SUPREME COURT
EN BANC

FEATI UNIVERSITY FACULTY CLUB (PAFLU),
***Petitioner*,**

-versus-

G.R. No. L-31503
August 15, 1974

FEATI UNIVERSITY and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
x----------x

D E C I S I O N

TEEHANKEE, *J.*:

SEPARATE OPINIONS:

FERNANDO, J., concurring.:
BARREDO, J., concurring.:
ESGUERRA, J., dissenting.:

The Court reverses the industrial court's Decision under review which would negate and nullify its earlier return-to-work order and award for backwages to the professors-instructors members of petitioner union. The factual findings and conclusions and orders rendered in the previous industrial court proceedings wherein it issued these earlier orders (in 1963 and 1969) as affirmed by two final judgments of this Court are now res judicata and may no longer be reopened, much less set aside, by the industrial court. Furthermore, the Court finds that the industrial court's decision repudiating its earlier orders as upheld by final judgments of this Court is bereft of factual and legal basis. The case is remanded to respondent court which is directed to fix and resolve with deliberate dispatch the terms and conditions of employment involved in the labor dispute, which the President had certified to it for compulsory arbitration in the national interest.

I

Background facts and antecedents

The origin of this case goes back to the strike declared on February 18, 1963 by petitioner faculty club composed of professors and instructors of respondent university on the ground of unfair labor practice due to the university's refusal to recognize their union and to bargain collectively.

The issues resolved in favor of petitioner union in Feati University vs. Feati University Faculty Club — PAFLU (December 29, 1966.)

The antecedent facts are related in this Court's extended (62 pages) decision of December 27, 1966 in Feati University vs. Feati University Club — PAFLU,[1] thus:

> "On January 14, 1963, the President of the respondent Feati University Faculty Club-PAFLU - hereinafter referred to as

Faculty Club — wrote a letter to Mrs. Victoria L. Araneta, President of petitioner Feati University — hereinafter referred to as University — informing her of the organization of the Faculty Club into a registered labor union. The faculty club is composed of members who are professors and/or instructors of the University. On January 22, 1963, the President of the Faculty Club sent another letter containing twenty-six demands that have connection with the employment of the members of the Faculty Club by the University, and requesting an answer within ten days from receipt thereof. The President of the University answered the two letters requesting that she he given at least thirty days to study thoroughly the different phases of the demands. Meanwhile, counsel for the University, to whom the demands were referred, wrote a letter to the President of the Faculty Club demanding proof of its majority status and designation as a bargaining representative. On February 1, 1963, the President of the Faculty Club again wrote the President of the University rejecting the latter's request for extension of time, and on the same day he filed a notice of strike with the Bureau of Labor alleging as reason therefor the refusal of the University to bargain collectively. The parties were called to conferences at the Conciliation Division of the Bureau of Labor but efforts to conciliate them failed. On February 18, 1963, the members of the Faculty Club declared a strike and established picket lines in the premises of the University, resulting in the disruption of classes in the University. Despite further efforts of the officials from the Department of Labor to effect a settlement of the differences between the management of the University and the striking faculty members no satisfactory agreement was arrived at. On March 21, 1963, the President of the Philippines certified to the Court of Industrial Relations the dispute between the management of the University and the Faculty Club pursuant to the provisions of Section 10 of Republic Act No. 875.

As a consequence of the dispute between the faculty club and the university, several cases were filed with the Court of Industrial Relations and the various orders and resolutions issued by said court in favor of the faculty club were elevated by the university to this Court in three cases[2] which were jointly

decided by this Court's decision of December 27, 1966 upholding all the challenged orders.

In the said 1966 decision, this Court unanimously upheld the faculty club on all disputed issues, as follows:

1) The Court upheld the industrial court's jurisdiction over the parties and subject matter in the cases before it, rejecting as untenable the university's claim that Republic Act 875 is not applicable to the university since it is an educational institution and not an industrial establishment and hence not an "employer" in contemplation of the Act and that the faculty club members are independent contractors and not "employees" within the purview of the Act.

   The court applied the settled doctrine "that the Industrial Peace Act is applicable to any organization or entity — whatever may be its purpose when it was created — that is operated for profit or gain,"[3] and cited with approval the industrial court's factual finding that "the university is not for strictly educational purposes and that 'It realizes profits and part of such earning is distributed as dividends to private stockholders or individuals."[4]

2) The Court recognized the employee status of the faculty club members as "employees and declared Republic Act No. 875 applicable to them in their employment relations with their school,"[4a] citing the earlier case of Far Eastern University vs. CIR.[4b]

   The Court also declared that since "members of the faculty club are employees, it follows that they have a right to unionize in accordance with the provisions of Section 3 of the Magna Carta of Labor (Republic Act No. 875)" rejecting as "without merit" the university's contrary assertion and stressing that "the faculty club is a duly registered labor organization."[5]

   The Court flatly rejected the university's challenge against the validity of the presidential certification, ruling that "(T)o

certify a labor dispute to the CIR is the prerogative of the President under the law, and this Court will not interfere in, much less curtail, the exercise of that prerogative," and that "in the instant case, when the President took into consideration that the University 'has some 18,000 students and employed approximately 500 faculty members,' that 'the continued disruption in the operation of the University will necessarily prejudice the thousands of students,' and that 'the dispute affects the national interest,' and certified the dispute to the CIR, it is not for the CIR nor this Court to pass upon the correctness of the reasons of the President in certifying the labor dispute to the CIR."[6]

3) The Court likewise repudiated all contentions of the university questioning the legality of the industrial court's return-to-work order of March 30, 1963 and its implementing order of April 6, 1963, and asserting that there were no more positions to which the faculty club members could return, as their individual contracts for teaching had expired by the end of March, 1963, ruling inter alia as follows:

> "Likewise untenable is the contention of the University that the taking in by it of replacements was valid and the return-to-work order would be an impairment of its contract with the replacements. As stated by the CIR in its order of March 30, 1963, it was agreed before the hearing of Case 41-IPA on March 23, 1963 that the strikers would return to work under the status quo arrangement and the University would readmit them, and the return-to-work order was a confirmation of that agreement. This is a declaration of fact by the CIR which we cannot disregard. The faculty members, by striking, have not abandoned their employment but, rather, they have only ceased from their labor (Keith Theatre vs. Vachon, et al., 187 A. 692). The striking faculty members have not lost their right to go back to their positions, because the declaration of a strike is not a renunciation of their employment and their employee relationship with the University (Rex Taxicab Co. vs. CIR, et al., 40 O.G., No. 13, 138). The employment

of replacements was not authorized by the CIR At most that was a temporary expedient resorted to by the University, which was subject to the power of the CIR to allow to continue or not. The employment of replacements by the University prior to the issuance of the order of March 30, 1963 did not vest in the replacements a permanent right to the positions they held. Neither could such temporary employment hind the University to retain permanently the replacements.

"x x x

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

"Likewise unsustainable is the contention of the University that the Court of Industrial Relations could not issue the return-to-work order without having resolved previously the issue of the legality or illegality of the strike, citing as authority therefor the case of Philippine Can Company vs. Court of Industrial Relations, G.R. No. L-3021, July 13, 1950. The ruling in said case is not applicable to the case at bar, the facts and circumstances being very different. The Philippine Can Company case, unlike the instant case, did not involve the national interest and it was not certified by the President. In that case the company no longer needed the services of the strikers, nor did it need substitutes for the strikers, because the company was losing, and it was imperative that it lay off such laborers as were not necessary for its operation in order to save the company from bankruptcy. This was the reason of this Court in ruling, in that case, that the legality or illegality of the strike should have been decided first before the issuance of the return-to-work order. The University, in the case before Us, does not

claim that it no longer needs the services of professors and/or instructors; neither does it claim that it was imperative for it to lay off the striking professors and instructors because of impending bankruptcy. On the contrary, it was imperative for the University to hire replacements for the strikers. Therefore, the ruling in the Philippine Can case that the legality of the strike should be decided first before the issuance of the return-to-work order does not apply to the case at bar. Besides, as We have adverted to, the return-to-work order of March 30, 1963, now in question, was a confirmation of an agreement between the University and the Faculty Club during a prehearing conference on March 23, 1963.

"The University also maintains that there was no more basis for the claim of the members of the Faculty Club to return to their work, as their individual contracts for teaching had expired on March 25, or 31, 1963, as the case may be, and consequently, there was also no basis for the return-to-work order of the CIR because the contractual relationships having ceased there were no positions to which the members of the Faculty Club could return to. This contention is not well taken. This argument loses sight of the fact that when the professors and instructors struck on February 18, 1963, they continued to be employees of the University for the purposes of the labor controversy notwithstanding the subsequent termination of their teaching contracts, for Section 2(d) of the Industrial Peace Act includes among employees 'any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment.'"[7]

In the course of the proceedings, the industrial court issued its resolution en banc dated May 7, 1963 denying the university's motion for reconsideration of the March 30, 1963 return-to-work order. The university appealed from the order and resolution on their merits. The Court in the same 1966 decision affirmed on the merits the order and

resolution appealed from (already questioned on *certiorari* in L-21278) ruling that "(I)n Case G.R. No. L-21500 the University appealed from the order of the CIR of March 30, 1963, issued by Judge Bautista, and from the resolution of the CIR en banc promulgated on June 28, 1963, denying the motion for the reconsideration of that order of March 30, 1963, in CIR Case No. 41-IPA. We have already ruled that the CIR has jurisdiction to issue that order of March 30, 1963, and that order is valid, and We, therefore, hold that the CIR did not err in issuing that order of March 30, 1963 and in issuing the resolution promulgated on June 28, 1963 (although dated May 7, 1963) denying the motion to reconsider that order of March 30, 1963."[8]

The Court thus sustained and affirmed the specific orders in the CIR's March 30, 1963 return-to-work order "(ordering) the strikers to return immediately to work and the university to take them back under the last terms and conditions existing before the dispute arose, as per agreement had during the hearing on March 23, 1963; and likewise (enjoining) the university pending adjudication of the case, from dismissing any employee or laborer without previous authorization from the CIR."[8a]

4) The Court also upheld the industrial court's order of April 29, 1963 for the arrest of the university officers upon complaint for indirect contempt filed by the prosecutor for violation of and disobedience to the said court's March 30, 1963 return-to-work order issued in pursuance of the parties' agreement.

5) The Court also upheld the industrial court's order granting the faculty club's motion to withdraw its petition for certification election on the ground that the case had been absorbed by the issues in the presidential certification case (Case 41-IPA), ruling that after all the university wanted the certification election case dismissed and that "the principal case before the CIR is Case No. 41-IPA and all the questions relating to the labor disputes between the University and the

Faculty Club may be threshed out, and decided, in that case."[9]

The Court accordingly in its said joint decision of December 27, 1966 unanimously dismissed the *certiorari* proceeding and upheld the industrial court's jurisdiction and the orders and resolutions issued in pursuance thereof, particularly the March 30, 1963 return-to-work order and arrest order for indirect contempt (Case L-21278). The orders and resolutions appealed from in Cases L-21462 and L-21500 (namely, the withdrawal of the certification election by virtue of its absorption in the certified labor dispute case and the validity on the merits of the March 30, 1963 return-to-work order as upheld by the en banc resolution dated May 7, 1963) were expressly affirmed by this Court. Costs in all three cases were awarded against the university.

The Court ordered in the same decision the dissolution of the writ of preliminary injunction it had issued upon a P50,000.- bond upon the filing of the *certiorari* proceeding on May 10, 1963 restraining the industrial court "from further proceeding in the premises" of the pending cases.

As stated, this Court's said 1966 decision was unanimous with only Justice J.B.L. Reyes out of the then nine-member Court, "concurring but reserving his vote on the teacher's right to strike"

Parenthetically, entry of judgment of the 1966 decision and execution proceedings were delayed, as the faculty club filed with this Court on January 11, 1967 a "petition for award of damages" on the P50,000.-injunction bond filed by the university. As resolution thereof was not forthcoming, the faculty club filed successive petitions on May 15, 1967 and August 22, 1968 for the Court to deal separately with the pending damages award petition and to order the entry of judgment and return of the case for execution of the return-to-work order since the "faculty members who were unduly deprived of employment by the university have remained during these past five years [1963-1968] unemployed as

such." The Court per its resolution of August 26, 1968 ordered the entry of judgment to be effected and "(3) to return this case to the court below for the execution of the judgment and for such action as the lower court may deem fit to take on the petition for award of damages that respondent FEATI University Faculty Club-PAFLU may file before it."

The issues resolved in favor of petitioner union in the second case of Feati University vs. Feati University Faculty Club (May 22, 1969), particularly, the award of accrued backwages.

After this Court's said 1966 decision had become final and executory with the entry of judgment on August 26, 1968, the faculty club on October 24, 1968 filed a number of motions and petitions to execute and to implement the decision as well as to hear the dispute on its merits (which had been left pending until this Court resolved the university's challenge against the CIR jurisdiction over the dispute and the validity of the presidential certification).

Foremost among such motions was the motion to execute dated October 24, 1968 for the execution of the March 30, 1963 return-to-work order directing the university management to permit and effect the return-to-work of the strikers, plus the back salaries that have accrued. This was opposed by the university.

The industrial court through then Judge Joaquin A. Salvador issued over the university's opposition and after hearing its, order of February 7, 1969 ordering the issuance of a writ of execution for the enforcement and compliance of the March 30, 1963 return-to-work order, directing further that the secretary of education and director of private schools be duly advised and furnished with copies of the execution orders" considering the time compliance of this order (of March 30, 1963) has been pending insofar as the professors and/or instructors herein involved are concerned."[10]

The industrial court further ordered that accrued back wages from July 12, 1963 to the date of actual readmission be paid to the faculty club members thus: "Conformably with the conclusions herein

reached on the claim of accrued back salaries, it is hereby declared that the professors and/or instructors concerned are entitled to such claim and the Feati University, respondent herein, is hereby adjudged to pay their respective accrued salaries starting from July 12, 1963 up to when they are actually taken back or readmitted to work by respondent University."[11]

The industrial court finally ordered the chief, examining division "to compute the respective accrued back salaries of these professors and/or instructors" based on the university's records and payrolls and within 60 days from receipt of the order "to submit his report for further disposition."

The bases of the industrial court's said execution order of February 7, 1969 were clearly and specifically set forth in its order. The industrial court held:

> "As jurisdiction of this Court and the validity and legality of the Orders of March 30, 1963, among other, were affirmed, [by the Supreme Court's December 27, 1966 decision] the said Order is now ripe for execution.
>
> "But execution nonetheless is opposed by respondent University, claiming that the Order of March 30, 1963 'has already been executed' and it 'has complied with it.' But in the same breath it however admits that 'those members (referring to the striking professors and/or instructors who are not yet working) whose classes had been taken over by replacement professors who refused to yield their posts could not resume their classes.' Otherwise stated and as it admitted through counsel at the hearing on March 23, 1963, the said Order has not yet been completely complied with although it justified such circumstance with the alleged refusal of the replacements to vacate their posts. But the issues as regards the replacements including their alleged refusal to yield their posts were already laid at rest by the Supreme court." [Here the industrial court quotes the same portion of the Supreme Court 1966 decision already quoted above rejecting the university's contention that its taking of replacements was a valid justification for the non-readmission of the faculty club members in view of the

> agreement before the March 23, 1963 hearing "that the strikers would return to work under the status quo arrangement and the university would readmit them and the return-to-work order was a confirmation of that agreement."][12]

The industrial court added that.

> "Respondent University, through counsel, explaining its opposition further, manifested in brief that it is without power to effect compliance of the return-to-work order of March 30, 1963 with respect to the posts being held by replacements who refused allegedly to give them up. This is belied by the Decision of the Supreme Court itself. The Order of April 6, 1963, implementing the return-to-work provision of the Order of March 30, 1963, was affirmed. In this Order the replacements were directed 'for the time being, not to disturb nor in any manner commit any acts tending to disrupt the effectivity of the Order of March 30, 1963.' The Supreme Court also took judicial notice of the powers which a university like respondent University has over its professors and/or instructors which are, to name a few; that it controls the work of the members of the faculty; that it prescribes the course or subjects the professors and/or instructors will teach and when and where to teach; and that professors and/or instructors cannot substitute others to do their work without the consent of the University. Assuredly, it was in the exercise of these powers that the replacements were employed by respondent University. Equally, therefore, it may also legally exercise such powers to terminate the employment of such replacements. It is a fact that the strikers concerned have not 'ceased to be employees when they struck.' (Page 37, Decision)[12a]

The industrial court further found expressly that the university's persistent refusal to take back the faculty club members notwithstanding its return-to-work agreement and the fact that this Court's 1966 decision had long become final and executory was "bad faith" and that the faculty club members were therefore fully entitled to the law's protection in the form of accrued salaries from the date of their right to readmission until the date of the actual readmission, as follows:

"Included in the motion under consideration is the claim for 'back salaries, that have accrued.' Reference to this claim, the issue to resolve is whether or not the striking professors and/or instructors who were not taken back to work by respondent University are entitled to back salaries. Considering the return-to-work agreement of March 23, 1963 and the orders and resolutions en banc thus far issued, this claim is well taken.

"The purpose of the agreement of March 23, 1963 was to end or settle the strike of February 18, 1963. The validity of this agreement and its purpose were never disputed by the parties. As a matter of fact, the striking professors and/or instructors returned to work as agreed (See verified Manifestation and Motion of Petitioner, dated March 25, 1963), terminating the strike. In connection with the implementation of the agreement, respondent University, in its Answer to the Manifestation and Motion filed by petitioner on March 25, 1963, alleged, among other things, that 'the only arrangement made and assented to by the respondent contemplated the return of only the striking faculty members whose classes have not been taken over by the replacement professors and teachers.' It is then clear that respondent University did not question the implementation of the agreement because of the issue it raised against the Court's jurisdiction but only as its scope or coverage.

"The agreement was clarified in the Order of March 30, 1963. After citing, in brief,. what was agreed by the parties at the hearing on March 23, 1963, the Court in this Order directed 'all the strikers to return to work immediately and the management to take them back under the last terms and conditions existing before the dispute arose.' But even as respondent University had partially complied with the agreement [See Answer to petition for contempt, Case No. 41-IPA (1)], it nonetheless filed a motion for reconsideration of the said Order. It did not in this motion, however, dispute the basis of the clarification and/or the clarification itself (See Memorandum it filed in support of its motion for reconsideration). This being the case, and the agreement being the law between the parties, it was and still is, incumbent upon respondent University to comply with it and

take the professors and/or instructors back to work. But it did not. It will not comply with its part of the agreement in spite of the fact that its motion for reconsideration was denied by the Court en banc (Resolution en banc, dated May 7, 1963). What is more is that respondent University persisted and still persists up to the present in refusing to take the professors and/or instructors concerned back to work even as the decision of the Supreme Court had long become final and executory. This is bad faith. As these professors and/or instructors were not taken back to work not because of their fault as they presented to work as agreed but due to the refusal of respondent University to honor its commitment under the agreement, it is but just and proper that they should not be made to suffer thereby.

"Considering the orders and resolution en banc issued, the claim for accrued back salaries is all the more justified Noteworthy, is the fact that the professors and/or instructors concerned have not, by striking, lost their right to go back to their positions (Rex Taxicab vs. CIR, et al, 40 G. C. No 13, 138) Indeed, this right was even articulated by the Order of March 30, 1963 when they were directed to return to their work immediately and respondent University required to take them back. This was, in the exercise of jurisdiction under Section 10 of R. A. 875 and pursuant to the Presidential certification, the solution found by the Court to end or settle the strike. As a matter of fact the strike was terminated when the striking professors and/or instructors returned to work as the Court directed, but considerable number of these were not taken back or readmitted to work by respondent University.

x x x

"Clearly discernible from these requirements is the concern of the law in protecting the rights of the employee or employees concerned arising from the order appealed from. And one of such rights which these requirements recognize is the right of such employee or employees to, and be paid for, the salaries or wages due him or them from the date his or their right to reinstatement or readmission accrued up to the time he or they are actually reinstated or readmitted back to work. In the case

> at bar, the Order of March 30, 1963 directed the professors and/or instructors concerned to return to work immediately and respondent University to take them back to work. The implementation of that Order was stayed in *certiorari* case (G.R. No. L-21278). On a bond filed by respondent University, the injunction was issued. As earlier shown, the validity and legality of the Order of March 30, 1963, was affirmed by the Supreme Court. On almost the same facts and interpreting the same legal provision (Section 14 of C. A. 103, as amended) the Supreme Court upheld the affirmative of the issue as to 'whether the strikers who were ordered reinstated on June 25, 1963 but were actually returned to the service on January 27 and 30, 1966 are entitled to back wages for the duration of the appeal instituted by the Company;' On this issue, it finally ruled that '10 days after the Company was notified of the resolution denying its (Company's) motion for reconsideration of the Order of June 25, 1953, the laborers' right to re-employment and wages accrued. Consequently, and by reason of its failure to abide by the aforesaid order, the Company is liable for back wages due the laborers from the date of their right to reinstatement accrued up to the time they were actually reinstated.' (Talisay Silay Milling Co., Inc. vs. CIR and Talisay Employees and Laborers Ass., G. R. L-14023, promulgated on January 30, 1960). Under the law, the facts and jurisprudence herein discussed, it is the considered opinion of this Court and so it holds that the professors and/or instructors concerned herein are entitled to, and respondent University is liable for, their back salaries starting from July 12, 1963 up to when they are actually taken back or readmitted to work by respondent University."[13]

The industrial court denied reconsideration per its resolution en banc of May 2, 1969. The university sought in vain to appeal therefrom via its petition of May 9, 1969 for review on *certiorari* which was also entitled "Feati University vs. Feati University Faculty Club" and docketed as Case No. L-30484 of this Court. It assailed the industrial court's order for the execution of the March 30, 1963 return-to-work with backwages, asserting principally inter alia that:

1) "the [industrial] Court instead of ordering the issuance of a writ of execution of the Return to Work Order, should have ordered the further implementation or enforcement of said order by ordering the replacing professors to vacate and surrender their posts to the strikers who could not be returned to work because of the refusal of the replacing professors to vacate their posts, and by ordering the University to return said strikers to the posts they were formerly holding after the replacing professors had vacated them."[14]

2) the industrial court erred in not granting its opposition "that the strike was not only illegal because it was declared before the lapse of the 30 day cooling off period, and it is not covered by Republic Act 875 but also because it was conducted or carried on illegally;" that "the strike and picketing declared and carried on by petitioner against respondent be ruled and held as illegal; and that the demands of the petitioner be found and declared unreasonable and very onerous and unjust to respondent," and that "this question of the legality or illegality of the strike, and the question of whether or not the strikers should be reinstated with or without back wages have still to be decided by the lower court, and only after the trial on the merits of this certified case which has only been started. The question of the right of the strikers to strike was not submitted to the Supreme Court in the aforementioned *certiorari* cases filed before it, and hence, was not resolved in its decision;"[15]

3) "the finding of same Judge in the Order appealed from that University did not comply with the Order of March 30, 1963 but that it persisted and it still persists up to the present in refusing to take 'the professors and/or instructors concerned' back to work, and that this is bad faith, is also absolutely devoid of factual or legal basis;"[16]

4) "after the dispute was certified by the President of the Philippines to the CIR, the University at the first hearing thereof on March 23, 1963 agreed to the return to work of

the strikers, which agreement was referred to by the Trial Court in its order of March 30, 1963. On April 1, 1963 the University accepted the strikers who returned to work, and all resumed their classes, except those whose positions had been taken over by the replacement — who refused to yield their classes;"[17] and

5) "consequently, the finding that the University refused and still persists in its refusal to comply with the return-to-work Order is absolutely gratuitous, and cannot lawfully be and should not have been made a basis for the award of back wages."[18]

The Court per its Resolution of May 22, 1969 denied the university's petition for lack of merit.

The university filed its Motion and Supplemental Motion for Reconsideration dated June 7 and June 11, 1969, respectively.

Required to comment thereon, the faculty club union filed in due course its opposition/manifestation wherein it frontally met the eleven grounds submitted by petitioner in assailing the appealed CIR order of execution of the March 30, 1963 order with an award for backwages.

The university filed its reply thereto and on November 19, 1969 after considering all the pleadings the Court issued its resolution denying reconsideration.

Judgment of this Court denying petitioner's appeal and upholding the appealed CIR order and resolution for execution of the return-to-work order with backwages was entered on December 7, 1969, and the affirmed CIR order of February 7, 1969 therefore became final and executory as of said date.

The CIR's turn-about decision of November 24, 1969 now under review

The ordeal of the professors-instructors members of petitioner faculty club was to prove far from over.

Under date of November 24, 1969 (just after this Court had denied reconsideration of its May 22, 1969 resolution denying the university's petition to review in L-30484 the CIR's February 7, 1969 order for execution of its March 30, 1963 return-to-work order and for backwages) the industrial court through the same then Judge Joaquin A. Salvador executed a complete turn-about and issued its decision wherein it repudiated and turned its back on its task entrusted to it under the President's 1963 certification to resolve and fix the terms and conditions of employment involved in the labor dispute by the simple expedient of declaring at that late day that petitioner's February 18, 1963 strike was "illegal and consequently, the employee status of the officers and members who participated therein is hereby declared terminated." The industrial court thereby sought to negate and nullify the faculty club members' finally adjudicated right to reinstatement with backwages as upheld by this Court in the two cited previous judgments and against its own final pronouncements therein.

The industrial court now held that the university was not chargeable with unfair labor practice and refusal to bargain collectively with the faculty club but that the strike was "an economic one". It further now held that "(I)n view of the ruling that the strike of February 18, 1963 is illegal, it would be illogical to recompense the strikers with back salaries. To hold otherwise would be to give them pecuniary advantage which under the law and rules of equity they should not be entitled to. Besides, no proof has been submitted that the striking faculty members did return or offer to return to work. On the contrary, it is undisputed that the intensive picketing remained unabated even after March 30, 1963."[19] This of course was the exact opposite of its own final pronouncements as upheld by this Court in the two cited previous judgments wherein it held that its March 30, 1963 return-to-work order terminated the strike and found the university guilty of "bad faith" in failing to take back the petitioner's faculty members so much so that even in its very decision now under review it found the university officials guilty of contempt of court for failure to implement its said March 30, 1963 order and imposed a P200. find on each of them!

Reconsideration was nevertheless denied by the industrial court's en banc resolution dated December 16, 1969.

II

The Court reverses the CIR decision of Nov. 24, 1969 under review.

Hence, the present review of the industrial court's said order and resolution by way of appeal on *certiorari*.

The Court reverses. The factual findings and conclusions and orders rendered in the previous industrial court proceedings as affirmed by two final judgments of this Court and above reproduced are now res judicata and bar the industrial court's belated (just 4 months short of 7 years after its March 30, 1963 return-to-work order!) and unfounded declaration of illegality of the strike and wholesale dismissal of all faculty club officers and members who took part therein. As the Court stressed in its recent decision in NASSCO vs. CIR[19a] issues concerning the reinstatement with backwages which have been resolved by final judgment of this Court "may no longer be reopened, it being the law of the case."

Prescinding therefrom, the industrial court's volute face is bereft of factual and legal basis, as will presently be seen.

1. In this Court's 1966 decision upholding the 1963 return-to-work order, it was emphasized in rejecting the university's contention that the issues of legality of the strike should have been first resolved, that the university had a clear and imperative need for the services of the striking professors and instructors (to the point of hiring replacements for the strikers!). The question of legality or illegality of the strike was thus rendered moot by the return-to-work agreement and the order issued in pursuance thereof. As stressed by this Court, "the return-to-work order of March 30, 1963, now in question, was a confirmation of an agreement between the university and the faculty club during a pre-hearing conference on March 23, 1963," supra.[20] The doctrine that such unconditional return-to-work agreement between the

parties for their mutual benefit pending hearing and resolution of their dispute by the courts is a virtual compromise and renders moot any issue of legality or illegality of the strike was recently reaffirmed by the Court in Cafimsa vs. CIR.[21]

2. Any doubt that the issue of legality of the strike was thus rendered moot and inconsequential by this Court's 1966 decision is definitely dispelled by the industrial court's categorical pronouncement in its February 7, 1969 order for execution of the 1963 return-to-work order with backwages that "(T)he purpose of the agreement of March 23, 1963 was to end or settle the strike of February 18, 1963. The validity of this agreement and its purpose were never disputed by the parties. As a matter of fact, the striking professors and/or instructors returned to work as agreed terminating the strike" but that the university questioned "the scope or coverage" of the agreement and order because of the alleged refusal of its replacements to yield their posts to the returnees. On this point, as already stated above, the same CIR order found the university guilty of "bad faith" in refusing to take back the returnees, holding that "the agreement being the law between the parties, it was and still is incumbent upon respondent university to comply with it and take the professors and/or instructors back to work," supra.[22]

3. Even prescinding from the industrial court's own final above-quoted pronouncement that the parties' agreement of March 23, 1963 as affirmed in the March 30, 1963 return-to-work order settled and terminated the strike and therewith any question as to its legality, the CIR's volute face after almost seven (7) years with its generalized conclusion in its November 24, 1969 decision under review that petitioner's strike of February 18, 1963 was not an unfair labor strike but an economic one to compel the university to grant economic benefits" and was therefore illegal because "petitioner union struck before the expiration of the 30-day cooling off period provided by law" (from its notice of strike filed on February 1, 1973) [23] is bereft of factual and legal basis.

The record that the two cited 1966 and 1969 judgments of this Court manifestly show that there was no economic deadlock to call for a 30-day cooling-off period but that the university questioned the faculty club members' right to self-organization and to form a labor union and refused to negotiate with them notwithstanding the purported extension of thirty days asked by it to study the demands which delay would have accomplished its purpose of buying time until the close of the school year — by which time, as the petitioner states in its brief "if the union had to wait for the 30 days period to expire, the union would have found themselves without work, without union, without anything."[24]

Petitioner has cited in its brief without contradiction from the respondent the evidence adduced at the hearings of many instances of discrimination and unfair labor practices and union-busting by the university which precipitated the strike, viz., the university's threat of mass dismissal by not renewing the employment of (and not giving class assignments to) professors/teachers-members of petitioner union at the close of the second semester of the 1962-1963 school year; the circulation by the university management of a petition to be signed by faculty members resigning from petitioner union, with some having been actually coerced into signing; and the case of Dean Opeña who testified as to his having been cautioned, threatened and ultimately dismissed for being sympathetic with the union.

In the light of these countervailing facts of record supported by the industrial court's own factual findings and final pronouncements in the two cited earlier cases involving exactly the same parties and the same issues and dispute, the Court cannot give faith to the same industrial court's belated and generalized conclusion against the legality of the purpose of the strike.[25]

4. Petitioner therefore had valid cause to go on strike because of the unfair labor practices and discriminatory acts aimed at

aborting its union, even without a notice of strike (much less wait out a 30-day cooling-off period required only in economic strikes).

As was held in Cafimsa, supra, one of the important rights recognized by the Magna Carta of Labor is the right to self-organization and because of dilatory tactics usually employed by the employer to stave off union recognition and collective bargaining, a union may be justified in resorting to a strike.

Furthermore, even if it were to be conceded arguendo that the unfair labor practices complained of were not plainly evident in the record, the Court has always recognized the unfair labor practice strike as labor's most effective weapon against the employer's unfair labor practices.

As stressed by the Court in Shell Oil Workers Union vs. Shell Co. of the Philippines, Ltd.,[26] "It is not even required that there be in fact an unfair labor practice committed by the employer. It suffices, if such a belief in good faith is entertained by labor, as the inducing factor for staging a strike." The Court, in Shell, went oh to cite the earlier ruling of Ferrer vs. CIR[27] fully applicable to the case at bar, that " 'As a consequence, we hold that the strike in question had been called to offset what petitioners were warranted in believing in good faith to be unfair labor practices on the part of Management, that petitioners were not bound, therefore, to wait for the expiration of thirty (30) days from notice of strike before staging the same, that said strike was not, accordingly, illegal and that the strikers had not thereby lost their status as employees of respondents herein."

5. The industrial court's pronouncement of illegality of the strike and wholesale dismissal from employment of the strikers due to five sporadic instances of violence or coercion, e. g. "chair picketing," preventing Commissioner Maslog from going out of the university premises, the mauling of two students trying to get into the university, a simple conviction of mauling and a complaint of a Feati bank

employee for mauling which did not prosper is manifestly untenable.

Factually, none of these isolated incidents has been shown to involve a single member of the petitioner union. The testimony of the union president that the union instructed its pickets to conduct the picketing without force and violence and that these instructions were carried out as befitted the stature and dignity of the striking professors/teachers stands unchallenged.

Legally, the union officers and members could not be held liable for the isolated instances of so-called violence which involved the union sympathizers and detractors, by virtue of the mandate of section 9 (c) of Republic Act 875 that "(c) No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable for the unlawful acts of individual officers, members or agents, except upon proof of actual participation in, or actual authorization of such acts or of ratifying of such acts after actual knowledge thereof."

Thus, the Court has long expressly abandoned the discarded doctrine that good faith of the strikers in the staging of the strike is immaterial in the determination of the legality or illegality of the strike, since the wholesale dismissal of workers who erroneously but in good faith struck against what they believed to be unfair labor practices against them has been rightfully considered an unduly harsh and excessive penalty for workers who were merely misled by their leaders to join the illegal strike.[28]

And as to the use of violence which outlaws a strike otherwise valid in purpose, the Court has made it clear that absent a pervasive and widespread use of force and violence deliberately promoted and countenanced by the union, where responsibility for injury to persons and destruction of property may be collectively attributed to the entire union leadership and membership, responsibility for such sporadic and isolated acts must be individual in nature.

Thus, Justice Fernando stressed for the Court in Shell[29] supra, that "a strike otherwise valid, if violent in character, may be placed beyond the pale. Care is to be taken, however, especially where an unfair labor practice is involved, to avoid stamping it with illegality just because it is tainted by such acts. To avoid rendering illusory the recognition of the right to strike, responsibility in such a case should be individual and not collective. A different conclusion would be called for, of course, if the existence of force while the strike lasts is pervasive and widespread, consistently and deliberately resorted to as a matter of policy," and that where the acts of violence were sporadic and not pervasive by design and policy, "(I)t is enough that individual liability be incurred by those guilty of such acts of violence that call for loss of employee status."

As summed up by Justice Castro for the Court in the earlier case of Insular Life Ass'ce. Co. Employees Ass'n. vs. Insular Life Ass'ce. Co. Ltd.,[30] "it is thus clear that not every form of violence suffices to affix the seal of illegality on a strike or to cause the loss of employment of the guilty party."

Needless to say, here in the case at bar, the industrial court failed to name a single officer or member of petitioner union who had participated in any act of violence or intimidation that would call for his outright dismissal.

III

Disposition of the case at bar

The dispositive-portion or judgment of the CIR's reversed decision provided as follows:

"x x x

"1. The strike declared against the Feati University on February 18, 1963 is declared illegal and consequently, the employee status of the officers and members who participated therein are hereby declared terminated;

"2. The issue of certification be threshed out in an election to be conducted upon such mode and manner as may be acceptable to the parties and whoever may desire to participate in it;

"3. The damages sustained by the parties, in the light of the facts and the jurisdictional competence of the Court, are denied; and

"4. The persons named in the contempt proceeding are fined P200.00 each.

x x x

With the reversal of the CIR judgment, the Court now orders the following disposition of the issues with a view of expediting the termination of this long pending dispute:

1. With the reversal of the CIR's belated and unwarranted declaration of illegality of the February 18, 1963 strike and wholesale dismissal of the strikers, the implementation of the return-to-work order with accrued backwages from July 12, 1963 up to date of actual readmission of the faculty club members should proceed without further delay.

   As to the amount of backwages, the Court applies the precedent recently set in Mercury Drug. Co. vs. CIR[31] of fixing the amount of backwages to a just and reasonable level without qualification or deduction so as to avoid protracted delay in the execution of the award for backwages due to extended hearings and unavoidable delays and difficulties encountered in determining the earnings of the laid-off employees ordered to be reinstated with backwages during the pendency of the case for purposes of deducting the same from the gross backwages awarded.

   As has been noted, this formula of awarding reasonable net backwages without deduction or qualification relieves the employees from proving or disproving their earnings during their lay-off and the employers from submitting

counterproofs, and obviates the twin evils of idleness on the part of the employee who would "with folded arms, remain inactive in the expectation that a windfall would come to him"[32] and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of the wrongfully dismissed or laid-off employees to hold unduly extended hearings for each and every employee awarded backwages and thereby render practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need.[33]

Here, a total of eleven (11) years has elapsed from July 12, 1963, date of commencement of the backwages. Considering all the circumstances at bar, viz., the preliminary injunction issued by this Court in the first Feati case restraining the enforcement of the March 30, 1963 return-to-work order, the nature of the work, the complexity of the issues raised by the university which were then novel and which were only resolved in this Court's 1966 decision recognizing the right of professors and instructors theretofore given teaching assignments on a contractual per-semester basis to organize a labor union and to demand collective bargaining and to strike, the fact that respondent is an educational institution, although engaged in it also for profit, and the further delay caused by the CIR's turnabout 1969 decision herein ordered reversed, the Court considers that the fixing and limitation of the backwages award to the equivalent of three (3) school years (of ten months each school year) without qualification and deduction to the professors/instructors who have not been readmitted by the university all this time since the March 30, 1963 order is just and reasonable, and no further amount shall be due them except the P50,000. injunction bond in the first Feati case (L-21278) supra, which is hereby declared forfeited in favor of petitioner for the benefit of all its members who have not yet been readmitted to the university in view of this Court's 1966 decision finding the university not to be entitled to the issuance of such preliminary injunction which was ordered dissolved in the

decision. The computation of such accrued backwages shall be based on the university records and payrolls as directed in the industrial court's February 7, 1969 execution order (upheld by this Court in L-30484 on May 22, 1969) save that the report of such computation shall be made to the industrial court within thirty (30) days from notice hereof and payment of the three years backwages (based on ten months per year) without qualification or deduction shall be effected immediately thereafter to the faculty club members entitled thereto.

2. As to the actual reinstatement of the professors/instructors who up to now have not yet been taken back, the Court notes that immediate reinstatement is not feasible considering that we are now in the midst of the first semester of the school-year, and that on the other hand, the said professors/instructors may have already found other similar employment and may no longer wish to be reinstated at this late date. The Court therefore directs the industrial court to determine and work out a schedule for the actual reinstatement of such professors/instructors who wish to be so reinstated at the beginning of the second semester of the current school-year and to use the court's coercive processes to effect the same without further delay.

3. The industrial court is directed to resolve with deliberate dispatch the merits of the labor dispute which the President had certified to it in 1963 under section 10 of Republic Act No. 875 in the national interest particularly, the twenty-six demands of petitioner union for union recognition, collective bargaining, security of tenure, etc. It should be noted as reaffirmed in Phil. Federation of Petroleum Workers (PFPW) vs. CIR[34] that such certified cases per se indicate a "degree of urgency required in the settlement of the terms and conditions of employment involved in the labor dispute. The industrial court, in such cases, is empowered to act therein with the broad powers and jurisdiction granted it by law, including the power of conciliation and compulsory arbitration; it is empowered to order the return to work of the workers with or without backpay, and 'shall not be

restricted to the specific relief or demands made by the parties to the industrial dispute, but may include in the award, order or decision any matter or determination which may be deemed necessary or expedient for the purpose of settling the dispute or of preventing further industrial disputes.'"[35]

It is under these ample powers of the CIR and the declared national interest involved that the strike was terminated by its March 30, 1963 return-to-work order and the striking professors/instructors ordered reinstated and be not dismissed from the university although technically their teaching assignments were on a contractual per semester basis (which lack of security of tenure was one of the teachers' main complaints) during the pendency of the dispute and its determination by the industrial court. The right of the professors/instructors to such reinstatement since July 12, 1963 has been frustrated all this time because of the tenacious opposition of the university and the intervening circumstances hereinabove narrated.

Hence, the award of backwages to petitioner's members hereinabove fixed at three years without deduction or qualification in implementation of the final February 7, 1969 award upheld in the second Feati case (L-30484) which held the university in "bad faith" for its failure and refusal to comply with the reinstatement order notwithstanding this Court's 1966 decision repudiating the university's challenge against its validity and the industrial court's jurisdiction.

All effort should now be exerted by the industrial court to settle and adjudicate without further delay the terms and conditions of employment involved in the labor dispute.

The question of certification election is not necessary for the discharge by the industrial court of its task of resolving and compulsorily arbitrating the labor dispute between the parties, as already held in this Court's 1966 decision, except that for purposes of determining the proper collective bargaining representative in view of the long period that has

elapsed since the dispute was certified in 1963 by the President but after the dispute has otherwise been resolved in all other aspects, any of the parties affected may apply for certification election as provided by law.

4. The P200.-fine imposed by the industrial court on each of the university officials named in the contempt proceedings for failure to implement the March 30, 1963 return-to-work order shall stand, since the same has not been complained of nor assigned as error by the parties in this review.

ACCORDINGLY, the appealed Decision of November 24, 1969 of the industrial court is hereby reversed and set aside (save for paragraph 4 of the dispositive portion thereof which imposes a P200. fine on each of the university officials named in the contempt proceedings which shall stand). In lieu thereof, judgment is hereby rendered ordering the industrial court to implement without further delay the March 30, 1963 return-to-work order with accrued backwages as ordered in the February 7, 1969 order (with the amount of the backwages to be paid by the university to the professors and instructors entitled thereto fixed at three (3) years backwages [at ten (10) months per year] without deduction or qualification besides damages of P50,000.00 on the university's injunction bond in the first Feati case which are hereby awarded against the university in favor of petitioner for the benefit of all its members who have not yet been taken back by the university), and to resolve with deliberate dispatch the merits of the labor dispute certified to it by the President, in accordance with the directives set forth in Part III of the Court's opinion (entitled Disposition of the case at Bar) which is hereby reproduced and made an integral part hereof by reference. With costs against respondent university.

In view of the length of time that petitioners' members' right to reinstatement during the pendency of the dispute and to accrued backwages has been pending enforcement as well as the fact that the labor dispute itself notwithstanding the presidential certification in 1963 has been unresolved to date, this decision shall be immediately executory upon its promulgation.

Zaldivar, Castro, Makasiar, Antonio, Fernandez and Aquino, *JJ.*, concur.
Makalintal, *C.J.*, concurs in the result.
Palma, *J.*, took no part.

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[1] Reported in 18 SCRA 1191-1231, 1195, per Zaldivar, J.; emphasis supplied.
[2] Cases Nos. L-21278, L-21462 and L-21500 all instituted by the university against the faculty club.
[3] 18 SCRA at page 1210.
[4] Ibid.
[4a] Idem, at page 1216.
[4b] 5 SCRA 1082 (1962).
[5] Idem at page 1218.
[6] Idem at page 1221.
[7] Idem at pages 1224 to 1226; emphasis supplied.
[8] Idem, at page 1231; emphasis supplied.
[8a] Idem, at page 1197; emphasis supplied.
[9] Idem at page 1231.
[10] Petitioner's brief, Annex E, pages 88-89.
[11] Idem, at page 89; emphasis supplied.
[12] Idem, at pages 78-79; emphasis and notes in parenthesis supplied.
[12a] Idem, at pages 81-82; emphasis supplied.
[13] Idem, at pages 83-88; emphasis supplied.
[14] Idem, at page 105.
[15] Idem, at pages 107-108.
[16] Idem, at page 108.
[17] Idem, at pages 110-111.
[18] Idem, at pages 109-110.
[19] Idem, at page 148.
[19a] L-31852 & L-32724, June 28, 1974.
[20] At page 6 hereof.
[21] 44 SCRA 350, 361, per Villamor, Jr. (Apr. 11, 1972); see also Citizens Labor Union vs. Stanvac, 97 Phil. 949 (May 6, 1955); Bisaya Land Trans. Co., Inc. vs. CIR 102 Phil. 438 (Nov. 26, 1957).
[22] At page 13 hereof.
[23] CIR decision at petitioner's brief, p. 143.
[24] Petitioner's brief, p. 34; emphasis supplied.
[25] See. East Asiatic Co. vs. CIR, 40 SCRA 521 (1971), Phil. Engineering Co. vs. CIR, 41 SCRA 89 (1971) and Cruz vs. PAFLU, 42 SCRA 68 (1971) where the Supreme Court did not accord acceptance to the industrial court's factual findings and conclusions upon a review of the record and of the countervailing evidence.
[26] 39 SCRA 276, 289 (May 31, 1971), per Fernando, J.

[27] 17 SCRA 352, 360 (1966); followed also in Norton Harrison, 19 SCRA 310 (1967).
[28] Dinglasan vs. NLU, 106 Phil 671 (1959), Cromwell Employees Union vs. CIR, 12 SCRA 124 (1964). See Cebu Portland Cement Co. vs. Cement Workers Union, 25 SCRA 54 (1968).
[29] Cited with favor in Cafimsa vs. CIR, 44 SCRA at pp. 367-368.
[30] 37 SCRA 244 (1971).
[31] L-23357, April 30, 1974, applied in NASSCO vs. CIR, L-31852 & L-32724, June 28, 1974 and Almira, et al. vs. B.F. Goodrich Phil., Inc., L-34974, July 25, 1974.
[32] Itogon Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union, 24 SCRA 873 (1968), cited in Diwa ng Pagkakaisa vs. Filtex International Corp., 43 SCRA 287 (1972) per Makalintal, now C.J.
[33] See La Campana Food Products, Inc. vs. CIR, 28 SCRA 314 (1969) and Kaisahan ng Mga Manggagawa vs. La Campana Food Products, Inc., 36 SCRA 142 (1970).
[34] 37 SCRA 711 (1971).
[35] Idem, at page 716.

SEPARATE OPINIONS

FERNANDO, J., concurring:

There is no hesitancy in my concurrence with the thorough, comprehensive, and learned opinion of Justice Teehankee. I find more than justified the tone of displeasure so evident therein, necessitated by the seeming callousness with which the respondent Court of Industrial Relations viewed the plight of petitioner Feati University Faculty Club as well as the lack of an adequate grasp of controlling legal doctrines in the field of labor law. What is even more deplorable is that an agency precisely created to attain the salutary objectives in the 1935 Constitution on the promotion of social justice and the protection of labor, appears, at least in this instance, to be a major obstacle. More specifically, there is much less than full respect for the landmark opinion of Justice Zaldivar for this Court in the parent case, Feati University vs. Bautista.[1] The strictures aimed therefore at the appealed decision of respondent Court are well-deserved. If this brief concurrence is penned, it is only out of a desire to add a few words on the applicability of progressive labor legislation to the underpaid and overworked members of the teaching profession, those who till the vineyards of the intellect.

The 1966 Feati University decision is, to my mind, of far-reaching consequence because for the first time there is a marked recognition that intellectual labor, no less than physical labor, is fully deserving of state protection. That is as it ought to be. If it were not thus, one of the most vital governmental ends, that of disseminating the fruits of knowledge and extending its terrain, would be frustrated. That was one of the cherished aims of the 1935 Constitution.[2] It is even more emphasized under the present Charter. Thus: "All educational institutions shall be under the supervision of, and subject to regulation by, the State. The State shall establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development."[3] Also: "(1) The State shall promote scientific research and invention. The advancement of science and technology shall have priority in the national development. (2) Filipino culture shall be preserved and developed for national identity. Arts and letters shall be under the patronage of the State. (3) The exclusive right to inventions, writings, and artistic creations shall be secured to inventors, authors, and artists for a limited period. Scholarships, grants-in-aid, or other forms of incentives shall be provided for specially gifted citizens."[4]

So it is in the United States. Education, as was stressed in Brown vs. Board of Education,[5] the famous desegregation decision, "is perhaps the most important function of state and local governments."[6] That theme, according to a 1973 Supreme Court decision, San Antonio vs. Rodriguez,[7] "expressing an abiding respect for the vital role of education in a free society, may be found in numerous opinions of Justices of [the American Supreme] Court writing both before and after Brown was decided. Wisconsin vs. Yoder, 406 US 205, 213, 32 L Ed 2d 15, 92 S Ct 1526 (The Chief Justice), 237, 238-239, 32 L Ed 2d 15 (Mr. Justice White) (1972); Abington School Dist. vs. Schempp, 374 US 203, 230, 10 L Ed 2d 844, 83 S Ct 1560 (1963) (Mr. Justice Brennan); McCollum vs. Bd. of Education, 333 US 203, 212, 92 L Ed 649, 68 S Ct 461, 2 ALR 2d 1338 (1948) (Mr. Justice Frankfurter); Pierce vs. Society of Sisters, 268 US 510, 69 L Ed 1070, 45 S Ct 571, 39 ALR 468 (1925); Meyer vs. Nebraska, 262 US 390, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446 (1923); Interstate Consolidated Street Ry vs. Massachusetts, 207 US 79, 52 L Ed 111, 28 S Ct 26 (1907)."[8]

It is trite to say then that competent and able educators are of the essence. They are needed in all ranks, from those teaching the very young to those furnishing tutelage to college and university students. Unless they are assured of decent living conditions, their efficiency is impaired and their enthusiasm wanes. That is quite understandable. They are mostly family men with their own children whose needs as to food, clothing and shelter as well as schooling and medicine have to be provided for. It is no indictment of Feati University to say that its management, like those in other business establishments, while no doubt conscious of the desirability of having its labor force relatively content, cannot close its eyes to the annual profit and loss statement. This is so because in this country, and it is most regrettable, quite a number of educational institutions are operated like ordinary commercial firms. It is a common complaint, one well-justified at that, that stipends granted faculty members are far from generous. In the original Feati University decision and in this decision, there is the recognition, one that is impressed with the elements of fitness and of justice, that instructors, lecturers and professors are entitled to all the benefits of the constitutional mandates and the legal norms se concerned with and so solicitous of the welfare of labor. If there is anything evident in our pronouncements then and now, it is that labor conditions in the Feati University are far from ideal. Its Faculty Club has therefore the legal right to take the needed steps to improve matters. It did so, and yet, if the appealed decision were to be upheld, it would be penalized for doing so. That should not be the case.

Nor is this all. If the educators falter or fail in their task, the hapless victims are the unfortunate students, their parents who undergo sacrifices so that their children might do better in life, and in a true sense, the country as a whole. One way to avoid such a dire consequence is for a college or university to have a permanent corps of faculty members. An assurance of tenure, it has been ascertained in some of the better centers of learning both here and abroad, is a guarantee of greater proficiency in teaching. The movement by the members in petitioner organization was precisely inspired by the belief that, if so united, they could obtain better working conditions, including the highly-prized security of tenure. For one reason or another, possibly because it will cut into its profits, there was an objection on the part or respondent Feati University. As was so made clear by us as far back as 1966, the objection to such concerted

activity was without legal basis. Moreover, the faculty members had to return to work. Yet, after all these years, they are still knocking at the gates. It is then a sad state of affairs not only for the professors, lecturers, instructors and their families, but for the cause of intellectual freedom, if instead of receiving encouragement and support, those who devote themselves to training the young will be hampered in their efforts to improve their living conditions. Plagued by a sense of insecurity, education itself suffers. That, to repeat, is a condition that must be remedied — and now.

The appealed decision was oblivious to such considerations. It was not only vitiated by bad law but also by complete inattention to the demands of sound educational policy. In manifesting such blindness to the clear dictates of progressive labor legislation, no less than of the requirements of intellectual freedom, respondent Court was clearly recreant to its trust.

Since the decision of the Court has that significance for me, I am as one with my brethren on this matter.

FERNANDO, J., concurring:

[1] L-21278. December 27, 1966, 18 SCRA 1191.
[2] Cf. Article XIV. Sections 4 and 5 of the 1935 Constitution.
[3] Article XV, Section 8, par. (1) of the Constitution.
[4] Ibid, Section 9.
[5] 347 US 483 (1954).
[6] Ibid, 493.
[7] 36 L Ed 2d 16.
[8] Ibid, 41.

BARREDO, J., concurring:

I deem it necessary to state briefly my reasons for concurring in the judgment rendered by the Court because I feel there is need for me to explain why in spite of my knowledge from actual experience, having been a professor in many private universities for a long time, that my

repeated appointments on semestral basis did not give me, as a matter of right, sufficient ground to demand that I be assigned a teaching load every semester, I am nevertheless voting in favor of ordering the reinstatement and of granting the members of petitioning union herein back salaries for three years without deduction or qualification.

Indeed, were it not for the peculiar circumstances under which the services of the professors and instructors herein involved were terminated, as recounted in the main opinion, it would have been, to my mind, extremely doubtful if those of them who were holding positions on semestral basis could be considered as entitled as a matter of right to reinstatement and the consequent corresponding back salaries. True, they were precisely demanding for security of tenure, but even granting they are entitled thereto, their right thereunder cannot be considered as existing until after the corresponding provision therefor has been made in the decision of the Industrial Court to which their demands had been submitted by the President of the Philippines for arbitration. As a matter of fact, even the terms of the Industrial Court's return-to-work order of March 30, 1963 do not seem to exclude conclusively the semestral individual contracts, express or implied, herein involved, for it refers to the return to work of petitioners "under the last terms and conditions existing before the dispute arose", which could mean in law a recognition of the semestral nature of the contracts already mentioned. To my mind, the injunction to the respondent university against dismissing any employee or laborer, pending adjudication of the case, does not necessarily mean the respondent had to extend new appointments to those whose tenures, under the term of their "last" respective semestral contracts existing before the strike, expired in the meanwhile. In law, there is a difference between dismissal and termination of tenure pursuant to prevailing contracts.

I am convinced, however, that it is highly improper and unfair to condone, in justice and equity, and from the viewpoint of the respect that parties are supposed to accord judicial orders, the attitude of respondent university with reference to the return-to-work order in question. I see no justification whatsoever for what clearly appears to be furtive evasions of the court's order, if not, truculent defiance thereof. The terms of the order did not come from the court *sua*

sponte, the basis thereof being a return-to-work agreement entered into by the parties before the hearing of March 23, 1963. There is no doubt in my mind that petitioners understood from the agreement that the university would retain or continuously reappoint them pending the final adjudication of the case, and if respondent had any contrary idea about it, it should not have remained silent but should have spelled it out for all to know. That agreement superseded any existing contract of any other import. To allow the order to stand as it is, and to later on take advantage of loose expressions and possible loopholes therein, knowing that the petitioners were pinning their hopes on being able to work while their demands were being arbitrated, appears to me to smack of deception and bad faith. In any event, in respect to this point, every vestige of legal justification for the respondent's posture ended when in the decision of this Court of December 27, 1966 (18 SCRA 1191), it was made clear that respondent had no right to take in replacements of petitioners, pursuant to the terms, not necessarily of the order, but of the return-to-work agreement between the parties, of which the order was only a confirmation. From then on, it became the indubitable and ineludible obligation of respondent to continuously reinstate petitioners until otherwise authorized by the court.

Moreover, it does seem clear in the records of the case that contrary to the spirit of the President's certification that the parties should submit their differences to arbitration by the Industrial Court, among the most important of which, was the one about security of tenure, respondent, thru its officials and counsel, in and outside of the court, consistently took an intransigent attitude and resorted to dilatory devices, thereby betraying complete indifference to the efforts of the faculty members of the institution, without whom, after all, it could not have attained the standing it had as a respectable seat of education in this country. Such an anti-social posture can hardly evoke sympathy. The Court of Industrial Relations was conceived as a special instrument for the promotion of social justice; for which reason, the procedures therein are stripped of technicalities, and it is to apply the law to the end that its social objectives not its cold juridical concepts alone are achieved. Which is not to create an imbalance or inequality before the law, but to put into actual operation the Constitution's mandate for the State to "afford protection to labor, promote full employment and equality in

employment, and regulate the relations between workers and employers" as it "shall assure the rights of workers curity of tenure" in the exercise, if necessary, of its power to "provide for compulsory arbitration." (Sec. 9, Article II, Constitution of the Philippines of 1973). No less than these, substantially, were the principles pertaining to labor enunciated in our 1935 Constitution. Respondent's position frustrated the laudable efforts to give meaning and substance to these constitutional precepts, and it has only itself to blame for the sanction that it has entailed.

Mr. Justice Teehankee could not have made the legality of the strike of petitioners plainer. Verily, the attempt to stigmatize the same because of the alleged violation of the 30-day conciliation period prescribed by law and the scattered incidents of coercions and violence in which some of the strikers participated, is futile in the light of prevailing jurisprudence on the matter ably discussed in the main opinion. Such being the case, the right of petitioners to reinstatement and back salaries as ordered in the judgment is beyond dispute.

In all other respects, I concur fully in the well reasoned decision penned by Mr. Justice Teehankee.

ESGUERRA, J., dissenting:

I regret that I cannot subscribe to the majority opinion which substitutes its findings of fact for those of respondent Court of Industrial Relations (CIR) and makes astounding statements on the liability of respondent FEATI University. Particularly, I cannot accept the dictum that a presidential certification of an industrial dispute to the Court of Industrial Relations (CIR) and a return to work order issued in the meantime by the (CIR) to maintain the status quo and prevent further injury to the public interest, preclude all debates about the legality of the strike and shut out all claims tending to show that the return to work order is not res judicata as between the parties to the dispute.

The background and antecedent circumstances which gave rise to the instant petition are found in the joint decision promulgated by this Court on December 27, 1966, in the cases entitled: "Feati University vs. Honorable Jose Bautista" (L-21278); "Feati University vs. Feati University Faculty Club-PAFLU" (L-21462); and "Feati University vs. Feati University Faculty Club-PAFLU" (L-21500). Excerpts from the decision setting forth the facts of these cases are as follows:[1]

> "On January 14, 1963, the President of the respondent Feati University Faculty Club-PAFLU — hereinafter referred to as Faculty Club — wrote a letter to Mrs. Victoria L. Araneta, President of petitioner Feati University — hereinafter referred to as University — informing her of the organization of the Faculty Club into a registered labor union. The Faculty Club is composed of members who are professors and/or instructors of the University. On January 22, 1963, the President of the Faculty Club sent another letter containing twenty-six demands that have connection with the employment of the members of the Faculty Club by the University, and requesting an answer within ten days from receipt thereof. The President of the University answered the two letters, 'requesting that she be given at least thirty days to study thoroughly the different phases of the demands. Meanwhile counsel for the University, to whom the demands were referred, wrote a letter to the President of the Faculty Club demanding proof of its majority status and designation as a bargaining representative. On February 1, 1963, the President of the Faculty Club again wrote the President of the University rejecting the latter's request for extension of time, and on the same day he filed a notice of strike with the Bureau of Labor alleging as reason therefor the refusal of the University to bargain collectively. The parties were called to conferences at the Conciliation Division of the Bureau of Labor but efforts to conciliate them failed. On February 18, 1963, the members of the Faculty Club declared a strike and established picket lines in the premises of the University, resulting in the disruption of classes in the University. Despite further efforts of the officials from the Department of Labor to effect a settlement of the differences between the management of the University and the striking faculty members no satisfactory agreement was arrived at. On March 21, 1963, the

> President of the Philippines certified to the Court of Industrial Relations the dispute between the management of the University and the Faculty Club pursuant to the provisions of Section 10 of Republic Act No. 875.
>
> "In connection with the dispute between the University and the Faculty Club and certain incidents related to said dispute, various cases were filed with the Court of Industrial Relations."

Three of them, entitled and docketed as set forth in the second paragraph of the first page of this decision, reached this court and were jointly decided as follows:

> "IN VIEW OF THE FOREGOING, the Petition for *Certiorari* and prohibition with preliminary injunction in Case G. R. No. L-21278 is dismissed and the writs prayed for therein are denied. The writ of preliminary injunction issued in case G. R. No. L-21278 is dissolved. The orders and resolutions appealed from in Cases Nos. L-21462 and 21500, are affirmed, with costs in these three cases against the petitioner-appellant Feati University."

On October 24, 1968, the Faculty Club filed several pleadings, viz.:

1. Motion to execute order of March 30,1963, for return to work in accordance with the December 27, 1966 decision above mentioned.

2. Motion to set case for hearing.

3. Petition for Award of Damages.

4. Petition for the reinstatement with back wages of non-faculty members.

On February 7, 1969, Judge Joaquin Salvador issued an order granting the motion to execute filed by petitioner Faculty Club. The University moved to reconsider the same but the motion was denied on March 25, 1969. Several hearings on CIR Case No. 41-IPA followed, and on November 24, 1969, a decision was rendered

thereon (confirmed by the CIR en banc), the dispositive portion of which reads as follows:

> "WHEREFORE, IN VIEW OF THE FOREGOING, this Court hereby orders the following:
>
> 1. The strike declared against the Feati University on February 18,1963, is declared illegal and, consequently, the employee status of the officers and members who participated therein are hereby declared terminated;
>
> 2. The issue of certification be threshed out in an election to be conducted upon such mode and manner as may be acceptable to the parties and whoever may desire to participate in it;
>
> 3. The claim for (sic) damages sustained by the parties, in the light of the facts and the jurisdictional competence of the Court, are denied; and
>
> 4. The persons named in the contempt proceedings are fined P200.00 each."

From this decision petitioner Faculty Club appealed, claiming that respondent court erred in —

1. Declaring the strike of the petitioner illegal inspite of the uncontroverted fact that there was already a return-to-work agreement;

2. Declaring the strike of the petitioner illegal inspite of the fact that this Honorable Court has, in its decision in Cases Nos. L-21278, 21462 and 21500, already ruled out the question of strike illegality;

3. Ruling that the strike of the petitioner was illegal because the so-called 30-day notice requirement was not complied with;

4. Ruling that the strike of the petitioner was illegal because it was carried out through illegal means;

5. Ruling the strike of the petitioner illegal inspite of the contrary position it took in its earlier Order dated February 7, 1969;

6. Finding that the strike members did not offer to return to work.

7. Finding that the picketing continued even after March 30, 1963;

8. Ruling on the question of damages which was never submitted; and ignoring the issues on the union economic demands and the petition for the reinstatement of non-faculty members;

9. Reviving the question of majority; and

10. Directing vaguely compliance with the "new precept here manifested in the SSS dispute."

The first five assigned errors will be taken up together as they all revolve around the legality or illegality of the strike. The last five will be taken up separately. Petitioner Faculty Club contends that the return-to-work arrangement rendered moot and academic the issue of legality of the strike. This is untenable. While in the case of Caltex Filipino Managers and Supervisors Association vs. Court of Industrial Relations, L-30632-33, April 11, 1972, 44, SCRA, 350, this Court had occasion to specifically rule that the legality or illegality of the strike became moot and academic because of the return-to-work arrangement, this particular ruling is not applicable to the instant case. In the aforecited case, the company unqualifiedly bound itself in the return-to-work agreement that all employees would be taken back "with the same employee status prior to April 22, 1965." This is not true in the instant case, for the fact is that when the return-to-work arrangement was first brought up, the University questioned the jurisdiction of the CIR. Besides, the prefatory sentence of the CIR Order of March 30, 1963, that the dispute could not be promptly

decided and settled by the Court, and hence the strikers were ordered to return to work and the University directed to readmit them under a status quo arrangement, confirm the fact that the return-to-work order was merely an interim or provisional arrangement. There is no question as to the power of the CIR to issue a valid return-to-work order and thus "avoid the dire possibility, foreseen in the certification, of huge economic losses, untold inconveniences and grave dangers to safety and human lives" (National Power Corporation vs. National Power Corporation Employees and Workers Association, 33 SCRA 811). The return-to-work arrangement was, therefore, designed to minimize in the meantime the disastrous effects of the strike, especially as it affected thousands of students of respondent University, and did not render moot and academic the issue of the legality or illegality of the strike.

Nor can we accede to the interpretation of the petitioner that the decision of this Court of December 27, 1966, in Feati University vs. Bautista, supra ruled out the question of the illegality of the strike. The issue of validity of the strike staged by petitioner Faculty Club on February 18, 1963, was never put in issue squarely before us, for what was questioned there was the validity of the return-to-work order and We upheld the legality of the CIR order of March 30, 1963, to that effect, without ruling on the legality of the strike which We then believed could be threshed out in later proceedings.

Petitioner Faculty Club claims that the CIR erred in declaring the strike illegal because the 30-day notice requirement was practically complied with by it. But respondent Court of Industrial Relations found that it was an economic strike and, therefore, the 30-day "cooling-off" period was indispensable and should have been strictly observed. It is a settled rule not to disturb findings of the trial court where they are supported by substantial evidence. The alleged sole reason for the strike was the refusal of the University to bargain, but the records show that the University answered the two letters of petitioner Faculty Club although it bided for time to study the demands numbering twenty-six which really necessitated thorough deliberation and serious consideration, involving as they did matters which raised legal, organizational and economic questions vitally affecting the FEATI University. While it is true that under Section 14 of the Industrial Peace Act (Republic Act 875), when a party serves

written notice upon the employer of its proposals and a reply to the same has to be made not later than ten days from receipt thereof, this condition is merely procedural and non-compliance therewith cannot be deemed to be an act of unfair labor practice. (National Union of Restaurant Workers vs. Court of Industrial Relations, 10 SCRA, p. 843). Hence no unfair labor practice could be imputed to the respondent University which did not refuse to bargain but merely sought extension of time to study and deliberate on the demands.

As to the means resorted to by the strikers in carrying out the strike, there are testimonies of police officers who were assigned to the strike-bound area to maintain peace and order there, and of persons who witnessed the violent and illegal acts of the strikers, and who were victims thereof, to show the illegality of the strike. These are what the respondent court found:

> "Captain David Laquian, in charge of the police detail in the Feati University premises, testified that the "people can not go in or out of the University because of several picketers" even resorting to "chain picketing" (T.S.N., Oct. 8, 1969, pp. 30-31); that this chain picketing consisted of picketers embracing each other and worming around in front of the two gates of the University; that "there was violence", specifically the case of Commissioner Maslog, who was prevented from going out of the premises, and the mauling of two students trying to get into the University, and assault on an employee of the Feati Bank (pp. 32-34). Amado Ravalo, then investigator of MPD Precinct No. 2, investigated the case of Charles King who was mauled on March 6, 1963 by the strikers between Echague and Helios Streets (T.S.N., Oct. 8, 1969, pp. 5-8) and of Ramon Vega, an employee of Feati Bank and, therefore, not involved in the labor dispute, who was likewise mauled on February 19, 1963 along Echague Street (p. 11).
>
> "Hospicio Brinas, legal officer of the University, averred that the picketers were not only professors, but professional picketers "harassing, coercing, intimidating the professors and instructors from entering the Feati University", and that he was one of those prevented from entering the premises (T.S.N., July 14, 1969, p. 42) that they forcibly pushed away the persons

entering (p. 45); these were all substantially corroborated by Commissioner Rodolfo Maslog (T.S.N., July 30, 1969).

"More revealing are the documentary evidences consisting of certified court records in relation to the incidents in question. Thus, Criminal Cases Nos. 69119 entitled, People of the Philippines vs. Dionisio Poladre y Taldero, the Decision of conviction on the mauling of Charles King in the Court of First Instance of Manila (Exhs. "24", "24-A" to "24-E"); the writ of preliminary injunction granted by Branch I, Court of First Instance of Manila enjoining defendants Bunag, et al., "from continuing the acts complained of, i.e., coercing, harassing and intimidating the students and other teachers, instructors and professors and preventing them from entering the classrooms and attending their classes, and preventing the plaintiff's employees from discharging their duties" (Exhs. "22" and "22-A"); and Miscellaneous Complaint of Crime Report re: the complaint of Ramon Vega (Exhs. "16" to "16-B").

"It is, therefore, clear that from the evidence presented, petitioner and its officers and members had not limited their acts to legal picketing but had resorted to threats, intimidations, coercions, bodily harm and other illegal means thereby rendering such strike illegal (Liberal Labor Union vs. Philippine Can Co., 91 Phil., 73; Luzon Marine Department Union vs. Judge Roldan, et al., G. R. No. L-2660, 47 O.G. Supp. to No. 12)."

We now turn to the CIR Order of February 7, 1969, which was completely reversed by the decision of November 24, 1969, subject of the present petition. Petitioner claims that the order of February 7, 1969, for the execution of the return to work order of March 30, 1963, became final and res judicata and could no longer be set aside by the decision on the merits of CIR Case No. 41-IPA rendered on November 24, 1969.

The petitioner apparently stresses the "finality of the Order" of February 7, 1969, to preclude the Respondent Court from setting it aside by its decision of November 24, 1969. Petitioner's contention is untenable. The order of March 30, 1963, as has been previously

shown, was merely provisional and temporary in character, or issued to maintain the status quo arrangement pending decision of the case on the merits. The order of February 7, 1969, providing for its execution, consequently, was also provisional in character and never became final. The respondent court by its decision of November 24, 1969, could declare the strike illegal as the decision of this Court upholding the order of March 30, 1963, only affirmed the jurisdiction of the CIR to issue it and never terminated the dispute by declaring the strike legal. That decision precluded the execution of the return to work order since the strikers' picketing continued beyond that date as found by the CIR and in the meantime the employment of the members of petitioner union on the semestral basis were terminated. There is, therefore, no more return to work order that could be validly executed and the authority of the Court of Industrial Relations to alter or amend its decision or orders that have become final and executory under the authority of Section 17 of Commonwealth Act 103 as amended, need not be invoked, as it has been shown that said order of March 30, 1963, as ordered executed by the order of February 7, 1969, was rendered *functus officio*.

As to the question of damages, the strike being illegal, it would be moot and academic to resolve that question. This is also true with respect to the claim of petitioner for reinstatement and back wages.

For the foregoing, the judgment appealed should be affirmed.

ESGUERRA, J., dissenting:

[1] Feati University vs. Bautista, 18 SCRA 1191, 1195.
