Bank Mergers and the Right to Bargain Collectively

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ABSTRACT

Part I of this paper provides a brief narrative on the phenomenon of mergers in the banking industry. Part II renders a report on unionization in the banking industry. Part III surveys the Philippine and American jurisprudence on the effect of mergers on: (1) the collective bargaining rights of an exclusive bargaining representative and (2) any existing CBA at the time of the merger. Part IV discusses the modes of determining representation status under the Labor and its implementing rules and regulations. Part V presents the experience of two notable bank mergers in the last three years, namely between Equitable and PCI Bank and Bank of the Phlilippine Islands and Far East Bank and Trust Company. The last part provides possible remedies and courses of action.

INTRODUCTION

The wave of mergers that captivated the Philippine banking industry in the 1990s arose out of a "sink or swim" scenario in the face of the global trend towards liberalization of financial services.

A policy encouraging mergers may have been triggered by the passage of Republic Act No. 7721 in 1994,[1] which allowed the entry of foreign banks into the country. At that time, the influential Bankers Association of the Philippines (BAP) declared that the removal of the ownership ceiling of local banks could encourage mergers and consolidations. They said that these may be the only effective measure to compete with the bigger foreign banks. Smaller commercial banks may merge with the bigger universal banks to further strengthen the position of domestic banks against foreign competitors.[2]

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Indeed, numerous issuances by the Bangko Sentral ng Pilipinas (BSP) unequivocally supported bank mergers and consolidations as it increased minimum capital requirements of banks and investment houses. There are also incentives given to financial institutions that undertake mergers or consolidations.[3]

BSP Governor Rafael Buenaventura has renewed his call for mergers to boost the stability of banks and shield them from external shocks in the wake of the global recession brought on by the terrorist attack of the World Trade Center on September 11, 2001.[4]

However, during the Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services in Geneva from 5 to 9 February 2001, governments were implored to anticipate and address "the negative social and employment impact which mergers and acquisitions may have, and (assist) the social partners to find commonly agreed solutions to mitigate the negative effects of mergers and acquisitions."[5] Proposed measures relating to employment, working and employment conditions, training, social dialogue, and ILO action were endorsed by a majority of delegates to the meeting.

In so far as ILO action is concerned, the delegates encouraged the promotion of relevant international labor standards in the area of freedom of association[6] and the right to collective bargaining.[7]

In the context of bank mergers in the Philippine setting, problems arose with regards to the right to collective bargaining of an exclusive bargaining representative in either the surviving or dissolved corporation. More particularly, the following questions emerged:

(1) What happens to the exclusive bargaining representative status of a collective bargaining agent in the surviving and dissolved corporations? Shall the exclusive bargaining representative status of either one survive the merger?

(2) Are there available modes of determination of representation status that may resolve any representation issue in a merger situation?

(3) Shall any existing collective bargaining agreement in the surviving or dissolved corporation be respected after merger?

Relative to enforcement of the right to organize and collectively bargain under ILO Convention Nos. 87 and 98, it becomes imperative to resolve the dilemma in bargaining representative status in a merger situation. After all, employees affected by mergers in the banking industry need their bargaining representatives to effectively advocate issues on security of tenure, training, and working conditions.

This study will suggest solutions to the three points of inquiry mentioned above.

DELIMITATION OF THE STUDY

Matters concerning the effects of bank mergers on security of tenure or in terms and conditions of employment, though significant, will not be the focus of discussion in this study. As of late, the Bureau has been involved in consultations on the settlement of representation disputes; hence, the proposal of policies on resolving representation issues in a merger situation has become its timely initiative.[8]

PART I: BANK MERGER OVERVIEW

Corporate Structure of Banks

Banking institutions are those engaged in the lending of funds obtained from the public through the receipt of deposits of any kind. They are formed as stock corporations. The General Banking Act specifically states that domestic banking institutions shall be organized in the form of stock corporations.[9]

Consequently, a bank has the same corporate structures and features as any other private commercial corporation. It is governed by a board of directors and operated by officers. It has a juridical personality separate and distinct from its individual stockholders. It is, by mere fiction of law, its own person with full capacity to enter into a contract much like any other individual. It also has the right of succession. It continues to exist despite the death or replacement of its stockholders. Stockholders may therefore sell their shares in a bank without affecting its existence.

A bank differs from any other private corporation by the numerous regulatory issuances it has to comply with. Because the function of receiving deposits from the public is imbued with public interest, its operation is strictly regulated by the BSP.

Being mere creatures of the law, a bank in order to be formed must first secure a special authority or grant from the State. It thus cannot be formed by mere agreement of its shareholders. Shareholders must first submit its articles of incorporation and by-laws to the Securities and Exchange Commission (SEC), and the SEC must approve these documents before formation of a bank takes place.

Unlike most private corporations, a bank must likewise secure an authority from the BSP. According to the General Banking Act, the SEC shall not register the articles of incorporation and by-laws

of any bank unless accompanied by a certificate of authority issued by the Monetary Board of the BSP.[10] In reviewing these documents, the BSP looks into whether the public interest and economic conditions justify such authorization, and whether the amount of capital, the financing organization, direction and administration, as well as the integrity and responsibility of the organizers and administrators reasonably as the safety of the interests which the public may entrust to the bank.[11]

Bank Merger Process

(1) Definitions

A merger is a union whereby one or more existing corporations are absorbed by another corporation which survives and continues the combined business.[12]

A consolidation, on the other hand, is the union of two or more existing corporations to form a new corporation called the consolidated corporation.[13]

The parties to a merger or consolidation are called constituent corporations. In consolidation, all the constituent corporations are dissolved and absorbed by the new consolidated enterprise. In merger, all constituent corporations, except the surviving corporation, are dissolved.[14]

(2) Plan of Merger

The board of directors or trustees of each bank shall approve a plan of merger setting for the following:

a) The names of the constituent corporations proposing to merge;

b) The terms of the merger and the mode of carrying the same into effect;

c) A state of the changes, if any, in the articles of incorporation of the surviving corporation; and

d) Such other provisions with respect to the proposed merger as deemed necessary or desirable.[15]

(3) Stockholders' Approval

Upon approval by majority vote of each of the board of directors of the constituent corporations of the plan of merger, the same shall be submitted for approval by the stockholders or members of each of the corporations at separate corporate meetings duly called for the purpose.[16]

Notice of such meetings shall be given to all stockholders or members of the respective banks, or at least two weeks prior to the date of the meetings, either personally or by registered mail.

Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger.

The affirmative vote of stockholders representing at least two thirds of the outstanding capital stock of each bank shall be necessary for the approval of such plan.[17]

(4) Right of Appraisal

Any dissenting stockholder may exercise his/her appraisal right, provided that if after the approval by the stockholders of such a plan, the board of directors should decide to abandon the plan. In such a case, the appraisal right shall be extinguished.[18]

(5) Amendment of the Plan of Merger

Any amendment to the plan of merger may be made, provided such amendment is approved by majority vote of the respective banks and ratified by the affirmative vote of stockholders representing at least two thirds of the outstanding capital stock of each institution.[19]

(6) Articles of Merger

After the approval by the stockholders of the merger, articles of merger shall be executed by each of the banks, to be signed by the president and vice-president and certified by the secretary or assistant secretary of each institution, setting forth:

a) The plan of merger;

b) The number of outstanding shares;

c) As to each bank, the number of shares or members voting for and against such plan respectively.[20]

(7) Financial Statements

Under current SEC rules, the applying banks are required to submit their respective financial statements which serve as basis of fixing the shares to be issued favor of the merged bank relative to the net assets to be absorbed by the surviving bank as of a specific date. The date is important because it indicates the values of said assets as of that date. In fact, it is required that the articles of merger should be filed not more than 120 days from the date of the long form audit report for each of the constituent corporations.[21]

(8) BSP and SEC Approval

The articles of merger shall be submitted to the SEC in quadruplicate for approval, but the favorable recommendation of the BSP shall first be obtained.[22]

Where the SEC is satisfied that the merger is not inconsistent with the provisions of the Corporate Code and existing laws, it

shall issue a certificate of merger, at which time the merger shall be effective.[23]

Effects of Merger

The legal effects of a bank merger are the following:

(1) The constituent banks shall become a single corporation which, shall be the surviving bank designated in the plan of merger;

(2) The separate existence of the constituent banks shall cease, except that of the surviving bank;

(3) The surviving bank shall possess all the rights, privileges, immunities and powers of each of the constituent corporations and shall be subject to all the duties and liabilities of a corporation organized under the Corporation Code;

(4) All property, real or personal, and all receivables due on whatever account including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent bank, shall be taken and deemed to be transferred to and vested in such surviving bank without further act or deed;

(5) The surviving bank shall be responsible and liable for all the liabilities and obligations of each of the constituent banks in the same manner as if such surviving bank had itself incurred such liabilities or obligations;

(6) Any claim, action or proceeding pending by or against any of such constituent banks may be prosecuted by or against the surviving bank; and

(7) Neither the rights of creditors nor any lien upon the property of any of each constituent bank shall be impaired by such merger.[24]

The general legal effect of merger is not to disrupt the legal continuity of the underlying "business enterprises" of each constituent corporation.[25]

Bank Merger Activity

Between 1973 and 2000, there were about 31 bank mergers[26] with only 15 cases occurring after RA. 7721. But the so-called "big-boy" mergers undoubtedly were undertaken between 1998 and 2000, with standouts such as the Equitable- PCI Bank merger (P45.3 billion combined capital) and the Bank of the Philippine

Islands-Far East Bank and Trust Co. union (P50 billion combined capital) leading the way.

While it would still be difficult to give a definite answer as to whether the recent wave of mergers has actually benefited the industry,[27] most observers believe that the Philippine banking system managed to survive the Asian financial crisis of 1997 relatively unscathed and that there is no banking crisis in the Philippines.[28]

PART II: UNIONIZATION IN THE BANKING INDUSTRY

As a central registry of labor organizations, workers' associations and collective bargaining agreements, [29] the Bureau of Labor Relations maintains records pertaining to unionization in the banking industry. As of September 2002, there were 132 labor organizations in the banking sector, involving 28,959 members. Independent unions comprise 64% of all registered labor organizations in the industry, and membership in these independent unions comprise 83% of the unionized banking workforce.

Bank unions only constitute .7% of the over-all organized workforce, with 132 out of 17,573 registered locals/chapters. independent unions, and workers' associations.

At present, there are only 4 registered collective bargaining agreements with the Bureau, representing 1,465 workers.[30] While this is not accurately reflective of the number of CBAs in the industry, these 4 registered agreements represents a decline from 49 registered CBAs as of November 2000. [31]

Data from the Bureau of Labor and Employment Statistics (BLES) as of April 2002 indicate that there were 137,000 bank employees in the country. With 28,959 unionized bank employees on record, the industry appears to be 21% organized.

PART III: SURVEY OF JURISPRUDENCE ON EFFECTS OF MERGERS ON THE RIGHT TO BARGAIN COLLECTIVELY

American Jurisprudence

The United States Supreme Court has been confronted with the issue of the effect of a merger on the rights of a collective bargaining agent. The term "successor employer" usually denotes an employer who has purchased or assumed a business.[33] A successor employer may obtain a business through "merger, sale of stock, sale of assets, loss of a renewable contract, incorporation of a formerly unincorporated entity, dissolution of a corporation, bankruptcy" or other means.[34]

The evolution of judicial dictum in this regard can be traced to John Wiley & Sons, Inc. v. Livingston,[35] where the Court resolved the issue of whether the arbitration provisions of a collective bargaining agreement survived a merger, so as to be operative upon the surviving corporation. District 65, Retail, Wholesale and Department Store Union, AFL-CIO, entered into a collective bargaining agreement with Interscience Publishers, Inc., a publishing firm, for a term expiring on 31 January 1962. The agreement did not contain an express provision making it binding on successors of Interscience. On 2 October 1961, Interscience merged with John Wiley & Sons, Inc., another publishing firm, and ceased to do business as a separate entity.

At the time of the merger, Interscience had about 80 employees, of whom 40 were represented by the union. It had a single plant in New York City, and did an annual business of somewhat over $1,000,000. Wiley was a much larger concern, having separate office and warehouse facilities and about 300 employees, and doing an annual business of more than $9,000,000. None of Wiley's employees was represented by a union.

In discussions before and after the merger, the union and Interscience (later Wiley) were unable to agree on the effect of the merger on the collective bargaining agreement and on the rights under it of those covered employees by Wiley. The union's position was that despite the merger it continued to represent the covered Interscience employees taken over by Wiley, and that Wiley was obligated to recognize certain rights of such employees which had "vested" under the Interscience bargaining agreement. Such rights concerned matters typically covered by collective bargaining agreements, such as seniority status, severance pay, etc. The union contended also that Wiley was required to make certain pension fund payments called for under the Interscience bargaining agreement.

Wiley, though recognizing for purposes of its own pension plan the Interscience service of the former Interscience employees, asserted that the merger terminated the bargaining agreement for all purposes. It refused to recognize the union as bargaining agent or to accede to the union's claims on behalf of]nterscience employees. All such employees, except a few who ended their Wiley employment with severance pay, continued in Wiley's employ.

No satisfactory solution having been reached, the union, one week before the expiration date of the Interscience bargaining agreement, commenced an action to compel arbitration.

The Court, speaking through Mr. Justice Harlan, held that the disappearance by merger of a corporate employer which has *entered into a collective bargaining agreement with a union does*

not automatically terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances, the successor employer may be required to arbitrate with the union under the agreement.

There was an express recognition of the central role of arbitration in effectuating national labor policy. It would derogate from the federal policy of settling labor disputes by arbitration if a change in the corporate structure or ownership of business enterprise had the automatic consequence of removing a duty to arbitration previously established; this is so as much in mergers, where the contracting employer disappears into another by merger.

The Court likewise noted that there may be cases in which the lack of any "substantial continuity of identity" in the business enterprise before and after a change would make a duty to arbitrate something imposed from without, and that a union may have abandoned its right to arbitration. But neither of these situations were present.

Also, it was clarified that the Court did not suggest any view on the question surrounding a certified union's claim to continued representative status following a change in ownership.

Although Wiley never directly addressed questions pertaining to the continued rights of a collective bargaining agent, subsequent decisions discussing Wiley's impact crystallized the Court's positions on the matter.

In NLRB v. Burns International Security Services, Inc.,[36] the Court established a number of significant principles on the question of the duty of a successor to bargain with the predecessor's union. Wackenhut provided plant protection services for Lockheed at a California airport, under a contract to terminate on 30 June 1967. On March 8, the United Plant Guard Workers (UPG) was certified as bargaining representative for Wackenhut employees and a three-year labor contract was executed on April 29. Lockheed invited bids for a new protection- services contract, informing all bidders of the UPG certification and contract with Wackenhut, and although Wackenhut submitted a bid, Lockheed awarded the contract to Burns effective July 1.

Burns retained 27 of the Wackenhut guards, and brought in 15 of its own guards from other locations, but refused to bargain with the UPG or honor its labor contract. It even recognized a rival union, American Federation of Guards (AFG), which represented Burns employees elsewhere. The National Labor Relations Board found the Lockheed plant to be an appropriate bargaining unit, and held Burns to be a successor both to Wackenhut's duty to bargain with UPG (within four months of its certification) and to its labor contract with UPG. The Court, through Mr. Justice White, sustained the Board's order to bargain with

UPG, but unanimously refused to enforce the board's order to honor the labor contract. It found that Burns had not merely retained former Wackenhut employees as a majority of its own workforce at the Lockheed plant, but had also used them to perform the same tasks under supervision organized as before. But these factors were clearly treated as less significant than the successor majority comprised of former Wackenhut employees.

The Court held that Burns's obligation to bargain with the union over terms and conditions of employment stemmed from its hiring of Wackenhut's employees and the from the recent election and Board certification, because a mere change of employers or ownership in the employing industry is not such an "unusual circumstance" as to affect the force of the Board's certification within the normal operative period if a majority of employees after the change of ownership or management were employed by the preceding employer.

Burns laid down the following principles on successorship:[37]

(1) When a company hires as a majority of its workforce in an appropriate bargaining unit employees who had worked for a unionized company, and these employees continue to perform the same work in the same setting, the successor company is obligated to recognize and bargain with the predecessor's union during the same period of time as the predecessor would be obligated to do.

(2) The duty to bargain would not carry over to a company acquiring a unionized business in any of three situations: (a) when recruitment by the successor employer results in, for example, "an almost complete turnover of employees," provided that the successor does not purposely avoid hiring predecessor employees because they are union members; or (b) when — even if all of the predecessor's employees are retained — because the successor's "operational structure and practices" differ from those of the predecessor, the former bargaining unit is no longer appropriate, in a case when the former Wackenhut employees had been dispersed among Burns employees at other locations; or (c) when, for other reasons, the successor nurtures in good faith a reasonable doubt that the union continues to represent a majority within the unit.

(3) The duty to bargain ordinarily does not commence until the successor has hired as a majority of its workforce the former employees of the predecessor, such that the status quo from which bargaining is to

begin is that which obtains between the successor and its own workforce at that time (rather than the earlier status quo between the predecessor and its workforce).

(4) An obligation to abide by the predecessor's contract must be found in some express or implied assumption of such an obligation by the successor, and cannot rest merely on the retention of a majority of former employees without consensual dealings between the parties.

In a separate opinion, Mr. Justice Rehnquist argued that Burns presented a weak case for the imposition of any duties on the new employer because Burns did not purchase the assets of Wackenhut or have any other relationship with Wackenhut other than hiring some of its old employees and performing some work that Wackenhut had previously performed. The majority opinion pointed out that the narrower holding in Wiley dealt with a merger occurring against a background of New York State law which embodied the general rule that in merger situations the surviving corporation is liable for the obligations of the disappearing corporation.[38]

In Howard Johnson Co. v. Hotel & Restaurant Employees Detroit Local Joint Board, [39] the Court applied Burns and sustained a refusal to arbitrate by a purchaser of company assets. The Grissom family operated a restaurant and motor lodge under franchise from Howard Johnson. Howard Johnson purchased the personal property used in the restaurant and motor lodge from the Grissoms, and leased the realty. After hiring only nine of its predecessor's 53 employees, Howard Johnson commenced operation of the establishment with a complement of 45. It refused to recognize the union that had bargained collectively with the Grissoms, and it refused to assume any obligations under the existing labor agreements. The union sued both the Grissoms and Howard Johnson to require them to arbitrate the extent of their obligations to the Grissom employees. The Grissoms admitted a duty to arbitrate, but Howard Johnson was denied any such duty.

The Court, through Mr. Justice Marshall, also distinguished Wiley on the ground that it involved a merger, as a result of which the initial employing entity completely disappeared. It also emphasized that in Wiley the surviving corporation hired all of the employees of the disappearing corporation.

After Howard Johnson, successorship cases were decided based on two questions: (1) whether a majority of the new company's employees were former employees of its predecessor; and (2) whether

there was "substantial continuity of identity in the business enterprise". The NLRB developed criteria for determining the second question: (1) whether there was substantial continuity of the same business operations; (2) whether the same plant was used; (3) whether the same or substantially the same work force was employed; (4) whether the same jobs existed under the same working conditions; (5) whether the same machinery, equipment and methods of production were used; (6) whether the same product was manufactured or the same services offered; and (7) whether the same supervisors were employed.[40]

Burns and Howard Johnson provided the parameters for applicability of a predecessor's collective bargaining agreement in assets-only and business enterprise transfers,[41] but remained unclear as to whether the Court would have ruled differently in both cases if the transfer of operations arose through a merger. After all, American state corporate law generally provides that all premerger assets and liabilities (including unexpired executory contracts) become assets and liabilities of the surviving corporation after a merger.[42]

Philippine Jurisprudence

Book V of the Labor Code of the Philippines encourages collective bargaining by giving employees the right to self-organization.[43] It allows workers to form or join a labor union and outlines the procedure for bargaining representative certification. Once a union has been certified, it becomes an unfair labor practice for the employer to refuse to bargain collectively with employee representatives.[44] But the law does not expressly impose the duty to bargain in cases where a formally unionized business is merged to a non-union or different union company. The duty of a successor employer to bargain with a predecessor union has evolved from jurisprudence. Underlying such a duty is the assumption that industrial peace will be maintained as long as the employees' reasonable expectations are carried out.

The successorship doctrine in labor law represents the attempt to establish the extent of predecessor and purchaser liability that may result from the transfer of ownership or control of a business enterprise. Prof. Villanueva of the Ateneo Law School points out four aspects of corporate reorganization relative to the application of the doctrine:

(1) affecting the assets and operations of the corporation;

(2) dealing with the underlying business enterprise;

(3) directly affecting stockholdings of equity investors; and

(4) directly affecting the juridical entity or capital structure.[45]

In the "assets-only" level, the contracting parties are only interested in the "raw" assets and properties of the business. In the "business-enterprise" level, the primary interest is essentially to obtain the "earning capability" of the venture. There is no interest in the juridical entity that owns the business enterprise, and therefore the dealings are directly on the business enterprise itself. The "juridical entity" level goes into the charter of the corporation, and can only be effected through the concurrence or approval of the State. In the "equity" level the purchaser takes control and ownership of the business by purchasing the shareholdings of the corporate owner.

In an "assets-only" transfer, employment contracts and collective bargaining agreements are not enforceable towards a transferee of an enterprise, labor contracts being *in personam*, and therefore binding only between the parties concerned. This was the clear pronouncement of the Supreme Court in Sundowner Development Corporation v. Drilon.[46] In MDII Supervisors and Confidential Employees Association v. Presidential Assistant on Legal Affairs,[47] the Court exhorted the buyer to give preference to qualified separated employees in the filling up of vacancies, "for reasons of public policy and social justice."

In Central Azucarera del Danao v. Court of Appeals,[48] however, the Court emphasized that the sale or disposition must be motivated by good faith. In National Labor Union v. Court of Industrial Relations,[49] unstable management-union relations sufficed to have alerted the buyer to the unfair labor practice implications of the purchase.

In cases such as San Teodoro Development Enterprises v. Social Security System[50] and Oromeca Lumber Company v. Social Security System,[51] the Court upheld the principle that in "business enterprise" transfers, the transferee should be liable for the debts and liabilities of the transferor. The purpose of the doctrine is to protect creditors of the business by not allowing them a remedy against the new controller or owner of the business enterprise. Indeed, in Sunio v. NLRC,[52] the Court proclaimed that the sale of a business of a going concern does not *ipso facto* terminate employer-employee relations insofar as the successor-employer is concerned, and that the change of ownership or management of an establishment is not one of the just causes for termination of employment.

But in Yu v. NLRC,[53] Prof. Villanueva observed that the Court tends to hold the transferee liable for the employment obligations of

the transferor in the context of the doctrine of piercing the veil of corporate fiction, i.e., requiring a certain degree of continuity of the same business by the same owners using the corporate fiction as a shield, with the transferor ceasing to exist and operate on its own.

In an equity transfer situation, the employees remain with the corporate employer in exactly the same manner as before the equity transfer, and therefore the purchaser does not assume any personal liability to the employees. Prof. Villanueva underscored the fact that there is only a change in ownership or control of the corporate employer in such a case.

Cases of changes in juridical entity or capital structure involve the concept of mergers and consolidations. In these arrangements, there is no liquidation of assets of the dissolved corporation, and the surviving or consolidated corporation acquires all their properties, rights and franchises and their stockholders usually become its stockholders.

Prof. Cesario Azucena Jr. of the U.P. School of Industrial Relations (UP-SOLAIR) and Ateneo Law School invokes Section 80 of the Corporation Code and explains that in unionized establishments, the merger will not terminate an existing collective bargaining agreement The same holds true for the bargaining representative status of the union party to such an agreement.[54]

Atty. Ancheta Tan of the Employers Confederation of the Philippines (ECOP)[55] and Prof. Disini of the U.P. College of Law[56] support Prof. Azucena's views, which seem to be consistent with the Supreme Court ruling in Filipinas Port Services, Inc. v. NLRC,[57] a case which involved the integration of different stevedoring and arrastre corporations into a single dockhandlers' corporation. Invoking a precursor to Section 80,[58] the Court held that by the fact of consolidation, a succession of employment rights and obligations had occurred between the new corporation and the employees of the dissolved entities. But Filipinas Port Services may have only covered computation of retirement benefits for services rendered even prior to the merger.

Labor relations concerns may be an entirely different matter. The Supreme Court has made no categorical pronouncement as to the effects of a merger or consolidation on the representative status of an incumbent bargaining agent, or on an existing collective bargaining agreement. The Court may have provided an opening in Cardona v. NLRC,[59] which involved salary differentials caused by a merger between Commercial Bank and Trust Company (CBTC) and the Bank of the Philippine Islands (BPI). The CBTC employees wanted the differentials to be paid, based on the provisions of their CBA with CBTC, the dissolved corporation. The Court found that CBTC employees' allowances were already standardized and aligned to the level of BPI employees, and that the invoked CBA was not executed because

negotiations were aborted by the merger. "There being no perfected contract," Mme. Justice Melencio-Herrera declared, "it cannot, therefore, be the source of any legal obligation."

But if the basis for the differentials were benefits in a perfected CBA between CBTC and the union, would the Court have ruled differently? Given the subsequent ruling in Filipinas Port Services, an affirmative inference appears reasonable. But whether the representative status of the incumbent union in the dissolved corporation will be recognized remains unclear. In Cardona, the Court did not attribute bad faith to BPI for non-continuation of CBA negotiations with the CBTC union, because CBTC employees were already absorbed into the BPI incumbent union.

Prof. Veloso of the Ateneo Law School, however, is of the opinion that Section 80 does not include obligations under a collective bargaining agreement, because agreements were *in personam*, and should not be included among the assumed liabilities and obligations referred to in the law.[60]

PART IV: THE LAW ON DETERMINATION OF REPRESENTATION STATUS

Mechanisms pertaining to petitions for certification election have been instituted in the Labor Code for organized[61] and unorganized[62] establishments.

In unorganized establishments, such petitions should be granted upon the concurrence of two requisites, namely: (1) the filing a petition; and (2) by a legitimate labor organization. The law appears to facilitate the conduct of an election in this regard.

In organized establishments, the Med-Arbiter shall automatically order an election by secret ballot when a verified petition is supported by the written consent of at least 25% of all the employees in the bargaining unit. If the percentage requirement has not been observed, the Med-Arbiter is still empowered to order the conduct of an election for purposes of ascertaining which of the contending labor organizations shall be the exclusive bargaining agent.[63]

Under the rules implementing Book V, as amended by Department Order No. 9, series of 1997, there is another mode of determining representation status aside from a certification election, i.e., voluntary recognition. Where there is only one legitimate labor organization operating within the bargaining unit, the employer representative and the union president shall submit to the regional office a joint statement under oath indicating the following: (1) proof of posting of the joint statement; (2) signatures of at least a majority of the members of the bargaining unit

supporting the voluntary recognition; and (3) a statement that there is no other legitimate labor organization operating within the bargaining unit.[64]

Within twenty-four hours upon submission of the joint statement, the regional office shall enter the fact of voluntary recognition into the records of the union. From the time of recording, the union shall enjoy the rights, privileges and obligations of an exclusive bargaining representative.[65]

TALE OF TWO MERGERS

Equitable Bank and PCI Bank: A Four-Cornered Union Fight

The grand merger between Equitable Banking Corporation (EBC) as the surviving corporation and Philippine Commercial International Bank (PCIB) as the absorbed corporation culminated with the approval of its articles of merger by the SEC on 2 September 1999.

At the time of the merger, EBC ranked 11th among all other banks in terms of assets, with P103.786B, and 5th in terms of capital with P16.342B.[66]

PCI Bank, on the other hand, was ranked 6th in terms of assets with P139.758B and 3rd in terms of capital with P24.524B.[67]

On 12 May 1999, a consortium composed of EBC, the Government Service Insurance System (GSIS), and the Social Security System (SSS) acquired 72% shareholdings in PCI Bank for P31.5B, which the Lopez and Gokongwei families put up for auction. EBC paid a total of P16B for the 38% of the 72% interest, with GSIS and SSS equally footing the bill for the remaining 34% at P7.5B each.[68] The result was an industry giant with an estimated market value of P80B, making it 9th among publicly-traded companies.[69]

The Plan of Merger signed on 15 July 1999 indicated that:

> 1.4.3. EBC shall thereupon and thereafter possess all the rights, privileges, properties, branches, offices and franchises of PCIB, and all the property, real or persona], and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to PCIB, shall be taken by and deemed transferred to and vested in EBC by operation of law by virtue of and as provided in Section 80 (4) of the Corporation, without further act or deed.
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> 1.4.4. EBC shall be responsible and liable for all the liabilities and obligations of PCIB in the same manner as if EBC had

itself incurred such liabilities or obligations, and any pending claim, action or proceeding brought by or against PCIB may be prosecuted by or against EBC. The rights of creditors or liens upon the property of PCIB shall not be impaired by the merger; provided that EBC shall have the right to exercise all defenses, rights, privileges, set-offs and counterclaims of every kind and nature which PCIB may have, or which EBC may invoke under existing laws.

It is estimated that 1,400 EBC employees were joined with 3,400 PCI Bank rank-and-file employees.[70] Prior to the approval of the merger, an in-house publication, "The Merger Times", was created to serve as a communication tool for understanding the reasons and effects of the merger. Then president of the union of PCI Bank employees Gamaliel Dinio, however, lamented that from May to August 1999 union members and officials were "literally in the dark about the merger talks."[71]

There was a dialogue between the employees and the bank on 7 September 1999, where several proposals relative to redundancy and separation were made. Management simply took note of them and emphasized the "long and tedious" integration process. Dinio concludes that "the last lesson ... is that the integration process ... could have proceeded more smoothly and more successfully if the employees' union was given a role in the process and representation in the various integration teams."[72]

At the time of the merger, there was a CBA between EBC and the Labor Union of Equitable Bank Employees (LUEBE), effective 1 December 1995 to 30 November 2000. The economic and non-economic provisions of the agreement were up for renegotiation upon their expiration on 30 November 1998. Hence, on 16 July 1999 a renewed CBA was signed by EBC and LUEBE representatives, amending 7 provisions and retaining all others. There is no provision on merger in this 1995-2000 agreement.

On the other hand, PCI Bank had a CBA with the PCI Bank & Employees Union (PCIBEU) as awarded in a Decision by the National Labor Relations Commission (NLRC), effective from 1 January 1998 to 31 December 2000. The provision on merger stated as follows:

In the event of a future merger, consolidation, reorganization or any other similar arrangement, the BANK undertakes to officially inform the absorbing institution of the existence of the CBA and shall exert its best efforts to ensure that the employee benefits, in their totality, under this Agreement, are not diminished.[73]

At the time of the approval of the merger on 2 September 1999, the two CBAs with LUEBE and PCIBEU were still in effect. It was a conscious decision on the part of management to allow the

two CBAs to remain effective until their expirations on 30 November 2000 and 31 December 2000, respectively.[74]

LUEBE attempted to commence renegotiations with management sometime in September 2000, but a petition for certification election was filed by the Equitable Bank Employees Association-Philippine Technical Clerical Commercial Employees Association (EPEA-PTCCEA) on 2 October 2000. [75] EPEA-PTCCEA appeared to be a chartered local of PTCCEA by virtue of a charter certificate dated 28 September 2000. A certificate of creation was eventually issued certifying that EPEA-PTCCEA submitted complete supporting documents for creation on 31 October 2000. The President of EPEA-PT Nestor Nerbes, was a former treasurer of PCIBEU.

In the petition, Nerbes averred that the PCIBEU had been effectively dissolved by virtue of the merger.

PCIBEU President Gamaliel Dinio reacted by informing Nerbes that he was considered resigned from PCIBEU effective 2 October 2000, and accused him of delaying bargaining renegotiations between the PCIBEU and Equitable PCI Bank.[76]

On 15 November 2000, the bank filed a Comment with Motion to Include Indispensable Parties,[77] praying for the declaration of LUEBE and EPCIBEU as indispensable parties to the petition.[78]

Summonses were then issued to representatives of LUEBE and EPCIBEU.

On 29 November 2000, a motion for intervention was filed by the United Employees Union of Equitable PCI Bank, Inc.-FFW Chapter,[79] with a charter certificate issued by FFW on 27 November 2000.

A manifestation and omnibus motion was filed by EPCIBEU on 6 December 2000, where it contended that the former PCIBEU survived the merger and was renamed to EPCIBEU. It claimed that the petition was defective for failure to comply with the 25% support signature requirement, and sought confirmation of its status as the exclusive bargaining representative status as the exclusive bargaining representative of all rank-and-file employees of Equitable PCI Bank rank-and-file employees; hence, it demanded dismissal of the petition.

During the hearing on 6 December 2000, all parties except EPCIBEU appeared. There was an agreement to conduct a consent election. But the parties were given time to respond to EPCIBEU's manifestation and omnibus motion. On 12 December 2000, the bank opposed EPCIBEU's move to dismiss the petition, and reiterated its non-objection to the conduct of a certification election considering the existence of 4 unions in the establishment.

On 15 December 2000, LUEBE filed an opposition to the motion for intervention filed by the FFW local, arguing that the motion

for intervention should have complied with the 25% support signature requirement.

After requiring the bank to submit the documents pertaining to the merger, DOLE-NCR Med-Arbiter Agatha Ann L. Daquigan rendered a decision ordering the conduct of a certification election among the rank-and-file employees of Equitable PCI Bank with the following as choices: a) EPEA PTTCEA; b) LUEBE; c) EPCIBEU; d) United Employees Union of Equitable PCI Bank Inc.-FFW Chapter; and e) No Union.

On 29 January 2001, EPCIBEU filed an appeal assailing the legal personality of EPEA-PTCCEA and the FFW local. In addition, it also raised the failure to comply with the 25% support signature requirement, and the alleged failure to file the petition within the freedom period of the CBA with PCIBEU that expired on 31 December 2000.

By authority of the Secretary of Labor and Employment, Undersecretary Rosalinda Dimapilis Baldoz affirmed the order for the conduct of the election in a Resolution dated 26 February 2001.

In essence, Undersecretary Baldoz refuted EPCIBEU's contentions as follows:

(1) EPEA-PTCCEA and the FFW local acquired legal personality during the pendency of the representation question, which made up for the fact that they were not registered at the time of the filing of the petition and the motion for intervention, respectively. With respect to EPEA PTCCEA, its acquisition of legal personality on 31 October 2000 meant that it could easily have filed another petition for certification election thereafter, considering the EBC-LUEBE CBA was set to expire on 30 November 2000. Thus, in allowing a retroactive effect of its registration to the date of filing of the petition on 2 October 2000, there was an avoidance of the circuitous process of dismissing the petition and having it re-filed by the petitioner.

(2) Neither LUEBE nor PCIBEU could claim continuity of exclusive bargaining status for either of the two banks or with the consolidated Equitable PCI Bank.

(3) When more than one union raises a representation issue, it is not necessary that all unions that challenge the incumbent must comply with the 25% support signature requirement.

(4) Since Equitable Bank survived the merger, the freedom period should be that pertaining to the EBC-LUEBE CBA, which was 2 October 2000- 30 November 2000.

(5) The reason why the Med-Arbiter ruled for a certification election is precisely because a genuine representation issue was raised against EPCIBEU.

On 15 May 2001, an Entry of Judgment was issued by the Bureau in behalf of the Secretary.

On 5 September 2001, the certification election was conducted and DOLE- NCR Election Officer Cynthia J. Tolentino issued an Order proclaiming EPCIBEU as the sole and exclusive bargaining agent of all rank-and-file employees of the bank.[80]

On 15 January 2002, EPCIBEU and the bank signed a collective bargaining agreement effective 1 January 2001 to 31 December 2005.

Bank of the Philippine Islands and Far East Bank & Trust Company: Organized Meets Unorganized

On 7 April 2000, the SEC issued the Certificate of Filing of the Articles of Merger and Plan of Merger of Bank of the Philippine Islands (BPI) as the surviving corporation and Far East Bank & Trust Company (FEBTC) as the absorbed corporation.

At the time of the merger, BPI ranked 3rd in commercial lending, while FEBTC ranked 7th with P130B in assets. The acquisition allowed BP to double its assets under management and surpassed Metrobank as the nation's top commercial lender.[81] By August 2000, BPI ranked 1 in terms of assets, deposit accounts, investment in bonds, loans, and capital accounts.[82] The deal also resulted in the creation of the biggest local bank in terms of branch network (including kiosk branches), with close to 700.[83]

At the time of the merger, there were 30 unions at BPI,[84] with FEBTC having no unions at all. Based on estimates, there were 3,300 BPI employees who merged with 1,700 FEBTC employees.[85]

The Human Resources Department conducted dialogues with the employees and the union on the merger and early retirement program. There was information dissemination on the merger through the internal newsletter "Banconews".[86]

There was a collective bargaining agreement between the bank and 28 exclusive bargaining representatives, effective 1 April 1996 to 31 March 2001. Renegotiations for the 1999 to 2001 provisions were signed in the early part of 2000, or two months prior to the merger. The 1996 to 2001 agreement contained a provision on merger, as follows:

> Should the bank merge or consolidate with another bank during the term of this agreement, the merged or resulting bank shall honor and respect the stipulations in this agreement.[87]

Management continued to respect all 28 CBAs after the merger. With no challenge on the incumbency of the bargaining agents, renewed CBAs in all but one branch[88] were signed effective 1 April 2001 to 30 March 2006.[89]

One major effect of the merger was upon the membership of the bargaining agents, because FEBTC employees are given the option to "join or not to join" the union.[90] BPI Employees Union-Metro Manila President Enrico S. Ballesteros has commented that this weakened the bargaining power of the union, because with a bargaining unit of 3,100 employees, only 1,500 are union members.[91] The bank has, however, encouraged former FEBTC employees to join the union.[92]

PART VI: FINDINGS AND RECOMMENDATIONS

Based on jurisprudence, the Labor Code and its implementing rules and regulations, and the EBC-PCI Bank and BPI-FEBTC mergers, the following were established:

(1) In a scenario where both surviving and absorbed corporations are unionized:

a) With respect to the exclusive bargaining agent in the surviving corporation:

i) The bargaining agent status of the union in the surviving corporation can remain intact after a merger that occurs immediately prior to the expiration of the representation aspect of a collective bargaining agreement

ii) The bargaining agent status of the union in the surviving corporation after a merger that occurs prior to renegotiation of the CBA within the five representation aspect remains unclear.

b) With respect to the exclusive bargaining agent in the absorbed corporation:

i) The legitimate status of the union in the absorbed corporation continues, provided it files a petition for change of name to suit the merger.

ii) The bargaining agent status of the union in the absorbed corporation can remain intact after a merger that occurs immediately prior to the expiration of the representation aspect of a collective bargaining agreement

iii) The bargaining agent status of the union in the surviving corporation after a merger that occurs prior to renegotiation of the CEA within the five-year representation aspect remains unclear.

(2) In a scenario where the surviving corporation is organized and the Gabsorbed corporation is unorganized:

a) The bargaining agent status of the union remains intact after a merger that occurs immediately prior to the expiration of the representation aspect of a collective bargaining agreement

b) The bargaining agent status of the union after a merger that occurs prior to renegotiation of the CBA within the five-year representation aspect remains unclear.

(3) In a scenario where the surviving corporation is unorganized and the absorbed corporation is organized:

a) The legitimate status of the union continues, provided it files a petition for change of name to suit the merger.

b) The bargaining agent status of the union after a merger that occurs prior to the second or third-year renegotiation points or prior to the fifth year of the representation aspect remain unclear.

(4) Collective bargaining agreements at the time of the merger were respected until the expiration of the fifth year.

(5) In a certification election that follows after expiration of the fifth year of all CBAs, bargaining agents in the surviving and absorbed corporations may participate. Other petitioning and intervening unions may participate without complying with the 25% support signature requirement.

(6) With respect to the CBA renegotiated after the fifth year:

a) The agreement may retroact to the first day after the fifth year of the last-expiring CBA.

b) Employees from the absorbed corporation may be excluded from the coverage of the union security clause.

(7) Consultations with the bargaining agent/s ensure employees' participation in the integration processes.

The underlying policy that begs clarification is the application of Section 80(4) (5) of the Corporation Code to collective bargaining rights, to wit:

> ... (4) All property, real or personal, and all receivables due on whatever account including subscriptions to shares and other choses in action and all and every other interest of, or belonging to, or due to each constituent bank, shall be taken and deemed to be transferred to and vested in such surviving bank without further act or deed;
> (5) The surviving bank shall be responsible and liable for all the liabilities and obligations of each of the constituent banks in the same manner as if such surviving bank had itself incurred such liabilities or obligations

Once a surviving bank is deemed responsible for the obligations to recognize a collective bargaining agent and agreement, there should be no point distinguishing between a merger that occurs before or after second or third-year renegotiation points of the CM. This also avoids a meticulous determination of whether a majority of the surviving bank's employees were former employees of the absorbed corporation or whether there was "substantial continuity of identity in the business enterprise," as articulated in Burns and Howard Johnson.

The applicability of Section 80 (4) (5) to collective bargaining agents and agreements can be embodied in the rules implementing Book V of the Labor Code. If Section 80 (4) (5) could not be made to apply, then the tests employed in Burns and Howard Johnson may be expressly outlined.

Also, unclear areas in scenarios enumerated above may be clarified through such administrative fiat. For instance, a situation where there are bargaining agents in the surviving and absorbed corporations prior to the CBA renegotiation periods could be resolved by a certification election process established under the rules.

Finally, consultation mechanisms with a collective bargaining agent relative to a merger or the integration process arising out of a merger can be outlined in merger provisions in collective bargaining agreements.

Endnotes

[1] REPUBLIC ACT No. 7721 (1994): AN ACT LIBERALIZING THE ENTRY AND SCOPE OF OPERATIONS OF FOREIGN BANKS IN THE PHILIPPINES AND FOR OTHER PURPOSES.

[2] Margie Quimpo-Espino, New law scraps foreign ownership ceiling in banks, PHILIPPINE DAILY INQUIRER, May 12, 1994. at 17.

[3] Sec. XI 12, Manual of Regulations for Banks.

[4] Rocel C. Felix, BSP renews call for bank mergers, THE PHILIPPINE STAR, December 1, 2001, at 25.

[5] Paragraph 3, Conclusions on the employment impact of mergers and acquisitions in the banking and financial services, sector, International Labor Organization (ILO) Tripartite Meeting on the Employment Impact of Mergers and Acquisitions in the Banking and Financial Services Sector, Geneva, 5-9 February 2001.

[6] FREEDOM OF ASSOCIATION AND PROTÉCTION OF THE RIGHT TO ORGANIZE CONVENTION, 1948 (No. 87).

[7] RIGHT To ORGANIZE AND COLLECTIVE BARGAINING CONVENTION, 1949 (No. 98)

[8] Under Administrative Order No, 55, series of 2002, the Secretary of Labor and Employment created a committee to review dispute settlement procedures enforced by the Department. Pursuant thereto, Administrative Order No. 178, series of 2002, mandated the committee to conduct national consultations.

[9] SEC. 7, REPUBLIC ACT NO. 337,. THE GENERAL BANKING ACT AS AMENDED.

[10] SECS. 9 AND 10, Id.

[11] Id.

[12] VILLANUEVA, PHILIPPINE CORPORATE LAW 464 (1998).

[13] Id.

[14] Id at 464-465

[15] SEC. 76, BATAS PAMBANSA BLG. 68, THE CORPORATION CODE OF THE PHILIPPINES (1980) (hereinafter "B.P. 68").

[16] SEC. 77, B.P. 68.

[17] Id.

[18] Id.

[19] Id.

[20] SEC. 78, B.P. 68.

[21] VILLANUEVA, supra note 12, at 467.

[22] SEC. 79, B.P. 68.

[23] Id

[24] SEC. 80, B.P. 68.

[25] VILLANUEVA, supra note 12, at 468.

[26] See Appendix "A".

[27] Felicisimo Dolor Jr., Mergers as processes, not events, BUSINESS WORLD, August 16, 2000, at 28.

[28] Ma. Socorro Gochoco-Bautista, THE PAST PERFORMANCE OF THE PHILIPPINE BANKING SECTOR AND CHALLENGES IN THE POSTCRISIS PERIOD, in RISING TO THE CHALLENGE IN ASIA: A STUDY OF FINANCIAL MARKETS, VOL. 10, ASIAN DEVELOPMENT BANK, at 41(1999).

[29] ARTICLE 231, LABOR CODE OF TILE PHILIPPINES (hereinafter "LABOR CODE") and Rule XVII, Book V. Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, series of 1997,

[30] The banks with registered current CBAs are the following: Pangasinan Savings & Loan Bank, Planters Development Bank. RCBC Savings Bank, and Sugbuanon Rural Bank.

[31] Annex G, Roundtable Discussion on "Lessons from Mergers and Consolidations in the Banking Industry", Banking Industry Tripartite Council (BITC), November 14, 2000.

[32] This estimate may, however, be bloated because the data available do not distinguish between government and private banks.

[33] B. Glenn George, Successorship and the Duty to Bargain. 63 NOTRE DAME L. REV. 277, 277 (1988).

[34] Jonathan Silver, Reflections on the Obligations of a Successor Employee,; 2 CARDOZ0 L. REV. 545, 545 n.1 (1981).

[35] 376 U.S. 543, 84 S. Ct. 909, 11 L. Ed. 2d 898 (1964).

[36] 406 U.S. 272, 92 S. Ct. 1571, 32 L. Ed. 2d 61(1972).

[37] GORMAN BASIC TEXT ON LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING 120-124 (1976).

[38] Justice Harlan invoked Section 90 of the N.Y. Stock Corporation Law and I5 FLETCHER, PRIVATE CORPORATIONS § 7121 (1961 rev. ed.).

[39] 417 U.S. 249,94 S. Ct. 2236,41 L. Ed. 2d 46 (1974).

[40] Georgetown Stainless Mfg. Corp.. 198 N.L.R.B. 234, 236 (1972).

[41] See VILLANUEVA, infra note 45.

[42] For instance, see Model Business Corp. Act § 11.06 (a) (2)-(3) (1991); Cal. Corp. Code § 1107 (a) (West 1990); Del. Code Ann. Tit. 8, § 259 (a) (1991); N.Y. Bus. Corp. Law § 906 (b) (Consol. 1983).

[43] ARTICLE 243, LABOR CODE.

[44] ARTICLE 248 (g), LABOR CODE.

[45] Cesar L. Villanueva, Corporation Law Aspects of Corporate Reorganization, Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (June 16, 2000) in VILLANUEVA, supra note 12, at 443.

[46] 180 SCRA 14 (1989).

[47] 79 SCRA 40 (1977).

[48] 137 SCRA 295 (1985).

[49] 116 SCRA 417 (1982).

[50] 8 SCRA 96 (1963).

[51] 4 SCRA 1188 (1962).

[52] 127 SCRA 390 (1984).

[53] 245 SCRA 134 (1995).

[54] Professor C.A. Azucena Jr., Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (June 16, 2000).

[55] Ancheta K. Tan and Yasmin Suzette J. Tan, Collective Bargaining and Security of Tenure in Connection with Joint Ventures, Mergers, Consolidations and Privatization, 13 (No.2) PHIL. L. GAZ. 13 (1998).

[56] Professor Domingo Disini, Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (June 16, 2000).

[57] 200 SCRA 773 (1991).

[58] SECTION 3, ACT NO. 2772.

[59] 195 SCRA 92 (1991).

[60] Professor Vicente Veloso, Presentation at the Ateneo Center for Continuing Legal Education (ACCLE) Conference on Legal Problems on Rightsizing, Downsizing and Corporate Reorganization (June 16, 2000).

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

[62] ARTICLE 257, LABOR CODE: Petitions in unorganized establishments. In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med Arbiter upon the filing of a petition by a legitimate labor organization.

[63] California Manufacturing Corp v. Laguesma, 209 SCRA 606 (1992).

[64] Section 1, Rule X,

[65] Section 2, Rule X.

[66] Ma. Salve I. Duplito, Reena J. Villamor and Raymond G. Falgui, Equitable joins GSIS, SSS in PCIBank buy, BUSINESS WORLD, May 13, 1999, at 1.

[67] Id.

[68] Id.

[69] Elena R. Torrijos, Equitable moves to complete PCIB takeover, PHILIPPINE DAILY INQUIRER, June 17, 1999. at B1.

[70] Interview with Ma. Rosanna L. Testa, Head, Human Resources Division, Equitable PCI Bank, in Equitable Bank PCI Bank Tower, Makati City (August 6, 2002).

[71] Gamaliel Dinio, Presentation at the Roundtable Discussion on "Lessons from Mergers and Consolidations in the Banking Industry", Banking Industry Tripartite Council (BITC), November 14, 2000.

[72] Id

[73] Section 5, Article III, PCI Bank-PCIBEU 1998-2000 CBA.

[74] Interview with Ma. Rosanna L. Testa,, supra note 70.

[75] Docketed as NCR-OD-M-0010-00l.

[76] Letter of PCIBEU President Gamaliel Dinio and Executive Vice-President Maximo C. Elemino to Nestor N. Nebres, Page 9, Records of Petition For Certification Election Filed By EPEA-PTCCEA (NCR-OD-M 0010-001) (hereinafter "Records").

[77] Page 21, Records.

[78] By this time, PCIBEU had petitioned for a change of name with the Department, from PCI Bank Employees Union (PCIBEU) to Equitable PCI Bank Employees Union (EPCIBEU).

[79] Hereinafter "FFW local".

[80] The results of the election were as follows:

No. of eligible voters	4,095	
No. of valid votes cast	3,493	
No. of spoiled ballots	48	
No. of segregated ballots		52
Total No. of Votes Cast	3,593	
EPEA-PTCCEA	1,046	
LUEBE	243	
EPCIBEU	1,983	
FFW local	218	
No Union	3	
TOTAL	3,493	

81 Bank mergers: FEBTC seen as a big catch, PHILIPPINE DAILY INQUIRER, October 18, 1999, at B9.

[82] Banking Quarterly, PHILIPPINE DAILY INQUIRER, August 16, 2000.

[83] From the corporate matters section at www.bpiexpressonline.com.ph, accessed on September 2, 2002.

[84] These unions are the following: (1) BPI Employees Union-Zamboanga (2) BPI Employees Union Pagadian City (3) Universal Bank Employees Union-Malaybalay (4) BPI Employees Union-Butuan (5) BPI-Employees Union-Surigao-ALU (e) BPI Employees Union-Bislig (f) BPI Employees Union-Davao City (6) BPI Midsayap Employees Union (7) BPI Services Employees Labor Union (8) BPI Family Bank Employees Union and its Branches (9) Bank of P1 Bacolod Branch Extension Office & Victorias Agency District Office-FFW (10) BPI Employees Union-Tagbilaran (11) BPI Employees Union-Dumaguete (12) BPI Employees Union-Central Luzon (13) BPI Employees Union-Southern Tagalog (14) BPI-Bicol Employees Union (15) Associated BPI Tagum Branch Employees Union (16) Associated Bank of BPI Employees Union-ALU (17) BPI Employees Union-Gingoog-ALU (18) BPI Employees Union-Cotabato City-ALU (19) BPI Motorized Messengers Association-WSN (20) BPI 1851 Club Employees Union NAFLU (21) BPI Employees Union-Cebu City-ALU (22) BPI Employees Union-ALU (23) BPI Employees Union-Butuan-ALU (24) BPI Employees Union-Tagbilaran-ALU (25) BPI Employees Union Malaybalay-ALU (26) BPI Iloilo Branch Workers Union-FFW (27) NUBE-BPI Family Savings Bank Inc. Employees Chapter (28) BPI Consumer Banking Group Employees Union (29) BPI Northern Luzon Employees Union (30) BPI Employees Union-NCR.

[85] Interview with Enrico C. Ballesteros, President, BPI-Employees Union-NCR, in BPI Head Office, Makati City (September 4, 2002).

[86] Lourdes B. Orosa, Vice-President, Human Resource Management Group, Bank of the Philippine Islands, Presentation at the Roundtable Discussion on "Lessons from Mergers and Consolidations in the Banking Industry", Banking industry Tripartite Council (BITC), November 14, 2000.

[87] Section 5, Article H (Union Security).

[88] Davao City.

[89] Interview with Miguel C. Andaya (Senior Vice-President), Lourdes B. Orosa (Vice-President, Human Resource Management Group), Donna P. Shotwell (Vice-President, Human Resource Management Group), Atty. Rene T. Tale (Assistant Vice-President), Bank of the Philippine Islands, in BPI Head Office, Makati City (August 6, 2002).

[90] Section 1, Article II (Union Security). Maintenance of membership. All regular employees who are members of the UNION on the date of the signing of this Agreement, or those who may hereafter join the Union, must remain members in good standing thereof as a condition of their continued employment with the BANK, but those employees who are not members of the Union on the date of the signing of this Agreement shall be free to join or not to join the Union.

[91] Interview with Enrico C. Ballesteros, supra note 85.

[92] Interview with Miguel C. Andaya, et al., supra note 89. It was mentioned that the CBA hold out in Davao City filed a case questioning the legality of not placing the former FEBTC employees within the purview of the union security clause.