arbitration not pursuant to law, arbiter's award should deserve great consideration by the courts. U.I.L. de Ponce v. Dest. Serralles, Inc., 116 D.P.R. 348 (1985).

Reviewing scope of Supreme Court regarding Labor Relations Board decisions is limited to matters of law. Matters of fact supported by evidence are final. L.R.B. v. Hosp. de la Concepción, 114 D.P.R. 372 (1983), *cert. denied*, Hospital de la Concepción v. P.R.L.R.B., 465 U.S. 1021 (1984).

Assumption that different remedy would have been awarded if case had been submitted to courts instead of arbitration does not justify substitution of court criterion for arbitrator's. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

Arbitrator's award of an ambiguous, incomplete and general nature cannot be considered final or binding on parties. L.R.B. v. Otis Elevator Co., 105 D.P.R. 195 (1976).

In the consideration of petitions from the Labor Relations Board to enforce its orders, this court shall not apply a restrictive approach, based on the formulation and emphasis of merely technical and ritualistic questions. L.R.B. v. Marex Constr. Co., Inc., 103 D.P.R. 135 (1974).

A complaint having been filed in claim of compensation on account of vacations accumulated and not used by a member of a union whose collective bargaining agreements contained adequate mechanisms to entertain said type of claim, a court, after January 25, should dismiss the complaint whenever the complainant would not have availed himself of the remedy provided in the collective agreement in question—having submitted his claim through the union to his employer. (*Perez v. Water Resources Authority, 87 D.P.R. 110 (1963) followed.*) Sec. of Labor v. Hull Dobbs, 101 D.P.R. 286 (1973).

Evaluation of the reasoning used by an arbitrator to reach a conclusion in a labor management controversy when said officer acted within his powers under a clear submission agreement does not lie. L.R.B. v. U.S.M. Precision Products, 100 P.R.R. 95 (1971).

A matter having been duly submitted to an arbitrator under the terms of a collective bargaining agreement his decision on the same is final and it is incumbent upon this court to enforce it. L.R.B. v. U.S.M. Precision Products, 100 P.R.R. 95 (1971).

The payment of a compensation having been ordered by the Labor Relations Board, if the parties do not specify the damages, said Board is empowered to receive evidence on the same and make the pertinent findings of fact and conclusions of law. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

A finding of fact made by the Labor Relations Board cannot be changed in an incident before this court to order compliance with an order entered by said Board. L.R.B. v. Cadillac U. and L. Supply, Inc., 98 P.R.R. 97 (1969).

The method employed by the Labor Relations Board in computing the back pay of employees who were out of their jobs on account of employer's unfair labor practice is a discretionary question of said Board, which practice will not be reviewed by this court in the absence of a showing of misuse of such discretion. L.R.B. v. Línea Suprema, Inc., 89 P.R.R. 821 (1964).

From an examination of the order to cease and desist from an unfair labor practice issued by the Labor Relations Board in this case against the employer, we conclude that the same is too ample, pursuant to the standards outlined in *L.R.B. v. Ceide, 89 P.R.R. 659 (1963)*, wherefore such order is modified. L.R.B. v. Caribbean Container, 89 P.R.R. 694 (1963).

The fact that in an order to cease and desist from an unfair labor practice directed to an employer—because of his refusal to negotiate with his employees and interfering with the rights guaranteed to them—the Board makes reference to a datum which is not supported by the evidence—that in the agricultural phase of the sugar industry collective agreements are frequently made retroactive to the commencement of the crop season—is no ground to set aside such order, since such datum has no special significance and is to a certain extent wholly irrelevant for the purposes of issuing such order. L.R.B. v. Ceide, 89 P.R.R. 659 (1963).

The determinations of the Labor Relations Board deserve the respect and consideration of Supreme Court. Landrón v. L.R.B., 87 P.R.R. 87 (1963).

Inasmuch as the violations of the collective agreement in question constitute unfair labor practices under the Puerto Rico Labor Relations Act, the State Labor Relations Board was justified in rendering its Order of "cease and desist" of June 17, 1960 and this court shall neither reverse nor modify said Order. P.R. Telephone v. L.R.B., 86 P.R.R. 362 (1962).

In proceedings to enforce an order of Labor Relations Board, this court will not disturb Board's findings of fact unless they are not supported by evidence. L.R.B. v. Simmons Int'l., Ltd., 78 P.R.R. 360 (1955); L.R.B. v. Union de Choferes, 73 P.R.R. 920 (1952); Rivera v. L.R.B., 70 P.R.R. 320 (1949); L.R.B. v. Namerow, 69 P.R.R. 77 (1948).

In the case where a union with whom an employer has signed a collective agreement based on closed shop, excludes a member from membership and requests the employer to discharge him from work, and the latter does so, if upon it being charged with the commission of unfair labor practice, the Board concludes that the employer, in discharging the laborer, acted within the administrative faculties and contractual obligations it had under § 69(1)(i) of this title and the evidence justifies said conclusion, it shall not be disturbed by Supreme Court. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

The determination of the Labor Relations Board of an appropriate bargaining unit is conclusive and will be affirmed in an appropriate case before us, unless its decision is arbitrary or capricious. Rivera v. L.R.B., 70 P.R.R. 5 (1949).

Supreme Court is authorized to hold, as a matter of law, that the findings of fact of the Labor Relations Board and an order based thereon cannot stand only if there is no evidence in the record before us in support of said findings. L.R.B. v. Namerow, 69 P.R.R. 77 (1948).

103. Questions not raised before Board. The mere fact that an employer charged with engaging in an unfair labor practice does not raise in due time before the Labor Relations Board objections to the report of the examiner of the Board who intervened in the administrative phase of the proceeding, does not deprive the employer of his contention before this Court where—as in the present case—the allegation is that the pronouncements complained of are not warranted by the evidence, which constitutes the record which gave rise to the action of the Board. L.R.B. v. Ceide, 89 P.R.R. 659 (1963).

In a proceeding to enforce an order of the Insular Labor Relations Board, Supreme Court shall not consider any question which was not raised before the Board, nor as to which the Board had an opportunity of reaching any conclusions. L.R.B. v. I.L.A., 73 P.R.R. 568 (1952); Luce & Co. v. L.R.B., 71 P.R.R. 335 (1950).

104. Questions of law. An arbitration determination that certain clauses of the collective bargaining agreement are not in accord with the statute is not error of law on the part of the arbitrator. Challenger Caribbean Corporation v. Unión Gen. de Trabajadores, 903 F.2d 857 (1990).

An award based on a voluntary submission of the parties is subject to judicial review only if the parties have agreed that the controversy will be resolved according to law. In absence of such a provision, an award may be challenged only if it shows fraud, improper conduct by the arbitrator, violation of due process, lack of jurisdiction, failure to resolve all the controversies presented or violation of public policy. J.R.T. v. Corp. Crédito Agrícola, 124 D.P.R. 146 (1989).

Where collective bargaining agreement established that arbitration award should be pursuant to law, any party in interest may challenge award before courts on any ground affecting validity thereof. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Labor Relations Law of Puerto Rico does not regulate labor arbitration and there is no other specific legislation on this matter in this jurisdiction. L.R.B. v. Otis Elevator Co., 105 D.P.R. 195 (1976).

Sections 3201–3229 of Title 32 regulating arbitration in business are not applicable to arbitration between labor and management. L.R.B. v. Otis Elevator Co., 105 D.P.R. 195 (1976).

The purpose of bringing before the Supreme Court the administrative record of a case heard before the Labor Relations Board is to allow the court to examine the sufficiency and merits of any conclusion or order of a judicial nature issued by the Board as corollary of our exclusive function of issuing a final decision on questions of law. L.R.B. v. Marex Constr. Co., Inc., 103 D.P.R. 135 (1974).

In those cases where this subchapter gives us jurisdiction to review decisions and orders of the Labor Relations Board, this subchapter vests this court, not the Board, with the power to give the final answer on questions of law. L.R.B. v. Junta de Muelles, 71 P.R.R. 143 (1950).

In enforcing or reviewing final orders from the Labor Relations Board, this court is not bound, in legal questions, by the findings of the Board. Rivera v. L.R.B., 70 P.R.R. 320 (1949).

105. Pleading. Where in a petition before Supreme Court to enforce a decision and order of the Labor Relations Board against a union it does not appear from the record nor does the union allege that it has complied with the affirmative action of said order, its contention that the decision and order of the Board are academic lack merit. L.R.B. v. Unión de Chóferes, 73 P.R.R. 920 (1952).

106. Parties. An order to cease and desist from unfair labor practices charged against the predecessor employer cannot be extended to an employer assignee when said employer-assignee was not served notice, nor was given an opportunity to be heard by the Labor Relations Board, nor is there any evidence whatsoever of simulation or evasion on the part of said employer assignee, or of his being an alter ego or a continuation of the predecessor employer. L.R.B. v. Club Náutico, 97 P.R.R. 376 (1969).

In a petition before this court filed by the Labor Relations Board of Puerto Rico in the name and on behalf of a union to enforce an arbitration award under the provisions of the Labor Relations Act, the union, separately, has no intervention. In this case, in the absence of any objection, its attorneys will be allowed leave to intervene together with the Solicitor General of Puerto Rico, attorney for the Board. L.R.B. v. Valencia Baxt Express, 86 P.R.R. 267 (1962), *cert. denied*, 373 U.S. 932 (1963).

In a proceeding brought by the Labor Relations Board against an employer for having committed alleged unfair labor practices, a company union is not a necessary party. Quiñones v. L.R.B., 69 P.R.R. 551 (1949).

107. Defenses. Where court decided prior case without jurisdiction thereupon, defense of res judicata before Labor Relations Board did not lie. L.R.B. v. Hosp. de la Concepción, 114 D.P.R. 372 (1983), *cert. denied*, Hospital de la Concepción v. P.R.L.R.B., 465 U.S. 1021 (1984).

Defense of estoppel in equity does not normally lie where execution of public policy is involved. L.R.B. v. Hosp. de la Concepción, 114 D.P.R. 372 (1983), *cert. denied*, Hospital de la Concepción v. P.R.L.R.B., 465 U.S. 1021 (1984).

In proceeding to enforce a decree of Labor Relations Board, it constitutes no defense on part of respondent that he has not yet violated, either totally or partially, decree in question. L.R.B. v. García, 78 P.R.R. 423 (1955).

Union-shop clause in a collective agreement which is illegal because of the failure to hold election indispensable to make it valid does not render the agreement void ab initio but merely voidable, and as long as agreement is not invalidated by competent authority, parties thereto are bound to comply with valid provisions contained therein, and they cannot allege nullity of agreement as defense in proceedings to enforce decision or order of Labor Relations Board. L.R.B. v. Simmons Int'l., Ltd., 78 P.R.R. 360 (1955).

108. Procedure. Term to appeal, reconsider or review an arbitration award commences upon the date of notice of such award and the additional period of three days granted in Rule 68.3 of App. III of Title 32 is not applicable. U. G. T. v. Challenger Caribbean Corp., 126 D.P.R. 22 (1990).

Review of labor arbitration award must be filed within thirty (30) days from date of filing at the Conciliation and Arbitration Office of the Department of Labor and Human Resources after certified copy of notice is filed in record. U. G. T. v. Challenger Caribbean Corp., 126 D.P.R. 22 (1990).

Procedure for reviewing labor arbitration award is similar to procedure for reviewing judgment of trial court or administrative decision. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Procedural rules for review, not for ordinary claims, apply to action challenging labor arbitration award. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Unless collective bargaining agreement established differently, review of labor arbitration award must be filed within thirty (30) days after its issuance. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Challenge of labor arbitration award through plenary ordinary claim procedure, regardless that award should be or not pursuant to law, did not lie. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Parties to labor collective bargaining agreement cannot relitigate de novo before the courts any and all controversies already decided by arbitration award, merely because they stipulated that said award should be pursuant to law. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Party challenging labor arbitration award on whatever grounds is bound by the rules that govern writs of review of administrative decisions before Superior Court. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

The Labor Relations Act does not regulate labor arbitration and in this jurisdiction there is no other specific legislation to that effect. Seafarers International Union v. Superior Court, 86 P.R.R. 762 (1990); L.R.B. v. Valencia Baxt Express, 86 P.R.R. 267 (1963), *cert. denied*, 373 U.S. 932 (1963).

In the absence of statute, arbitration disputes between employee-employer will be subject to the general principles that govern arbitration. J.R.T. v. Valencia Baxt, 86 D.P.R. 282 (1962), cert. denied, 373 U.S. 932 (1963).

109. Damages. The Labor Relations Board has the power to order a party to compensate another for damages caused to the latter because of an unlawful strike provided the Board understands that this remedy is necessary and adequate to effectuate the purposes of the Labor Relations Act. U.T.I.E.R. v. L.R.B., 99 P.R.R. 498 (1970).

110. Evidence. The rule generally followed by arbitrators as to who bears the burden of proof is, as in cases before courts, that the party who supports the affirmative of the issue in question should produce sufficient evidence to prove the essential facts of the claim. The burden is on the part of the party against whom the arbitrator would rule if no evidence was presented in the case. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

Documents that were not presented to the arbitrator that intervene in the issue will not be considered in the pleading relating to the merits of such case. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

Arbitrators have decided that in some cases the party that presents the controversy does not necessarily has the burden of proof, specially in cases where the fundamental facts are under the exclusive knowledge of the other party. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

In cases of employment discharge, arbitrators have stated almost invariably, that the burden of proof falls on the employer due to the fact that justification is an affirmative defense. In arbitration cases where a severe and extreme penalty has already been established—the discharge of the employee—the employer will have to proof to the arbitrator that such discharge was justified. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

In cases of employment discharge as well as others dealing with disciplinary actions, ordinarily the employer is in control and possession of all information necessary to decide the issue. J.R.T. v. Hato Rey Psychiatric Hosp., 119 D.P.R. 62 (1987).

Outside of criminal matters, the locus of the burden of proof is not properly a problem of due process of law. J.R.T. v. A.E.E., 117 D.P.R. 222 (1986).

In judicial challenge of labor arbitration award alleging fraud, improper conduct or lack of due process, court may allow introduction of evidence by party, provided prior justification for need thereof pursuant to Rule 14 of App. VIII-A of Title 4. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

In court action challenging labor arbitration award discovery procedure are not admissible. U.I.L. de Ponce v. Dest. Serrallés, Inc., 116 D.P.R. 348 (1985).

Alleged error in appreciation and evaluation of evidence by itself is not enough grounds to review, amend or change arbitrator's award and its findings. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

Evidence offered by a laborer in a suit claiming compensation from his employer for accumulated and not used vacations, to the effect of making inapplicable to his case the rule establishing the obligatory nature of the arbitration clauses enunciated in *Pérez v. Water Resources Authority, 87 P.R.R. 110 (1963)*—evidence which is alleged would have established before the court the refusal of the worker's union to represent him in the procedure for complaints established in the collective bargaining agreements—is inadmissible when the trial court declares the right of said laborer to elucidate his claim, insofar as periods subsequent to January 25, are concerned by resorting to arbitration. Sec. of Labor v. Hull Dobbs, 101 D.P.R. 286 (1973).

III. JUDICIAL ENFORCEMENT OF ARBITRATION AWARDS

201. Generally. It is correct to follow the standard established by the Supreme Court of Puerto Rico that liability will be distributed where union contributed to damages of worker. Morales Torres v. J.R.T., 119 D.P.R. 286 (1987).

This section, construed with § 66 of this title, authorizes the Labor Relations Board to petition the Supreme Court for enforcement of order in case involving unfair labor practice and for clarification of appropriate bargaining unit. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

Appeal before Labor Relations Board to implement execution of arbitrator's award pursuant to this section does not constitute exercise of cause of action but taking subordinate step in same procedure, similar to motion of execution. L.R.B. v. P.R. Telephone Co., Inc., 107 D.P.R. 76 (1978).

Request from Labor Relations Board to implement execution of arbitrator's award—similar to motion for execution of judgment—pursuant to subsection (2)(c) of this section is a procedural remedy. L.R.B. v. P.R. Telephone Co., Inc., 107 D.P.R. 76 (1978).

In this jurisdiction there is no local law which expressly orders—or prohibits—that awards of a quasi-legislative nature be enforced by Supreme Court. L.R.B. v. Valencia Baxt Express, 86 P.R.R. 267 (1962), *cert. denied*, 373 U.S. 932 (1963).

An employee or a union in his behalf may sue an employer in the courts for the enforcement of the provisions of a collective bargaining agreement, and the present suit being one brought by a union, represented by the Board, on behalf of two of its members, to enforce an

arbitration award made under a collective bargaining agreement, comes within that doctrine. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

A petition to enforce an arbitration award does not lie when the controversy involved arises subsequent to the employer having complied with the award and is not nor could have been subject matter of the arbitration. L.R.B. v. Thon, 69 P.R.R. 694 (1949).

202. Discretion of Board. The Labor Relations Board is justified in not exercising its discretion to reopen a case and grant a new hearing where the party so requesting disregarded the case during all the procedure which culminated in the adverse decision and order rendered by the Board. L.R.B. v. Cadillac U. and L. Supply, Inc., 98 P.R.R. 97 (1969).

The granting of a hearing to a party to argue orally its exceptions and objections to the report rendered to said body by a trial examiner designated to take cognizance of the case, is discretionary with the Labor Relations Board, and in the absence of evidence to establish that said Board abused its discretion, its refusal to grant said hearing shall not be disturbed by this Court. Hernández García v. L.R.B., 94 P.R.R. 21 (1967).

In the exercise of its power to issue an order to an employer requiring him to cease and desist from an unfair labor practice, and also to take such affirmative action as will effectuate the purposes of the Labor Relations Act, the Labor Relations Board has broad discretion, but such discretion to order the employer to take affirmative action is limited by the requirement imposed by the courts that such remedy be proper and adequate for the evil at hand. L.R.B. v. Ceide, 89 P.R.R. 659 (1963).

An employer's or union's past conduct is a factor to be considered in passing upon the Labor Relations Board's justification to enter a broad and general order to "cease and desist" from an unfair labor practice. L.R.B. v. Ceide, 89 P.R.R. 659 (1963).

Filing in Supreme Court of a petition to enforce an arbitrator's award, rendered by virtue of a collective bargaining agreement which the employer agreed but had failed to accept, is a matter which the Legislature left to the sound discretion of the Board, and once the Board takes an administrative decision to file such suit, Supreme Court will not substitute its views on that decision for those of the Board. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

203. Condition precedent. The Labor Relations Board is not bound, before requesting the Supreme Court to enforce an arbitration award, to hold a public hearing nor to require the employer to comply with the said arbitration award. L.R.B. v. Caribbean Towers, Inc., 99 P.R.R. 578 (1971).

Subsection (2)(c) of this section does not expressly provide that the Labor Relations Board should previously require the employer to comply with the arbitration award before resorting to Supreme Court, however, the better practice in cases of arbitration awards should always be for the Board to require the party bound to comply with it, to do so, and resort to Supreme Court solely on the refusal to comply with the award. The petition of the Board complies with these requirements. L.R.B. v. Eastern Sugar, 69 P.R.R. 763 (1949).

204. Jurisdiction. The Supreme Court has jurisdiction to enforce orders of Labor Relations Board on composition of appropriate bargaining unit and noncompliance with order and collective bargaining agreement. J.R.T. v. A.M.A., 119 D.P.R. 94 (1987).

A court has jurisdiction to take cognizance of a controversy between a union and an employer which constitutes a private suit to compel the latter to comply with the provisions of an arbitration award on wages. United Steelworkers v. Paula Shoe Co., Inc., 93 P.R.R. 645 (1966).

A part of the Superior Court of Puerto Rico [now Court of First Instance] has jurisdiction to entertain a complaint claiming wages filed by a group of workers and employees who worked in a naval base of the United States against a local company who hired them in its

capacity as a constructor of federal works. Nolla, Galib & Cia. v. Superior Court, 93 P.R.R. 630 (1966), *cert. denied*, 386 U.S. 1033 (1967).

Even assuming that the action of the Union de Trabajadores de la Autoridad Metropolitana de Autobuses (U.T.A.M.A.) in initiating a strike constitutes a violation of the collective agreement, this Supreme Court is barred by § 102 of this title from granting the request of the Labor Relations Board asking a temporary injunction to enforce an order of said agency which urged the labor union to "cease and desist" from violating the terms of the agreement. L.R.B. v. U.T.A.M.A., 92 P.R.R. 361 (1965).

The Supreme Court has jurisdiction—when the employer involved in the case is subject to provisions of the federal act on Labor Management Relations, Taft-Hartley—to know of the violations of a contract between employers and employees. L.R.B. v. Valencia Baxt Express, 85 P.R.R. 267 (1962), *cert. denied*, 373 U.S. 932 (1963).

The Taft-Hartley Act, 29 U.S.C. ch. 7, does not make violation of a collective bargaining agreement, including refusal to abide by an arbitrator's award made thereunder, an unfair labor practice, but assuming that this petition to compel an employer to abide by an award which he agreed but had failed to accept is a proceeding to correct an unfair labor practice, the local courts, and not the National Board, have jurisdiction thereof even though the employer is subject to the federal act. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

Exclusive jurisdiction of the National Relations Board to protect the public right in case of an unfair labor practice under the Federal Act, 29 U.S.C. ch. 7, does not necessarily bar a suit in the local courts by an employee to protect his private rights—enforcement of an arbitration award, made under a collective bargaining agreement, which an employer agreed but had failed to accept. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

The Taft-Hartley Act, 29 U.S.C. ch. 7, does not make violation of a collective bargaining agreement, including refusal to abide by an arbitrator's award made thereunder, an unfair labor practice, and this being so, a suit for the refusal to abide by the award and to compel enforcement of the award does not run afoul of the federal act and jurisdiction over said suit lies with the local courts rather than with the National Labor Relations Board, even though the employer involved is also subject to the federal act. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

Where an employer refuses to comply with an agreement to accept an arbitration award—a refusal which is an unfair labor practice under § 69(1)(f) of this title—and instead of taking proceedings against him for the violation of this subchapter the Board files a petition before us under subsection (2)(c) of this section not to prevent said unfair labor practice as such but, as agent or representative of the employees as prevailing party in the award, to enforce the arbitrator 's award, suit is one to enforce by judicial action private rights under the collective bargaining and submission agreements and the arbitration award made pursuant thereto and jurisdiction of said private suit lies in the local courts. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

Supreme Court has jurisdiction over the petition of the Labor Relations Board to make an employer comply with an arbitration award in connection with a labor controversy which the employer agreed but failed to accept as final and binding but with which he refused to comply. L.R.B. v. Compañia Popular, 69 P.R.R. 723 (1949).

Under subsection (2)(c) of this section, the Supreme Court has jurisdiction to consider and determine whether or not an arbitration award entered by a Grievance and Adjustment Committee, constituted in accordance with the terms of a collective agreement, which renders final the decision of the committee, should be enforced. Ríos v. Puerto Rico Cement Corp., 66 P.R.R. 446 (1946).

205. Arbitration agreement. Doctrine stating that arbitration settling controversies on interpretation of obligations of parties under collective bargaining agreement also includes

controversies on salary and overtime unless specifically excluded —*Pérez v. Water Resources Authority, 87 P.R.R. 110 (1963)*— applies prospectively to collective bargaining agreements executed after January 25, 1963, date of decision, notwithstanding that agreement effects be retroactive to prior date. Secretary of Labor v. Hull Dobbs Co., 107 D.P.R. 441 (1978).

Arbitrator is empowered to award remedies consistent with and related to the purposes of law and agreement under which he acts. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977).

In the absence of an express prohibition, an arbitrator is empowered to modify the penalty imposed on the laborer by his employer if he considers it too severe and drastic. S.I.U. of P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977); L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965); L.R.B. v. Cooperation Cafeteros, 89 P.R.R. 487 (1963).

In absence of applicable statute, general principles of arbitration will apply to labor arbitration problems. L.R.B. v. Otis Elevator Co., 105 D.P.R. 195 (1976).

The rule of law established in *Pérez v. Water Resources Authority, 87 P.R.R. 110 (1963)*, is not applicable to controversies which arise under collective bargaining agreements entered into prior to January 23, 1963, date when said case was decided. Nazario v. Hull Dobbs of P.R., Inc., 102 D.P.R. 568 (1974).

The legal doctrines established in the case of *Pérez v. Water Resources Authority, 89 P.R.R. 110 (1963)* have a prospective effect as of January 25, 1963. Nazario v. Superior Court, 98 P.R.R. 827 (1970).

When a question is submitted to arbitration according to a collective agreement providing that the award shall be final and binding, unless the parties agree to, the Arbitration Committee does not determine its own jurisdiction, and it is for the courts and not to the arbitrators to construe the agreement of submission to arbitration in order to determine what questions the parties submitted to arbitration to avoid the resolution of questions not submitted to arbitration. L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965).

Arbitration agreements should be strictly enforced if submission is clear and free from ambiguity. L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965); L.R.B. v. Executive House, Inc., 91 P.R.R. 775 (1965).

A written submission to arbitrate a complaint of a union under a collective agreement in force is not necessary, even though the matter which was considered by the corresponding Grievance Committee was submitted to a Fifth Member when said collective agreement had already expired. L.R.B. v. P.R. Telephone Co., 91 P.R.R. 883 (1965).

Where an arbitrator orders the reinstatement of an employee, the employer is not relieved from such obligation by the fact that the employee fails to report to work, the obligation of the employer—originating from the arbitrator's award — to notify the discharged employee of his intention to reinstate him in his former employment, requiring him to report to work, being of a positive nature. L.R.B. v. Cooperativa Cafeteros, 89 P.R.R. 487 (1963).

Both the rights arising from an agreement and those arising from the law or the Constitution of Puerto Rico are arbitrable under the provisions of a collective agreement. Pérez v. W.R.A., 87 P.R.R. 110 (1963).

Agreements on arbitration—specially those arising from collective bargaining agreements in the sphere of the labor-management relations—should be strictly enforced if the submission is clear and free from ambiguity as to the will of the parties in that sense, both to render valid the contractual will of the parties when not contrary to public order or interest or when the aims and purposes of any other legislative norm of general interest are not defeated, and to render valid a well-defined public policy which encourages this simpler, less formal and speedier way of deciding controversies between citizens. Seafarers Int'l Union v. Superior Court, 86 P.R.R. 762 (1962).

The voluntary submission of a controversy to arbitration by an employer and a union under the express terms of a collective agreement, binds a worker member of said union who personally opposes to the submission of said controversy. Rivera v. Land Authority, 83 P.R.R. 251 (1961).

Arbitration agreements between employers and employees are governed by this subchapter and they are excluded from chapter 259 of Title 32. L.R.B. v. Corona Brewing Corp., 83 P.R.R. 40 (1961).

In the absence of an express provision to the contrary in a collective bargaining agreement, an arbitrator is empowered (1) to find that even if the facts on which the employer predicated the discharge of employees were true, discharge was too drastic a penalty, and (2) to modify the penalty. L.R.B. v. Sociedad Mario Mercado e Hijos 74 P.R.R. 376 (1953).

Under a submission to arbitration pursuant to a collective bargaining agreement providing that the award rendered be final and binding, the Arbitration Committee does not, unless the parties agreed thereto, determine its own jurisdiction, and it is for the courts, and not the arbitrators, to construe the arbitration agreement to determine what questions the parties agreed to submit to arbitration. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

206. Review of award. Violation of due process in administrative proceedings renders arbitration award null and void. L.R.B. v. Communications Authority, 110 D.P.R. 879 (1981).

Extreme rigidity on the part of the arbitrator in the exclusion of evidence rendered administrative arbitration proceedings null and void. L.R.B. v. Communications Authority, 110 D.P.R. 879 (1981).

An employer and its employees who in a collective bargaining agreement have agreed to accept arbitration awards issued by virtue of such agreement, substitute the arbitrator for the courts for the determination of all questions of fact and substantive law, thus waiving their rights to litigate in the courts the questions properly submitted to arbitration, and under such circumstances there is no legal way by which the courts can relieve the parties of their agreement. L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965); López v. Destilería Serrallés, 90 P.R.R. 241 (1964).

The fact that there is need to make some simple mathematical calculations following a formula stated by the parties in the agreement does not preclude the court from ordering compliance with an award which is complete and in which the arbitrator limited himself to deciding the questions submitted to him. L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965); L.R.B. v. Cross Construction Corp., 89 P.R.R. 747 (1964).

Since an arbitration award which is final and binding for the parties ends the controversies between said parties without the intervention of the courts, except to enforce it, such award shall on its own definitely decide all questions submitted, without modification or explanation whatsoever, by the courts. L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965); L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

Where neither the collective bargaining agreement nor the submission to arbitration restrict the powers of the Arbitration Committee but rather give it unfettered powers, and it is provided that its award shall be final and binding, this court, in a proceeding to enforce the arbitration award, cannot refuse to enforce it because of the committee's alleged errors of substantive law. L.R.B. v. Sindicato Obreros Unidos, 92 P.R.R. 57 (1965).

It is not a function of this court to interpret a valid arbitration award in a manner different from the arbitrator, where the parties in a collective agreement agree to settle labor-management disputes concerning the interpretation thereof by submitting them to arbitration and that the arbitrator's award shall be binding on the losing party. In such a case, the parties have substituted the courts by the arbitrator and a valid arbitration cannot be litigated in the courts. L.R.B. v. Executive House, Inc., 91 P.R.R. 775 (1965).

This court is not barred from ordering compliance with an arbitration award determining that an employer is bound to pay to his employee's union a sum of money by way of benefit pursuant to a collective agreement in force, by the fact that the arbitrator has not established in said award the specific amount which the employer owed to the union, when the law and the agreement provide adequate mechanics for deciding said specific point. L.R.B. v. Cross Constr. Corp., 89 P.R.R. 747 (1964).

A court's authority to set aside an arbitration award made in pursuance of a covenant in a collective agreement is very limited, and in the absence of (a) fraud, (b) misconduct, (c) lack of due process in the conduct of the hearing, (d) violation of the State's public policy, (e) lack of jurisdiction, and (f) that the award does not decide all the questions in controversy which were submitted, a court is without authority to set aside an arbitration award for errors of judgment, whether as to the law or as to the facts. L.R.B. v. Cooperativa Cafeteros, 89 P.R.R. 487 (1963); Rivero Adorno v. Land Authority, 83 P.R.R. 251 (1961); L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

An arbitration award may be impeached or set aside if there is some defect or insufficiency in the submission to arbitration. L.R.B. v. Valencia Baxt Express, 86 P.R.R. 267 (1962), *cert. denied*, 373 U.S. 932 (1963); Rios v. Puerto Rico Cement Corp., 66 P.R.R. 446 (1946).

An employer and a union who under a collective agreement voluntarily agreed to arbitrate their difficulties and that the award shall be final and binding, substitute the arbitrator for the courts for the determination of every question of fact and of substantive law and they cannot relitigate in court the questions decided by the arbitrator, since this rule is of equal application to the members of the union which is a party to said collective agreement. Rivera v. Land Authority, 83 P.R.R. 251 (1961).

In a petition before us to enforce an arbitration award the employer's allegation that it is not bound to comply with said award because it modifies the terms of its collective agreement lacks merit, since the arbiter merely interpreted the phrases of the collective agreement included in the controversy and his conclusion is correct. L.R.B. v. Corona Brewing Corp., 83 P.R.R. 40 (1961).

An arbitration award, in the absence of any restriction in the agreement to arbitrate, cannot be set aside for errors of judgment either as to the law or the facts. L.R.B. v. Sociedad Mario Mercado e Hijos 74 P.R.R. 376 (1953).

The fact that an award is partly void does not necessarily vitiate the entire award; in such case, the valid portion could be enforced, provided the award is severable. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

207. **Evidence.** The evidence, as set forth in the opinion, is sufficient to conclude that in this arbitration case the submission of the parties to the arbitrator was clear and sufficient and that the arbitrator decided exactly the question submitted to him as to the interpretation to be given to a certain clause of the collective agreement between the parties concerning the vacations of the employer's employees. L.R.B. v. Executive House, Inc., 91 P.R.R. 775 (1965).

Supreme Court takes judicial knowledge of the usual practice of executing collective bargaining agreements by private document. L.R.B. v. N.Y. & P.R. S/S Co., 69 P.R.R. 730 (1949).

208. **Attorney's fees.** Ordinarily, it is appropriate to award attorney's fees where a worker has to petition a court to enforce his rights, but the amount of fees depends on the nature of the case and other factors. Morales Torres V. J.R.T. 119 D.P.R. 286 (1987).

209. **Interest.** Legal interest should be calculated as of the date of the order, award or decision. Morales Torres v. J.R.T., 119 D.P.R. 286 (1987).

§ 71. Secretary of Justice and Prosecuting Attorneys as attorneys for Board

Upon request of the Board the Secretary of Justice or the Prosecuting Attorney of the part of the court in which any action is filed, shall appear and act as attorney for the Board in any proceeding either in the Court of First Instance or Supreme Court.—May 8, 1945, No. 130, p. 406, § 10; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Act Aug. 22, 2003, No. 201, known as the "Judiciary Act of 2003", §§ 24–25r of Title 4.

"Attorney General" was changed to "Secretary of Justice" pursuant to Act July 24, 1952, No. 6, p. 10.

The word "district" was changed to "part of the court" upon authority of Act July 24, 1952, No. 11, p. 30.

Term "District Attorney" was changed to "Prosecuting Attorney" as the latest form of translation as indicated in Act July 24, 1952, No. 23, p. 94.

Amendments—1946.

Act 1946 amended this section generally.

ANNOTATIONS

1. Federal legislation. The right of the P.T.A. only exists by virtue of Act No. 379; the federal doctrine of "de minimis" does not apply here. Jiménez v. General, 170 D.P.R. —, 2007 TSPR 13 (2007).

§ 72. Additional sanctions

(a) Any employer found by the Board or by the National Labor Relations Board created by Act of Congress of July 5, 1935, to have committed any unfair labor practice, and who does not comply with an order relating to such practice issued by the Board which made such finding, shall not be entitled:

(1) To submit any bid upon any contract to which the Government or any political subdivision thereof, or public service enterprise or agency supported in whole or in part by public funds is a party;

(2) to receive any franchise, permit, or license, or any grant or loan of public funds from the Government, or any political or civil subdivision or public service enterprise or agency of the Government, for the period of one year after the service upon said employer of said order; Provided, That if said order is completely set aside or reversed by a court of competent jurisdiction, no such disabilities or disqualifications shall be enforced.

(b) Every contract to which the Government, or any political or civil subdivision thereof, or public service enterprise or agency of the Government or any agency supported in whole or in part by public funds is a party

shall contain provisions that in the event the Board or the National Labor Relations Board finds that the contractor or any of his subcontractors, or the grantee or borrower of public funds, has committed an unfair labor practice and does not comply with the order issued by the Board which made the findings:

(1) No further payments shall be made after such date to the contractor or to any of his subcontractors, or to the grantee or borrower.

(2) The contract or grant or loan may be terminated.

(3) A new contract or contracts may be entered into or open market purchases be made for the completion of the original contract, charging any additional cost to the original contractor; Provided, That if such order is completely reversed or set aside by a court of competent jurisdiction, all monies due the contractor, grantee or borrower from the date of the issuance by the Board of said order shall be paid him.

(c) For the purposes of this section any declaration by the Board or by the National Labor Relations Board that an employer has not complied with an order issued by the Board making such declaration shall be binding, final and conclusive unless such order is reversed or set aside by a court of competent jurisdiction.—May 8, 1945, No. 130, p. 406, § 11; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Text references.
Act of Congress of July 5, 1935, cited in text of this section, is National Labor Relations Act, ch. 372, 49 Stat. 449, 29 U.S.C. § 151 et seq.

Amendments—1946.
Act 1946 amended this section generally.

§ 73. Public records

Subject to reasonable rules and regulations to be made by the Board, the charges, petitions, complaints, transcripts of testimony, decisions and orders relating to proceedings instituted by or before the Board shall be made public records and be made available for inspection or copying.—May 8, 1945, No. 130, p. 406, § 12.

§ 74. Right to strike

Nothing in this subchapter shall be construed so as to interfere with, hinder or in any way restrain the right to strike.—May 8, 1945, No. 130, p. 406, § 13; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Amendments—1946.
Act 1946 amended this section generally.

Cross references.

Right to strike and organize, see § 41 of this title, and Const., Art. II, Secs. 17, 18, preceding Title 1.

§ 75. Cooperation of Board with local and federal agencies

In administering this subchapter the Board shall cooperate with similar governmental agencies or call upon other governmental agencies for assistance and may act as an agent of, or jointly with, the National Labor Relations Board.—May 8, 1945, No. 130, p. 406, § 14.

§ 76. Penalties

Any person who wilfully disobeys, prevents, impedes, or hinders the Board of any of its authorized agents in the performance of their duties in accordance with this subchapter, or who obstructs the holding of any hearing being carried on in accordance with § 66 or 70 of this title, shall be punished by a fine of not to exceed five thousand dollars ($5,000) or by imprisonment in jail for a term of not to exceed one year, or by both penalties in the discretion of the court.—May 8, 1945, No. 130, p. 406, § 17; Mar. 7, 1946, No. 6, p. 18, § 1.

HISTORY

Amendments—1946.

Act 1946 added the reference to § 66.

Subchapter III. Other Provisions Governing

§ 81. Payments by employees to representatives of employees prohibited—Definitions

Whenever used in this subchapter:

(1) *Representative or representatives of employees.*—Includes labor organizations as well as the persons who are officers, officials and employees of, and anyone else holding a position of any kind in a labor organization.

(2) *Labor organization.*—Means any labor organization of any kind, or any agency or committee representing employees, or any group of employees acting in concert, or any plan participated in by employees and existing, in whole or in part, for the purpose of dealing with an employer with respect to grievances, disputes, wages, wage rates, working hours, and/or working conditions.

(3) *Employer.*—Shall comprise any natural or [juridical] person, including agencies and instrumentalities of the Commonwealth of Puerto Rico operating as private enterprises or businesses, and the executives, super-

visors, managers, and any other person directly or indirectly acting in an executive capacity in the interest of an employer, but it shall not include the Government or any political subdivision thereof; Provided, That it shall also include any individual, partnership, or organization intervening in favor of management in any labor dispute or collective bargaining.—June 23, 1955, No. 99, p. 520, § 1.

HISTORY

Separability.

Section 6 of Act June 23, 1955, No. 99, p. 520, provides: "If any provision of this act [this subchapter], or the application of such provision to any person or circumstance, be declared invalid, the remainder of this act or the application of the said provision to persons or circumstances other than those with respect to whom or to which it was declared invalid, shall be affected by such declaration."

§ 82. Payments by employees to representatives of employees prohibited—Payments by employers unlawful

It shall be unlawful for any employer to pay or deliver or to agree to pay or deliver any money or other valuable consideration whatsoever to any representative whatsoever of any of his employees.—June 23, 1955, No. 99, p. 520, § 2.

ANNOTATIONS

1. Generally. Payment by employer of employees who are union representatives, while they are working on union business and administration of collective bargaining agreement during regular working hours, is illegal. 1979 Op. Sec. Jus. No. 26.

§ 83. Payments by employees to representatives of employees prohibited—Receipt of payments by representatives unlawful

It shall be unlawful for any representative whatsoever of any employees to receive or accept or to agree to receive or accept from the employer of the said employees any money or other valuable consideration whatsoever.—June 23, 1955, No. 99, p. 520, § 3.

§ 84. Payments by employees to representatives of employees prohibited—Exceptions

The provisions of this subchapter shall not apply:

(1) With respect to any money or other valuable consideration whatsoever payable by an employer to any representative who is an employee or an ex-employee of the said employer as remuneration for his services as an employee of the said employer or by reason thereof;

(2) with respect to the payment or delivery of any money or other valuable consideration in satisfaction of a judgment entered by any court,

or in satisfaction of a decision, adjudication, or award made by a conciliator, a grievance committee, or an impartial moderator, or in satisfaction of a settlement, adjustment, or compromise made of any claim, complaint, grievance, or dispute in which there is no fraud or compulsion;

(3) with respect to the sale or purchase of any article or product in the regular course of business and at the prevailing market price;

(4) with respect to money deducted from the wages, salaries, remunerations, or incomes of employees for the payment of dues in a labor organization, provided such deduction is required by virtue of the terms of a collective bargaining agreement executed between the employer and a labor organization not established, supported, or aided by any action whatsoever which is defined as unfair labor practice in §§ 61–76 of this title (Puerto Rico Labor Relations Act), if the said labor organization represents the majority of the pertinent employees, as provided by § 66(1) of this title, in an appropriate unit covered by such collective bargaining agreement, and provided the officer or treasurer designated by the labor organization as having custody of the funds thereof has posted the proper bond, nor

(5) with respect to money or other valuable consideration paid into a fund established for the sole and exclusive benefit of the employees of an employer and of the relatives or dependents of said employees, by virtue of the terms of a collective bargaining agreement entered into between an employer and a labor organization, or for the benefit of the said employees, their relatives, or dependents, together with the employees, and the relatives or dependents thereof, of other employers who make like payments.—June 23, 1955, No. 99, p. 520, § 4.

ANNOTATIONS

1. Union leave. Part-time union leave for regular employees of public corporation is valid. (*Revising the criteria expressed in Opinions of the Secretary of Justice of June 26, 1985 and April 28, 1986, unpublished.*) 1989 Op. Sec. Jus. No. 28.

Union leave is that granted, with pay, to regular employees of public corporations who are officials of a labor union so that they may perform tasks related to the collective bargaining agreement during working hours. 1989 Op. Sec. Jus. No. 28.

Full time union leave, to employees of public corporations is invalid. 1989 Op. Sec. Jus. No. 28.

§ 85. Payments by employees to representatives of employees prohibited—Penalties

Any representative, employer, or natural or [juridical] person willfully violating any of the provisions of this subchapter, shall be guilty of a misdemeanor and subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment for not more than one year, or both penalties, in the discretion of the court. The Court of First Instance of Puerto Rico is

hereby vested with exclusive jurisdiction for taking cognizance of all cases of violation of this subchapter.—June 23, 1955, No. 99, p. 520, § 5.

HISTORY

Codification.
"Superior Court" was changed to "Court of First Instance" pursuant to Act Aug. 22, 2003, No. 201, known as the "2003 Judiciary Act", §§ 24–25r of Title 4.

Subchapter IV. Emergency Proceedings in Case of Strike or Threatened Strike

§ 91. Definitions

When used in this subchapter, unless the context clearly indicates otherwise:

(a) *Threatened strike.*—Means a situation in which a labor organization informs the employer that on a certain date it will go on strike, or a situation in which there are clear indications of a rupture in the collective bargaining and there is the threat of a strike obviously evidenced by concrete acts aimed at or leading to the beginning of a strike movement.

(b) *Grave emergency.*—Means a strike, actual or threatened, in activities essentially necessary to the normal life of the community, whenever the interruption, total or partial, or the imminence of the interruption of such activities, by means of the said strike, is prejudicing or may prejudice seriously the health of the people or the public welfare as a result of the cessation in the rendering of any essential public service, as a result of all of which the normal life of the community is being or may be seriously affected.—May 22, 1965, No. 11, p. 17, § 1.

HISTORY

Effectiveness.
Section 11 of Act May 22, 1965, No. 11, p. 17, provides: "This act [this subchapter] shall take effect immediately after its approval and its provisions may be applied to any employer lockout or any strike existing on the date of its approval."

Statement of motives.
See Laws of Puerto Rico:
May 22, 1965, No. 11, p. 17.

Separability.
Section 8 of Act May 22, 1965, No. 11, p. 17, provides: "All provisions of this act [this subchapter] shall be liberally construed so that they may fulfill their purpose. Should any section, sentence, clause or phrase of this act, or its application to a certain employer, labor organization, employee, person or circumstance be for any reason adjudged unconstitutional or void, the rest of the act or its application to any other employers, labor organizations, employees, persons or circumstances, shall be held valid."

Applicability.

Section 10 of Act May 22, 1965, No. 11, p. 17, provides: "This act [this subchapter] shall not apply to enterprises, labor organizations and employees covered by Act No. 142 of June 30, 1961, while said act [former §§ 481–499 of this title] is in force and in its subsists the procedure therein established to settle labor-management disputes."

Special provisions.

Section 9 of Act May 22, 1965, No. 11, p. 17, provides: "The Secretary of the Treasury shall place at the disposal of the Bureau of the Budget, from unencumbered funds, such sum as may be necessary to meet the expenses which the committee hereby created may incur, including the per diems assigned to its members."

§ 92. Duties and powers of the Governor

Whenever in the judgment of the Governor, by reason of a strike or a threatened strike in any of the corporate instrumentalities of the Government of Puerto Rico engaged in the rendering of essential public services, there exists or may arise a grave emergency which clearly imperils or may imperil the public health or safety or essential public services in Puerto Rico or in any sector of Puerto Rico, the Governor may exercise the functions and powers and may discharge the duties granted and imposed on him below and all other powers incidental thereto.—May 22, 1965, No. 11, p. 17, § 2.

§ 93. Appointment of Committee; per diems; powers and proceedings

In such event, the Governor may appoint a committee composed of not less than three (3) nor more than seven (7) persons. The Committee shall designate a chairman from among its members.

With the exception of the teaching personnel of the University of Puerto Rico, no official or employee of the Commonwealth or of its agencies, instrumentalities or political subdivisions may be a member of the Committee.

The members of the Committee shall receive per diems at the rate of twenty-five dollars ($25) for each day of meeting. They shall also be entitled to reimbursement of travel and other expenses incurred in the service of the Committee up to one hundred dollars ($100) monthly.

At the request of the chairman of the Committee any head of department or agency or instrumentality of the Commonwealth may furnish the personnel or any other assistance necessary for the discharge of the functions of the Committee. The Governor may give specific instructions to said official for the rendering of such assistance.

The Committee shall state the contentions of the parties to the labor-management dispute, setting forth in its report, which it shall render to the Governor within the time specified by him, the essential facts of the dispute without making any recommendation whatsoever.

The Governor shall transmit copy of said report to the Secretary of Labor and Human Resources and shall widely diffuse said report for public knowledge as he may deem convenient.

The Committee shall have power to hold hearings and, in the exercise of its powers, may issue subpoenas requiring the appearance of witnesses and the production of such data, information and evidence as it may deem necessary. The chairman or any member of the Committee may administer oaths and receive testimony, data, information and evidence.

If a subpoena of the Committee is not duly complied with, the Committee may resort to any part of the Court of First Instance of Puerto Rico and petition the court to give preference to the processing and dispatch of said petition. The court shall have authority to issue orders compelling the appearance of witnesses or the production of data, information or evidence previously required by the Committee. The Court of First Instance shall have power to punish as contempt disobedience of such orders.—May 22, 1965, No. 11, p. 17, § 3.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Act Aug. 22, 2003, No. 201, known as the "2003 Judiciary Act", §§ 24–25r of Title 4.

"Secretary of Labor" was changed to "Secretary of Labor and Human Resources" pursuant to § 1 of Act June 23, 1977, No. 100, p. 225. See note under § 301 of Title 3.

§ 94. Injunction and certiorari; penalties

After receiving the report of the Committee, the Governor may direct the Secretary of Justice to file in the Court of First Instance a petition for a restraining order or temporary injunction, asking said court to issue, and it shall issue, without previous notice on the party or parties concerned, an order for the labor organization concerned to abstain or desist from said strike, subject to the previous finding by the court, based on the pleading of the petition and the evidence under oath presented ex parte, to the effect that:

(1) A strike exists and there exists a grave emergency by reason of said strike which clearly imperils the public health or safety or some essential public service, either throughout Puerto Rico or in any sector of Puerto Rico, or

(2) there is a threatened strike and there exists a grave emergency by reason of said threatened strike which clearly imperils the public health or safety or some essential public service, either throughout Puerto Rico or any sector of Puerto Rico.

The court may further issue any other orders that may be necessary to fulfill the purposes of this subchapter. Any order issued by the court shall

be reviewable by the Supreme Court of Puerto Rico upon writ of certiorari. The filing of a petition for review shall not stay the effects of the order of the Court of First Instance.

If after considering on its merits the evidence at the hearing, which shall be held within the following ten (10) days, the Court of First Instance should be satisfied that the alleged circumstances which gave rise to the temporary injunction actually exist, or that analogous circumstances prevail, it shall issue a permanent injunction subject to the limitations below expressed. If after hearing the case on its merits the court shall find otherwise, it shall discharge the injunction.

If any natural or [juridical] person disobeys an order issued by the court hereunder, the court shall have power to punish said person for criminal contempt and to impose upon same, as a penalty therefor, fine or imprisonment, or both penalties, in its discretion. The court may consider as a distinct contempt each day elapsed without its order being obeyed, and may impose successive penalties which may vary from day to day, in its discretion.

For the purpose of collecting the fines that the court may impose as penalty for contempt committed in disobeying its orders hereunder, the provisions of § 1130(13) of Title 32, shall not apply.

The provisions of this section shall render ineffective, with respect to the proceedings herein established, the Rules or parts of Rules of Civil Procedure in conflict therewith.

Sections 101–109 of this title shall not apply to any proceeding hereunder.—May 22, 1965, No. 11, p. 17, § 4.

HISTORY

Text references.

Reference to "the Rules or parts of Rules of Civil Procedure" in the text of this section, considering the date of the act from which it derives, should be to the 1958 Rules of Civil Procedure, former App. II of Title 32, repealed by Rule 72 of the 1979 Rules of Civil Procedure.

Present similar provisions see App. III of Title 32.

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Act Aug. 22, 2003, No. 201, known as the "2003 Judiciary Act", §§ 24–25r of Title 4.

§ 95. Conciliation proceedings

In every case in which the court shall have issued an order under § 94 of this title, it shall be the duty of the parties to the labor-management dispute to make every possible effort to settle their differences with the intervention of the Bureau of Conciliation and Arbitration of the Department of Labor and Human Resources. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by said Bureau.

As soon as the Court of First Instance has issued an order, the Governor shall reconvene the committee. During sixty (60) days since the court issued the order (unless the dispute has been settled by that time), the committee may submit to the Governor periodic reports on the situation and shall submit a final report on the state of the labor-management dispute and the position assumed by each party, as well as the efforts which have been made for settlement. It shall further include a statement by each party of its position. The Governor shall widely diffuse this report for public knowledge as he may deem convenient, and forthwith the Governor shall submit to the Legislative Assembly a complete and detailed report of the proceedings had, including the findings of the committee, as well as such recommendations as he may deem pertinent for attaining through legislative action the solution of the problem, if it persists.—May 22, 1965, No. 11, p. 17, § 5.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Act Aug. 22, 2003, No. 201, known as the "2003 Judiciary Act", §§ 24–25r of Title 4.

"Department of Labor" was changed to "Department of Labor and Human Resources" pursuant to § 1 of Act June 23, 1977, No. 100, p. 225. See note under § 301 of Title 3.

Special provisions.

Section 1 of Act Mar. 29, 1978, No. 5, p. 22, as amended by § 1 of Act Feb. 4, 1986, No. 1, p. 3, both of which contain statements of motives, provides: "Any declaration, information, document or report that any official or other personnel of the Bureau of Conciliation and Arbitration of the Department of Labor and Human Resources of Puerto Rico receives in the course of, or related to, his duties will be confidential, and he cannot be forced to reveal it, or to testify in relation to it before any court, agency or authority through any proceeding or action, or by any other means, except to executive officials with immediate authority over them, and only in connection with the internal operation of said Bureau; neither said officials nor the personnel of the Bureau shall violate voluntarily the provisions of this act. Provided, however, that the requirement of confidentiality mentioned above will not be applicable to the awards issued by the arbitrators attached to said Bureau, which shall be divulged or published by the Secretary of Labor and Human Resources."

Section 2 of Act Mar. 29, 1978, No. 5, p. 22, added by Act Feb. 4, 1986, No. 1, p. 3, both of which contain statements of motives, provides:

"(a) The Secretary of Labor and Human Resources is hereby authorized to print, publish and divulge the labor-management arbitration awards issued by the arbitrators attached to the Bureau of Conciliation and Arbitration, or to contract for the publication and divulgation of said awards, and authorize the sale of the publications in any case.

"(b) The proceeds of the sale of these publications shall be covered into the General Fund of the Commonwealth Treasury. These publications shall be made available free of charge to the members of the Legislature of Puerto Rico, the Department of Labor and Human Resources, the Labor Relations Board of Puerto Rico, the Superior Court of Puerto Rico, San Juan Part, and the Supreme Court of Puerto Rico.

"(c) The Secretary of Labor and Human Resources is hereby authorized to promulgate the rules and regulations needed to put the provisions of this section into effect."

§ 96. Term

Upon expiration of eighty (80) days after the order was issued, or in case a settlement of the dispute has been reached, the Secretary of Justice shall move the court to discharge its order. The motion of the Secretary of Justice shall be granted and the order shall be discharged.—May 22, 1965, No. 11, p. 17, § 6.

§ 97. Individual right of employee

Nothing provided in this subchapter shall be construed as compelling an employee acting individually and not in concert with another, to render work or service without his consent. Nothing herein contained shall be construed as making it unlawful for an employee acting individually and not in concert with another, to give up his work or service.—May 22, 1965, No. 11, p. 17, § 7.

Subchapter V. Labor Unions Services Bureau

§§ 99–99d. Repealed. Act July 23, 1974, No. 155, Part 1, p. 708, § 7, eff. 90 days after July 23, 1974.

HISTORY

Repeal.

These sections, which were respectively derived from §§ 1–5 of Act June 6, 1967, No. 109, p. 345, provided for technical and economic assistance to labor unions.

Prior to repeal, § 99a was amended by Act June 18, 1971, No. 33, p. 111.

Present similar provisions, see §§ 99e, 99f and 99k–99o of this title.

§ 99e. Creation; purpose

A bureau which shall be known as the Labor Union Services Bureau is hereby created in the Department of Labor and Human Resources, which shall carry out and render, upon request of the labor unions, the following functions and services:

(1) To design and install accounting systems for the use of labor unions.

(2) To audit accounts to determine the correctness of financial operations and accounting.

(3) To prepare financial statements used by the labor unions to comply with the requirements of the Labor-Management Reporting and Disclosure Act and the Welfare and Pension Plans Disclosure Act, as well as to substantiate applications for economic assistance under the Labor Unions Economic and Technical Assistance Program.

(4) To review the accounting books to determine the correctness of the entries thereon.

(5) To give advice on accounting matters, on its own initiative and at the request of labor organizations.

(6) In harmony with the decisions made by the Secretary of Labor and Human Resources, to provide economic assistance to labor unions on the basis of the matching of funds for purposes of labor education, travels abroad to the end of exchanging experiences that will improve the operation of the labor organizations of Puerto Rico; coordination and implementation of welfare, insurance, information and public relations plans, as well as to make statistical, economic and actuarial surveys aimed at augmenting the bargaining power of labor organizations at the collective bargaining table. This economic assistance shall be furnished by following the recommendations of the Advisory Board on Labor Unions Economic Assistance and the decisions the Secretary of Labor and Human Resources may make in the light of these recommendations.

(7) To assist labor unions to prepare and process applications for services rendered by government and private agencies related to housing projects, health plans, vacation and recreation facilities, cultural and educational projects, and other services of interest to the unions.

(8) To analyze the problems of administrative and operational nature of labor unions and to offer advice in the solution of these problems, especially to improve the organizational structure and to put into effect new systems and working procedures.

(9) To offer syndical education services to members, officers and union leaders through seminars, forums, motion pictures and television and radio programs.

(10) In coordination with the Information and Public Relations Office of the Department of Labor and Human Resources, and with the collaboration of the technical personnel of said office, to prepare publications of an educational nature in the labor field, and to assist labor unions in the preparation of similar publications.

(11) To administer a scholarship fund for the training of workers and labor leaders.

(12) To provide adequate orientation and guidance with regard to everything related to the constitution, organization and development of labor unions.

(13) To develop activities to promote the services to be rendered by the Bureau and to encourage labor unions to use such services.

The aforementioned services shall be rendered according to the particular needs and the financial capability of the applicant unions.—July 23, 1974, No. 155, Part 1, p. 708, § 1; July 20, 1979, No. 164, p. 416, § 1.

HISTORY

Text references.

Labor-Management Reporting and Disclosure Act, mentioned in subsection (3), is Act September 14, 1959, 73 Stat. 519, 29 U.S.C. §§ 153–531.

Welfare and Pension Plans Disclosure Act, mentioned subsection (3), is Act August 28, 1958, 72 Stat. 997, 29 U.S.C. §§ 301–309.

Amendments—1979.

Act 1979 made some wording changes in the introductory paragraph of this section.

Subsections (12) and (13): Act 1979 added these subsections, and the last paragraph.

Statement of motives.

See Laws of Puerto Rico:

July 23, 1974, No. 155, Part 1, p. 708.

July 20, 1979, No. 164, p. 416.

Appropriations.

Section 12 of Act July 23, 1974, No. 155, Part 1, p. 708, renumbered as § 8 and amended by § 9 of Act July 20, 1979, No. 164, p. 416, provides: "The necessary appropriations to enforce the new service programs authorized hereunder [§§ 99e–99o of this title] shall be included annually in the operational budget of the Department of Labor and Human Resources."

§ 99f. Director

The Labor Union Services Bureau shall be directed by a Director who shall be appointed by the Secretary of Labor and Human Resources, pursuant to the Puerto Rico Personnel Act. The Director of the Bureau shall administer and direct the Bureau under the direction and supervision of the Secretary of Labor and Human Resources, and shall also act as Secretary of the Advisory Board to extend financial assistance to the labor unions.—July 23, 1974, No. 155, Part 1, p. 708, § 2; July 20, 1979, No. 164, p. 416, § 2.

HISTORY

Text references.

The Puerto Rico Personnel Act was repealed by § 10.2 of Act Oct. 14, 1975, No. 5. Present similar provisions, see §§ 1461–1468p of Title 3.

Amendments—1979.

Act 1979 amended this section generally.

§§ 99g–99j. Repealed. Act July 20, 1979, No. 164, p. 416, § 3, eff. July 20, 1979.

HISTORY

Repeal.

These sections, which were respectively derived from §§ 3–6 of Act July 23, 1974, No. 155, Part 1, p. 708, regulated the functions of the Office of Director of the Labor Union Services Bureau, the Technical Services Office, the General Technical Services Division and the Office of Economic Assistance.

§ 99k. Repeals; transfers

Act No. 177 of March 22, 1946, as amended, and Act No. 109 of June 6, 1967, as amended, are hereby repealed, and it is hereby provided that all authority, responsibility and administrative functions conferred on the Labor Unions Accounting Bureau and the Labor Unions Technical and Economic Assistance Program of the Department of Labor and Human Resources, created under the statutes hereby repealed, shall be transferred to the Labor Union Services Bureau. Upon making the transfer of units, the personnel thereof shall keep their status and all their vested rights under the provisions of the Puerto Rico Public Service Personnel Act.—July 23, 1974, No. 155, Part 1, p. 708, § 7, renumbered as § 3 and amended on July 20, 1979, No. 164, p. 416, § 4.

HISTORY

Text references.
The Puerto Rico Personnel Act was repealed by § 10.2 of Act Oct. 14, 1975, No. 5. Present similar provisions, see §§ 1461–1468p of Title 3.

Amendments—1979.
Act 1979 added "Public Service" before "Personnel Act" and eliminated the Proviso concerning appointment of the Director of the Budget by the Secretary, and functions of the former.

§ 99*l*. Regulation

The Advisory Board created by regulations of the Secretary of Labor and Human Resources of October 4, 1967, to implement Act No. 109 of June 6, 1967, as amended, shall continue in force. Provided, That the Secretary of Labor and Human Resources shall amend said regulations to harmonize the same with the objectives of §§ 99e–99o of this title and the new administrative structure created hereunder. It is further provided, that the Secretary of Labor and Human Resources shall have full authority to repeal or amend the rules in force, or to promulgate new regulations to enforce §§ 99e, 99f and 99k–99o of this title in all its parts.—July 23, 1974, No. 155, Part 1, p. 708, § 8, renumbered as § 4 and amended on July 20, 1979, No. 164, p. 416, § 5.

HISTORY

Text references.
Act No. 109 of June 6, 1967, as amended, mentioned in this section, former §§ 99–99d of this title, was repealed by Act July 23, 1974, No. 155, Part 1, p. 708, § 7.
Present similar provisions, see §§ 99e–99o of this title.

Amendments—1979.
Act 1979 added "and Human Resources" to "Secretary of Labor" in three places.

§ 99m. Application for services, cooperation or aid

When a labor union wishes to receive any of the services, cooperation or assistance placed at its disposal by §§ 99e, 99f and 99k–99o of this title, it shall file an application, in writing, with the Secretary of Labor and Human Resources, which shall be done by a majority of its members or its directors and shall be accompanied by a certified copy of the resolution approved to such effect by a majority of the members or directors of said labor organization; Provided, however, That such application may be withdrawn in writing any time by said labor organization, including a certified copy of the resolution approved to such effect by a majority of the members or directors of said labor organization, according to the procedure originally initiated upon the application for such service.—July 23, 1974, No. 155, Part 1, p. 708, § 9, renumbered as § 5 and amended on July 20, 1979, No. 164, p. 416, § 6.

HISTORY

Amendments—1979.

Act 1979 added "and Human Resources" to "Secretary of Labor".

§ 99n. Confidentiality of records, books and documents

All records, account books and other documents and papers belonging to and submitted for study and verification by a labor organization to the Labor Union Services Bureau, as provided in §§ 99e, 99f and 99k–99o of this title, as well as any information or evidence obtained therefrom, shall be considered as strictly confidential and may not be produced as evidence in the courts of justice, nor may the same be disclosed by any officer or employee of said service, unless the labor organization in question so requests it in writing from the Secretary of Labor and Human Resources. Any employee or agent of the Department of Labor and Human Resources who discloses any information furnished during the rendering of the services requested by a labor organization, without written permission being granted by the latter, may be dismissed from the Department of Labor and Human Resources upon preferment of charges and the holding of a hearing, as provided by law.—July 23, 1974, No. 155, Part 1, p. 708, § 10, renumbered as § 6 and amended on July 20, 1979, No. 164, p. 416, § 7.

HISTORY

Amendments—1979.

Act 1979 added "and Human Resources" after "Secretary of Labor" in first sentence and after "Department of Labor" in two places in second sentence.