

ARTICLE 110 OF THE LABOR CODE:  
POTENT WEAPON FOR THE PROTECTION OF  
WORKERS OR PATENT PRETENSE?

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... Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labor and has put into it his time and effort is entitled to be protected.<sup>1</sup>

For the lowly wage-earner, his employer's bankruptcy is never pleasant. Not only does it leave him jobless, the ensuing scramble of creditors for his beleaguered employer's assets often leaves him penniless, unable to obtain payment of his already earned wages. Article 110 of the Labor Code sought to remedy this anomaly by giving workers first crack at their bankrupt employer's assets. Yet has this preference served its purpose or has it become hollow rhetoric?

A worker's wages constitute his bread and butter. His remuneration is what he solely relies on not merely for his own subsistence, but for his family's very survival. It is then no surprise that our labor statutes extend protection not only to a worker's right to employment but also to his entitlement to wages.

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<sup>1</sup> *Esmalin v. NLRC*, 177 SCRA 537, 549 (1989).

Hence, to diminish, if not eliminate, the evils of the so-called “sweating system,” Presidential Decree 442 or the Labor Code mandated the fixing of minimum wage rates for every region. As added protection, Article 110 of the Code granted workers the right of first preference to the assets of their employer to ensure full satisfaction of their unpaid wages in the event of bankruptcy or liquidation.

The preference created by Art. 110 traces its origin to 1949 when member-states of the International Labor Organization (ILO) drafted Convention 95<sup>2</sup> setting guidelines for the “Protection of Wages.” The ILO document mandated the fixing of minimum wages among ILO member states and the creation of the workers’ right of first preference. Article 11 paragraph one of said ILO document reads:

In the event of bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national law or regulations or as regards wages up to a prescribed amount as may be determined by national laws or regulations.<sup>3</sup>

The Philippine legislature ratified Convention 95 in 1953 when it enacted Republic Act 602 or the Minimum Wage Law but it was not until 1974 when the Philippines enacted enabling legislation to enforce labor’s right of first preference under Article 11 (1) of ILO Convention 95.

On May 1, 1974, President Marcos – then exercising legislative powers – promulgated P.D. 442 or the Labor Code, which consolidated the country’s then existing labor statutes. The Code also incorporated under Art. 109 the workers’ right of first preference. By reason of

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<sup>2</sup> INTERNATIONAL LABOR STANDARDS IN THE PHILIPPINES, A COMPILATION OF ILO CONVENTIONS RATIFIED BY THE PHILIPPINES 225.

<sup>3</sup> *Id.*, 229-230

subsequent amendments to the Labor Code, Art. 109 was renumbered into what is now known as Art. 110 but the provision itself remained unchanged. Art. 110<sup>4</sup> and its corresponding implementing rule under Rule VIII Book III Labor Code IRR<sup>5</sup> provide:

Art. 110. *Worker preference in case of bankruptcy.* – In the event of bankruptcy or liquidation of an employer’s business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of the law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

Sec. 10. *Worker preference in case of bankruptcy.* – In the event of bankruptcy or liquidation of an employer’s business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

A plain reading of Art. 110’s original provision would reveal the intention to subordinate the claims of an employer’s other creditors, including government, to that of its workers’ claims for unpaid wages as can be shown by the inclusion of the phrase “any provision of law to the contrary notwithstanding.”

The last sentence of the provision also provides that: “Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.” In other words, Art. 110 appeared to grant an absolute right in favor of workers, superior to that of their employer’s other creditors, as far as their unpaid wages are concerned.

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<sup>4</sup> As cited in *DBP vs. NLRC*, 183 SCRA 328 (1990).

<sup>5</sup> *Ibid.*

In *PCIB v. NAMAWU-IF*,<sup>6</sup> promulgated in 1982, the Court sustained this view, holding that even a secured creditor acquires a debtor company's assets subject to the workers' right to obtain full payment of their wages under Art. 110. Adopting the Solicitor-General's comment, the Court said:

We cannot but agree with the Solicitor-General that:

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"...Even if the employer's properties are encumbered by means of a mortgage contract, still the workers' wages which enjoy first preference in case of bankruptcy or liquidation are duly protected by an automatic first lien over and above all other encumbrances on said properties. Otherwise, workers' wages may be imperiled by foreclosure of mortgages, and as a consequence, the aforesaid provision of the New Labor Code would be rendered meaningless."<sup>7</sup>

Five years after *PCIB v. NAMAWU-IF*, however, the Court adopted a contrary view.

## JURISPRUDENTIAL HISTORY

### Workers' Claims Subordinate to Tax Claims and Mortgage Credits

#### Republic v. Peralta

In *Republic v. Peralta*,<sup>8</sup> promulgated in 1987, the government's claims for unpaid tobacco inspection fees and import duties were pitted against claims for separation pay filed by former workers of Quality Tobacco Corporation. The workers' unions contended their claims enjoyed preference over government's tax claims under Art. 110.

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<sup>6</sup> 115 SCRA 873 (1982).

<sup>7</sup> *Id.*, 880.

<sup>8</sup> 150 SCRA 37 (1987).

The Court ruled in favor of Government and held that the latter's tax claims prevailed over the claim of the workers of Quality Tobacco Corporation to the payment of their unpaid wages. The Court said Art. 110 must be read in relation to the Civil Code's provisions on the concurrence and preference of credits which require satisfaction of the government's tax claims against the assets of an insolvent taxpayer, prior to all other creditors of the latter. The High Court, through Justice Feliciano, held:

Article 110 of the Labor Code, in determining the reach of its terms cannot be viewed in isolation. Rather, Article 110 must be read in relation to the provisions of the Civil Code concerning the classification, concurrence and preference of credits, which provisions find particular application in insolvency proceedings where the claims of all creditors, preferred or non-preferred, may be adjudicated in a binding manner.

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Put succinctly, Articles 2241 and 2242 jointly with Articles 2246 to 2249 (of the Civil Code) establish a two tier order of preference. The first tier includes only taxes, duties and fees due on specific movable or immovable property. All other special preferred credits stand on the same second tier to be satisfied, *pari passu* and *pro rata*, out of any residual value of the specific property to which such credits relate.

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Art. 110 of the Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by the employer.

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It cannot be assumed *simpliciter* that the legislative authority, by using in Article 110 the words "first preference" and "any provision of law to the contrary notwithstanding" intended to disrupt the elaborate and symmetrical structure set up by the Civil Code. Neither can it be assumed casually that Art 110 intended to subsume the sovereign itself within the term "other creditors" in stating that "unpaid wages shall be paid in full before *other creditors* may establish any claim to a share in the assets of

the employer.” Insistent considerations of public policy prevent us from giving to “other creditors” a linguistically unlimited scope that would embrace the universe of creditors save only unpaid employees.<sup>9</sup>

Justice Cruz alone expressed his dissent, which the author will take up later.

### DBP v. Santos

In *DBP v. Santos*,<sup>10</sup> DBP as mortgage-creditor of Riverside Mills Corp. (RMC) foreclosed and acquired ownership over all of the latter’s mortgaged properties in the subsequent auction sale. In a separate case, the Labor Arbiter subsequently awarded RMC employees separation pay and other monetary benefits totaling P86 million. The Arbiter’s judgment attained finality but a writ of possession previously obtained by DBP prevented the execution sale of RMC’s properties to satisfy the Arbiter’s award. The workers sought and obtained from the Labor Arbiter an order declaring the workers’ first preference under Art 110.

DBP, however, assailed the order contending Art. 110 cannot apply absent a judicial declaration of bankruptcy such as in the case of RMC. The workers, however, argued that the word “bankruptcy” in Art. 110 should be interpreted in its generic sense, hence, a judicial declaration of bankruptcy is not a precondition to the application of Art. 110 and that the situation covered by Art. 110 falls outside the purview of the Civil Code’s provisions on the concurrence and preference of credits.

The Court ruled in favor of DBP and held that a mortgage creditor’s lien is superior to the claims of the mortgagor’s employees for unpaid wages under Art. 110. The Court said Art. 110 cannot be invoked without a prior declaration of bankruptcy or judicial liquidation, citing as basis Art. 110’s implementing rule. The Court also reiterated the doctrine in *Republic v. Peralta* that Art. 110 must be read in relation to the Civil Code’s

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<sup>9</sup> *Id.*, 44-46, 50, 51.

<sup>10</sup> 171 SCRA 138 (1989).

provisions on the concurrence and preference of credits. The Tribunal, through Justice Gutierrez, held:

Art. 110 of the Labor Code and Section 10 Rule VIII Book III of the Revised Rules and Regulations Implementing the Labor Code provide:

Art 110. *Worker preference in case of bankruptcy.* – In the event of bankruptcy or liquidation of an employer’s business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of the law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

Sec. 10. *Payment of wages in case of bankruptcy.* – Unpaid wages earned by the employee before the declaration of bankruptcy or judicial liquidation of the employer’s business shall be given first preference and shall be paid in full before other creditors may establish any claim to the assets of the employer.

It is quite clear from the provisions that a declaration of bankruptcy or judicial liquidation must be present before the worker’s preference may be enforced. Thus, Art. 110 of the Labor Code and its implementing rule cannot be invoked by the respondents in this case absent a formal declaration of bankruptcy or a liquidation order. Following the rule in *Republic v. Peralta* (150 SCRA 37), to hold that Art. 110 is also applicable in extra-judicial proceedings would be putting the worker in a better position than the State which could only assert its own prior preference in case of a judicial proceeding. Therefore, as stated earlier, Art. 110 must not be viewed in isolation and must always be reckoned with the provisions of the Civil Code (on the concurrence and preference of credits).

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The claims of all creditors whether preferred or non-preferred, the identification of the preferred ones and the totality of the employer’s assets should be brought into the picture. There can be then an authoritative, fair and binding adjudication instead of the piece meal settlement which would result in the questioned decision in this case.

We, therefore, hold that Labor Arbiter Ariel C. Santos committed grave abuse of discretion in ruling that private respondents may enforce their first preference in the satisfaction of their claims over those of the petitioner in the absence of a declaration of bankruptcy or judicial liquidation of RMC. There is, of course, nothing in this decision which prevents the respondents from instituting involuntary insolvency or any other appropriate proceeding against their employer RMC where respondents' claims can be asserted with respect to their employer's assets.<sup>11</sup>

*DBP v. Santos* was promulgated on March 8, 1989. Several days later on March 21, R.A. 6715, amending Art. 110 and other provisions of the Labor Code took effect. R.A. 6715 expanded the scope of the worker's first preference to include "other monetary claims." To stress the absolute nature of the workers' preference as against all other creditors, R.A. 6715 expressly provided that workers' claims shall be paid in full before claims of government and other creditors may be satisfied.

As amended, Art. 110 and its implementing rule under Rule VIII Book III Labor Code IRR now read:

Art 110. *Worker preference in case of bankruptcy.* – In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their *wages and other monetary claims*, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full *before claims of the government and other creditors may be paid.*

Sec. 7. *Payment of wages and other monetary claims in case of bankruptcy.* – In case of bankruptcy or liquidation of the employer's business, the unpaid wages and other monetary claims of the employees shall be given first preference and shall be paid in full before the claims of government and other creditors may be paid. (Approved by the Labor Secretary on May 24, 1989)<sup>12</sup>  
[Emphasis supplied]

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<sup>11</sup> *DBP v. Santos*, 171 SCRA 138, 143-144, 146 (1989).

<sup>12</sup> Azucena, C.A., *EVERYONE'S LABOR CODE* 417 (2001).

The changes incorporated by R.A. 6715 apparently manifested Congress' intendment to overturn the Court's ruling in *Republic v. Peralta*, yet subsequent decisions applying Art. 110, save for one,<sup>13</sup> maintained adherence to the doctrines laid down in *Republic v. Peralta* and *DBP v. Santos*.

In *DBP v. Secretary of Labor*,<sup>14</sup> promulgated on November 28, 1989 several months after R.A. 6715 took effect, the Court reiterated its holding that the preferential right in Art. 110 cannot exist without a bankruptcy, insolvency or general judicial liquidation proceeding. The High Tribunal said:

A preference of credit bestows upon the preferred creditor an advantage of having his credit satisfied ahead of other claims which may be established against the debtor. Logically, it becomes material only when the properties and assets of the debtor are insufficient to pay his debts in full; for if the debtor is amply able to pay his various creditors in full, how can the necessity exist to determine which of his creditors shall be paid first or whether they shall be paid out of the proceeds of the sale of the debtor's specific property? Indubitably, the preferential right of credit attains significance only after the properties of the debtor have been inventoried and liquidated and the claim held by his various creditors have been established.<sup>15</sup>

In this jurisdiction, bankruptcy, insolvency and general liquidation proceedings provide the only proper venue for the enforcement of a creditor's preferential right such as that established in Art. 110 of the Labor Code, for these are in rem proceedings binding against the whole world where all persons having any interest in the assets of the debtor are given the opportunity to establish their respective credits.<sup>16</sup>

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<sup>13</sup> *PNB v. Cruz*, 180 SCRA 206 (1989).

<sup>14</sup> 179 SCRA 630 (1989).

<sup>15</sup> *Ibid*, 634-635 [citing *Kuenzle v. Streiff (Ltd.) v. Villanueva*, 41 Phil. 611 (1916); *Barretto v. Villanueva*, 6 SCRA 928 (1962); *PNB v. Lantin*, 125 SCRA 476 (1983)].

<sup>16</sup> *Ibid* at 635 [citing *PS Bank v. Lantin*; *DBP v. Santos*].

In *DBP v. NLRC*<sup>17</sup> (promulgated also after R.A. 6715 took effect), the Court took note of the deletion of the terms “declaration” and “judicial” in reference to bankruptcy and liquidation, respectively, in the amended version of Art. 110’s implementing rule. The question raised was whether Art. 110 as amended now dispensed with the need for a bankruptcy or judicial liquidation proceeding as a precondition for the application of Art. 110. The Court ruled in the negative. Again invoking *Republic v. Peralta*, the Tribunal held that the amendment of Art. 110 and its implementing rule *did not* eliminate the need for a bankruptcy or liquidation proceeding as a prerequisite to the operation of Art. 110. Said the Court, through Mm. Justice Melencio-Herrera:

Notably, the terms “declaration” of bankruptcy or “judicial” liquidation have been eliminated. Does this mean then that liquidation proceedings have been done away with?

We opine in the negative, upon the following considerations:

1. Because of its impact on the entire system of credit, Art. 110 of the Labor Code cannot be viewed in isolation but must be read in relation to the Civil Code scheme on classification and preference of credits.

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2. In the same way that the Civil Code provisions on classification of credits and the Insolvency Law have been brought into harmony, so also must the kindred provisions of the Labor Law be made to harmonize with those laws.

3. In the event of insolvency, a principal objective should be to effect an equitable distribution of the insolvent’s property among his creditors. To accomplish this there must first be some proceeding where notice to all of the insolvent’s creditors may be given and where the claims of preferred creditors may be bindingly adjudicated [*De Barretto v. Villanueva*, 6 SCRA 928]. The rationale therefore has been expressed in the recent case of *DBP v. Secretary of Labor*.<sup>18</sup>

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<sup>17</sup> 183 SCRA 238 (1990).

<sup>18</sup> *Id.*, 336-337.

Justice Cruz dissented anew but he was joined this time by Justices Padilla and Sarmiento.

### Barayoga v. APT

*Barayoga v. APT*<sup>19</sup> which had been promulgated as of this writing is no different from the cases previously cited. Philippine National Bank (PNB) was a mortgage creditor of sugar mill Bicolandia Sugar Development Corp. (BISUDECO). The claim of PNB – which then remained under government control – was transferred to the Asset Privatization Trust (APT). The latter was created to conserve, provisionally manage and dispose of non-performing assets of the Philippine government identified for privatization or disposition. APT acquired ownership of BISUDECO's assets following foreclosure proceedings. BISUDECO workers then filed a complaint for, among others, underpayment of wages and other labor standard benefits. APT then subsequently sold BISUDECO's assets to the Bicol-Agro Industrial Cooperative (BAPCI). The workers sought to enforce their claim against APT and BAPCI.

Both the Labor Arbiter and NLRC held APT liable for the workers' unpaid employment benefits. While the NLRC noted that no employer-employee relationship existed between APT and BISUDECO workers at the time of their illegal dismissal, APT should have treated the workers' claim as a lien that attached to BISUDECO's assets which were transferred to government. A question raised was whether APT – as mortgagee of their employer's assets – can be held liable for the workers' claims.

The Court, through Associate Justice, now Chief Justice, Panganiban said a mortgagee-transferee of its debtor's assets does not automatically acquire the liabilities (like worker claims for benefits) of the debtor-mortgagor. Hence, APT as mortgagee of BISUDECO cannot be held liable for the monetary claims of the latter's workers.

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<sup>19</sup> GR No. 160073, October 24, 2005

While BISUDECO workers did not invoke the benefit of Art. 110 in this case, the Court cited *DBP v. NLRC*<sup>20</sup>, holding that the worker's preference of credit is not a lien that attaches to specific properties of their insolvent employer. A mortgagee's lien, on the other hand, creates a charge on the debtor company's particular property and hence prevails over the workers' preference of credit. Again, the Court said the benefit of Art. 110 cannot be invoked outside bankruptcy or judicial proceedings where the claims of all creditors may be inventoried and determined.

### Voices in the Wilderness

Seemingly echoing like faint voices in the wilderness are the dissenting opinions of Justices Cruz in *Republic v. Peralta*, and that of Justices Padilla and Sarmiento in *DBP v. NLRC* as well as the Court's majority opinion in *PNB v. Cruz*.<sup>21</sup>

In his dissent<sup>22</sup> in *Republic v. Peralta*, Justice Cruz said Art. 110's clear language must be given its plain meaning. Since the provision itself provided no exceptions, none should be considered.

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<sup>20</sup> 183 SCRA 328 (1990).

<sup>21</sup> 180 SCRA 206 (1989).

<sup>22</sup> Justice Cruz's Dissent:

I regret that I cannot give my concurrence to the majority opinion because it reads into the law an exception that is not there. In so doing, it arrogates for the Court a power rightfully belonging to the legislature.

It seems to me that the erudite *ponencia* "doth protest too much."

The language of the provision in question is clear and categorical. Art. 110 of P.D. 442 states quite plainly:

"Art 110. *Worker preference in case of bankruptcy.* – In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, *any provision of the law to the contrary notwithstanding.* Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

He said Art. 110 of the Labor Code should prevail over the Civil Code provisions on the concurrence and preference of credits, it being the later expression of the legislative authority's will. Lastly, Justice Cruz contended that taxation must be "subordinated to the demands of social justice."

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I take the phrase "any provision of law to the contrary notwithstanding" to mean *exactly* what it says. I submit that if the law had intended an exception, it would have – and could have – easily provided for it.

The Labor Code was promulgated by President Marcos who, we may assume, was aware of the usual preference of tax claims. So informed, he would have reserved that primacy in the above article if that was what he really wanted.

That fact that he did not is to me a certain indication of his true intention, *viz.*, that under the said article the claims of laborers for unpaid wages shall have *priority above all else*.

It is axiomatic that the words of a statute are to be given their normal and ordinary connotation. We cannot read into the law meanings that are not intended and – worse – that are precisely *excluded*, as in this case.

Moreover, the Labor Code was promulgated later than the Civil Code, the Insolvency Law and the Internal Revenue Code where the tax claims are preferred. The Labor Code prevails over these earlier statutes as it represents the *later* expression of the legislative will.

While I recognize the need for the usual preference of taxes over other claims, I suggest that the general rule must be read in light of the basic policy embodied in the Labor Code for the protection of the working class.

The power of taxation, while indispensable, is not absolute and may be subordinated to the demands of social justice. I for one am not alarmed by the dire prognostication that this would prejudice the very existence of the State. The amount involved is not significant enough as to drain the coffers of the government.

By contrast, that same amount could, without exaggeration, spell the difference between subsistence and starvation for the laborer and affect the very survival of the faith we hope he still retains in the concern of the state for his welfare.

Social Justice is not a mere catchphrase to be mouthed with sham fervor in Labor Day celebrations for the delectation and seduction of the working class. It is a mandate we should pursue with energy and sincerity if we are truly to insure the dignity and well-being of the laborer.

For his part, Justice Padilla in his dissent<sup>23</sup> in *DBP v. NLRC* opined that the amendment of Art. 110 by R.A. 6715 in effect created a three-tier order of preference in relation to the Civil Code's preference of credits which would be as follows: first – unpaid wages and other monetary claims of workers enjoying absolute preference; second – taxes, duties and fees on specific movable and immovable property; and third – all other preferred credits.

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By the decision reached today, I feel the Court has reneged on its hitherto consistent commitment for the protection of labor under the policy of social justice. It is for me a cause of deep disappointment.

<sup>23</sup> Excerpts from Justice Padilla's Dissent:

I regret that I cannot join the majority ruling in the light of the amendment to Article 110 of the Labor Code by Republic Act 6715, approved on 2 March 1989, and the resultant amendment of Section 10, Rule VIII, Book III of the Revised Rules and Regulations Implementing the Labor Code.

Before its amendment by Republic Act 6715, Article 110 of the Labor Code provided –

Worker preference in case of bankruptcy. – In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of the law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer."

After Republic Act 6715, Art. 110 now provides:

Art. 110. Worker preference in case of bankruptcy. – In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid.

Section 10 of the Implementing Rules, before Republic Act 6715 provided:

Payment of wages in case of bankruptcy. – Unpaid wages earned by the employees before the declaration of bankruptcy or judicial liquidation of the employer's business shall be given first preference and shall be paid in full before other creditors may establish a claim to a share in the assets of the employer.

The positions taken by Justice Cruz and Padilla, however, differ only in that Justice Cruz submits that Art. 110 even in its original version should be considered to have created an absolute benefit in favor of workers while Justice Padilla in effect submits that the right conferred by Art. 110 became absolute only after its amendment by R.A. 6715.

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After Republic Act 6715, Section 10 of the Rules now provides:

Payment of wages and other monetary claims in case of bankruptcy.

– In case of bankruptcy or liquidation of the employer's business, the unpaid wages and other monetary claims of the employees shall be given first preference and shall be paid in full before the claims of government and other creditors may be paid.

The majority, in my considered opinion, has failed to fully take into account the radical change introduced by Republic Act 6715 into the system of priorities or preferences among credits or creditors ordained in the Civil Code.

Under the provisions of the Civil Code, specifically, Articles 2241 and 2242, jointly with Articles 2246 to 2249, a two-tier order of preference of credits is established. The first tier includes only taxes, duties and fees on specific movable or immovable property. All other special preferred credits stand on a second tier.

Under the system of preferences in the Civil Code, only taxes enjoy absolute preference i.e., they exclude the credits of the lower order until such taxes are fully satisfied out of the proceeds of the sale of the property subject of the preference, and taxes can even exhaust such proceeds. All other special preferred credits enjoy no priority among themselves but must be paid or satisfied pro rata. To make the pro rating fully effective, the preferred creditors enumerated in Nos. 2 to 13 of Article 2241 and Nos. 2 to 10 of Article 2242 must be convened and the import of their claims ascertained in some proceeding where the claims of all may be bindingly adjudicated.

With the amendment of Article 110 of the Labor Code by Republic Act 6715, a three-tier order is established wherein unpaid wages and other monetary claims of workers enjoy *absolute preference* over all other claims, including those of the Government, in cases where a debtor-employer is unable to pay in full all his obligations. The absolute preference given to monetary claims of workers, to which claims of Government, i.e., taxes are now subordinated, manifests the clear and deliberate intent of our lawmaker to put flesh and blood into the Constitutional policy of protecting the rights of workers and promoting their welfare.

I thus take exception to the proposition that a *prior* formal declaration of insolvency or bankruptcy or a judicial liquidation of the employer's business is a condition *sine qua non* to the operation of the preference accorded to workers under Article 110 of the Labor Code for the following reasons:

Justice Padilla also opined that Art. 110 did not require a bankruptcy, insolvency or liquidation proceeding as a condition sine qua non to its application for two reasons. First, Art. 110 itself as amended and its new implementing rules make no mention of such a requirement. Second, a proceeding in rem is not necessary to enforce a preferential right over assets of an insolvent debtor as Art. 110 itself bars the satisfaction of claims of other creditors including government, *until* unpaid wages and other monetary claims of workers are satisfied in full.

Justice Sarmiento likewise contended that, under R.A. 6715, “the payment of unpaid wages and other benefits to labor enjoys preference over all other indebtedness, including taxes, of management, with or without a declaration of insolvency.”<sup>24</sup>

*PNB v. Cruz*,<sup>25</sup> promulgated on December 18, 1989, adopts Justice Cruz’s dissenting opinion.

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First, the majority reads into the aforesaid law and implementing rule a qualification that is not there. Nowhere is it said in the *present law* and its *new* implementing rule that a prior declaration of bankruptcy or judicial liquidation is a condition sine qua non to the operation of Article 110. In fact, it will be noted that the phrase *declaration of bankruptcy or judicial liquidation of the employer’s business*, which formerly appeared in Section 10 Rule VIII, Book III of the Revised Rules and Regulations Implementing the Labor Code has been deleted in the new implementing rule. What is even more obvious and therefore, significant in the present law and implementing rule is the *unconditional and unqualified grant* of priority to workers’ monetary claims over and above *all other claims as against all the assets* of an employer incapable of fully paying his obligations.

Second, a proceeding *in rem*, by its nature, seeks to bar any other person who claims any interest in the property or right subject of the suit. To my mind, such a proceeding is not essential or necessary to enforce the workers’ preferential right over the assets of the insolvent debtor as against other creditors of the lower tier as Article 110 *itself* bars the satisfaction of claims of other creditors including the Government, until unpaid wages and monetary claims of the workers are *first satisfied in full*.

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<sup>24</sup> *DBP v. NLRC* 183 SCRA at 345.

<sup>25</sup> 180 SCRA 206 (1989).

In this case, Aggregate Mining Exponents (AMEX) laid off 70% of its workforce in 1980 due to business reverses. The company's retained workers, however, were not paid their wages. These employees remained unpaid until 1982 when AMEX completely ceased operations and instead entered into an operating agreement with another company, TM San Andres Development Corp. The workers sought redress from the Labor Arbiter. Applying Art. 110 of the Labor Code, the Labor Arbiter held that in the event of AMEX's inability to pay its workers' wages, the latter can be satisfied from the proceeds or fruits of its machinery and equipment operated by TM San Andres.

AMEX did not appeal but AMEX's mortgagee-creditor PNB assailed the Labor Arbiter's decision. Invoking *Republic v. Peralta*, PNB argued that Art. 110 must be read in relation to the Civil Code's provisions on the concurrence and preference of credits (Articles 2241 to 2245). PNB also contended that Art. 110 does not purport to create a lien in favor of workers for unpaid wages upon all of the properties or upon any particular property owned by their employer. Which then prevails, the workers' preference under Art. 110 or PNB's lien as mortgagee-creditor?

The Court, through Mr. Justice Gancayco, declared the benefit accorded by Art. 110 as absolute and subject to no exceptions. This plainly meant that the preference may prejudice not only Government but all other creditors including mortgagees. The Tribunal likewise opined that Art. 110 should prevail over the Civil Code's provisions on the concurrence and preference of credits, the Labor Code being a later enactment and expression of legislative will.

This Court must uphold the preference accorded to the private respondents in view of the provisions of Art. 110 of the Labor Code which are clear and which admit of no other interpretation. The phrase "any provision of law to the contrary notwithstanding" indicates that such preference shall prevail despite the order set forth in Articles 2241 to 2245 of the Civil Code. No exceptions were provided under the said article, henceforth, none shall be considered. Furthermore, the Labor Code was signed into law decades after the Civil Code took effect.

In *Herman v. Radio Corp. of the Philippines* [50 Phil. 490], this Court declared that whenever two statutes of different dates and of contrary tenor are of equal theoretical application to a particular case, the statute of later date must prevail being a later expression of legislative will. Applying the aforecited case in the instant petition, the Civil Code provisions cited by the petitioner must yield to Art. 110 of the Labor Code.

Moreover, our pronouncement in *A.C. Ransom Labor Union-CCLU v. NLRC* [150 SCRA 498], reinforces the above mentioned interpretation where this Court, speaking through Associate Justice Melencio-Herrera, explicitly stated that “the worker preference applies even if the employer’s properties are encumbered by means of a mortgage contract x x x. So that when (the) machinery and equipment of Ransom were sold to Revelations Manufacturing Corp. for P2,000,000.00 in 1975, the right of the 22 laborers to be paid from the proceeds has been recognized.”

Reliance by the petitioners on *Republic v. Peralta* is without basis. The said case involved a question of workers’ preference as against tax claims of the State. In the said case, the Court held that the State must prevail in that instance since “it has been frequently said that taxes are the very lifeblood of the government. The effective collection of taxes is a task of highest importance for the sovereign. It is critical indeed for its survival.

Nevertheless, under Art. 110 of the Labor Code as amended, the unpaid wages and other monetary claims of workers should be paid in full before the claims of Government and other creditors. Thus, not even tax claims have preference over the worker’s claim.

Consistent with the ruling of this Court in *Volkschel Labor Union v. Bureau of Labor Relations* [137 SCRA 42], this Court adopts the doctrine that “(i)n the implementation and interpretation of the Labor Code and its implementing regulations, the workingman’s welfare should be the primordial and paramount consideration.” Bearing this in mind, this Court must reiterate the dictum laid down in *AC Ransom* that the conflict between Art. 110 of the Labor Code and Articles 2241 to 2245 of the Civil Code must be resolved in favor of the former.

A contrary ruling would defeat the purpose for which Art. 110 was intended; that is, for the protection of the working class pursuant to the never-ending quest for social justice.<sup>26</sup>

In sum, *Republic v. Peralta*, *DBP v. Santos*, *DBP v. Secretary of Labor* and *DBP v. NLRC* held that Art. 110 cannot be read in isolation and must be construed together with the Civil Code's provisions on the concurrence and preference of credits. The foregoing cases likewise held that Art. 110 cannot apply absent a declaration of bankruptcy and judicial proceeding for insolvency. *DBP v. NLRC*, moreover, declared that a preference is not a lien which attaches to specific property.

In stark contrast, *PNB v. Cruz* held that Art. 110 accords workers of a bankrupt employer absolute preference in the payment of their wages which shall be paid in full before claims of Government and other creditors may be satisfied. The Court said the worker's preference established by Art. 110 may be invoked with or without a declaration of bankruptcy or a judicial proceeding for insolvency.

## ANALYSIS

### Art. 110 Must Take Precedence Over Civil Code Provisions on Concurrence and Preference of Credits

This author respectfully submits that Art. 110 must prevail and should be treated as an exception to the concurrence and preference of credits under the Civil Code.

Not only do settled rules of statutory construction justify such an interpretation of Art 110, a contrary holding would defeat the very reason for the Labor Code's enactment – the protection of the working man.

The Labor Code, moreover, has been recognized as an exercise of police power which may validly impair the obligation of contracts like mortgages that have antedated P.D. 442 and its amendatory law R.A. 6715.

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<sup>26</sup> *PNB vs. Cruz*, 180 SCRA 206, 212-214 (1989).

The Court's holding in *PNB v. Cruz* as well as the dissent of Justice Cruz, the author believes, must be held to be controlling. The author likewise agrees with Justice Padilla's separate opinion but only with respect to his submission: (1) that the preference may be invoked by workers even in the absence of an bankruptcy, insolvency, or judicial liquidation proceeding, and (2) that Art. 110 creates a new three-tier order of preference (in relation to Arts. 2241, 2242 and 2246-2249<sup>27</sup> of the Civil Code) where the unpaid wages and monetary benefits of workers enjoy absolute preference above their employer's other creditors, government included.

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<sup>27</sup> Art. 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

- (1) Duties, taxes and fees due thereon to the State or any subdivision thereof;
- (2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;
- (3) Claims for the unpaid price of movables sold, on said movables, so long as they are in the possession of the debtor, up to the value of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;
- (4) Credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof;
- (5) Credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed;
- (6) Claims for laborers' wages, on the goods manufactured or the work done;
- (7) For expenses of salvage, upon the goods salvaged;
- (8) Credits between the landlord and tenant, arising from the contract of tenancy on shares, on the share of each in the fruits or harvest;
- (9) Credits for transportation, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for thirty days thereafter;
- (10) Credits for lodging and supplies usually furnished to travellers by hotel keepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests;
- (11) Credits for seeds and expenses for cultivation and harvest advanced to the debtor, upon the fruits harvested;

### A. The Rule When the Law is Clear

It is elementary in statutory construction that when provisions of a law are categorical and unequivocal, courts have no choice but to apply the law. As Black said, “x x x where the statute is free from ambiguity and plainly shows what the legislature meant, the letter of it is not to be disregarded under the pretext of pursuing its

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(12) Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on money or instruments of credit;

(13) Claims in favor of the depositor if the depositary has wrongfully sold the thing deposited, upon the price of the sale.

In the foregoing cases, if the movables to which the lien or preference attaches have been wrongfully taken, the creditor may demand them from any possessor, within thirty days from the unlawful seizure.

Art. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

(1) Taxes due upon the land or building;

(2) For the unpaid price of real property sold, upon the immovable sold;

(3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;

(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;

(5) Mortgage credits recorded in the Registry of Property upon the real estate mortgaged;

(6) Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;

(7) Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;

(8) Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;

(9) Claims of donors of real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;

spirit, and *exceptions not made by the legislature cannot be read into it.*"<sup>28</sup> [Emphasis supplied]

Both the original and amended versions of Article 110 earlier cited admit of no ambiguity.

Section 1 of R.A. 6715 which amended Art. 110 merely strengthened and further clarified what had been from the beginning a categorical expression of the law. Both versions make no mention of the application of Civil Code provisions on the concurrence and preference of credits in relation to Art. 110. Neither do both versions mention "declaration of bankruptcy" and "liquidation proceeding" as conditions sine qua non to the application of Art. 110. Both versions, moreover, retained the proviso "*any provision of law to the contrary notwithstanding*" which unequivocally conveys the legislative authority's intent to render contrary provisions of law *subordinate* to Art. 110. [Emphasis supplied]

As noted by Justice Cruz in his dissent in *Republic v. Peralta*, the application of Civil Code provisions in relation to Art. 110 takes into consideration an intent that never existed. Had the legislative

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(10) Credits of insurers, upon the property insured, for the insurance premium for two years.

x x x

Art. 2246. Those credits which enjoy preference with respect to specific movables, exclude all others to the extent of the value of the personal property to which the preference refers.

Art. 2247. If there are two or more credits with respect to the same specific movable property, they shall be satisfied *pro rata*, after the payment of duties, taxes and fees due the State or any subdivision thereof.

Art. 2248. Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers.

Art. 2249. If there are two or more credits with respect to the same specific real property or real rights, they shall be satisfied *pro rata*, after the payment of the taxes and assessments upon the immovable property or real right.

<sup>28</sup> Black, CONSTRUCTION AND INTERPRETATION OF LAWS, p. 66-67, 2nd ed. as cited by Diaz, *Statutory Construction*, p. 37, 2000 ed.

authority intended the Civil Code provisions to prevail over Art. 110, the law should have expressly stated so. Art. 110, however, does not and neither should any correlation be made between Art. 110 and said provisions of the Civil Code. Justice Cruz said:

I take the phrase ‘any provision of law to the contrary notwithstanding’ to mean *exactly* what it says. I submit that if the law had intended an exception, it would have – and could easily have – provided for it.

x x x

It is axiomatic that the words of a statute are to be given their normal and ordinary connotation. We cannot read into the law meanings that are not intended and – worse – precisely *excluded* as in this case.<sup>29</sup> [Emphasis by Justice Cruz]

In *Globe-Mackay Cable and Radio Corp. v. NLRC*,<sup>30</sup> the Court held that:

x x x if a statute is clearly plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.

Like Justice Cruz, Justice Padilla opined that Art. 110 created an absolute right in favor of the workers but qualified that such right became absolute *only* from the time it was amended by R.A. 6715. Justice Cruz on the other hand, submits that Art. 110 vested an absolute right in favor of

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<sup>29</sup> *Republic vs. Peralta*, 150 SCRA at.54

<sup>30</sup> GR No. 82511, March 8, 1992, [www.lawphil.net](http://www.lawphil.net).

the workers from the very beginning even before its amendment by R.A. 6715. The author agrees with Justice Cruz. Art 110's original and amended versions admit of no exceptions.

In holding that the preference created by Art. 110 cannot be invoked absent a declaration of bankruptcy or judicial proceeding for insolvency, *DBP v. Santos*<sup>31</sup> relied on the original implementing rule of Art. 110 which provided that: "Unpaid wages earned by the employees *before the declaration of bankruptcy or judicial liquidation* of the employer's business shall be given first preference and shall be paid in full before other creditors may establish any claim to the assets of the employer."

A perusal of the statutory provision itself (Art. 110), however, merely mentions "bankruptcy" and "liquidation" instead of "declaration of bankruptcy" and "judicial liquidation." Hence, it can only be reasonably inferred that the legislative authority had intended "bankruptcy" and "insolvency" to be taken in their generic sense. It is a settled principle that administrative rules cannot go beyond the provisions of the law they seek to implement.

In the event of conflict between a statutory provision and its implementing rule, the former prevails as the more authoritative expression of legislative intent. An administrative agency's power to draft implementing rules merely constitutes an exercise of delegated legislative power. This being the case, the delegate cannot draft rules beyond the intendment of the legislature. In *United BF Homeowners' Association et al. v. BF Homes, Inc.*<sup>32</sup>, the Court said:

The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which

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<sup>31</sup> 171 SCRA 138 (1989).

<sup>32</sup> 310 SCRA 304, 315-316 (1999).

are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.<sup>33</sup>

x x x

A statutory grant of powers should not be extended by implication beyond what may be necessary for their just and reasonable execution. It is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.<sup>34</sup>

Neither can Art. 11(1) of Convention 95 justify the rule that a bankruptcy or liquidation proceeding must exist as a condition sine qua non to the application of Art 110. While Art. 11 mentions the words “bankruptcy” and “judicial liquidation,” the same provision likewise renders the enforcement of the preference subject to municipal legislation. Art. 11 (1) reads:

In the event of bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national law or regulations or as regards wages up to a prescribed amount **as may be determined by national laws or regulations.**<sup>35</sup> [Emphasis supplied]

Art. 110 itself, the enabling law of Art. 11(1), *makes no mention* of the commencement of any bankruptcy or judicial liquidation proceeding as a precondition for the enforcement of the workers’ preference. There being no such precondition in Art 110, none should be considered as a requirement prior to the application of the workers’ right of first preference.

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<sup>33</sup> Id. citing *Conte v. Commission on Audit*, 264 SCRA at 19, 30-31.

<sup>34</sup> Ibid. citing *Nasipit Lumber Co., Inc. v. National Wages and Productivity Commission*, 289 SCRA 667, 681 and *Lina v. Cariño* 221 SCRA 515, 531.

<sup>35</sup> INTERNATIONAL LABOR STANDARDS IN THE PHILIPPINES, A COMPILATION OF ILO CONVENTIONS RATIFIED BY THE PHILIPPINES 225.

## B. Liberal Construction in Favor of Labor (Art. 4)

Even if Art. 110 and its original implementing rule were allowed to stand together, a liberal construction of the two provisions under Art. 4 of the Labor Code would still justify giving the words “bankruptcy” and “liquidation” their plain meanings (i.e. cessation of operations due to business reverses and the disposition of its assets). Art. 4 states that: “All doubts in the implementation and interpretation of the provisions of this Code including its implementing rules and regulations, shall be resolved in favor of labor.”

Construing these words in their generic sense will ensure prompt satisfaction of workers’ unpaid claims without need of any formal declaration of bankruptcy or liquidation proceedings which can only have the effect of delaying payment of their wages. Attaching to these words their technical legal meanings will require workers to fall in line with their employer’s other creditors and wait to have their unpaid wages satisfied. Such a prejudicial arrangement certainly could not have been intended by the Labor Code which was precisely enacted to safeguard the working man’s survival and welfare. In *Volkschel Labor Union v. Bureau of Labor Relations*,<sup>36</sup> the Court noted that: “In the implementation and interpretation of the provisions of the Labor Code and its implementing regulations, the workingman’s welfare should be the primordial and paramount consideration.”

The Court’s pronouncement in *Philippine Commercial and Industrial Bank v. NAMA-WU-IF*<sup>37</sup> further sheds valuable insight on this matter:

x x x it is but humane and partakes of the divine that labor, as human beings, must be treated over and above chattels, machineries and other kinds of properties and the interests of the employer who can afford and survive the hardships of life better than their workers. Universal sense of human justice, not to speak of our specific social justice

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<sup>36</sup> 137 SCRA 42 (1985).

<sup>37</sup> 115 SCRA 873 (1982).

and protection to labor constitutional injunctions dictate the preferential lien that the above provision accords to labor.

### C. The Framer's Intent

An examination of relevant documents further reveals the intent of the legislative authority – President Marcos who then exercised legislative powers – to extend protection to labor via the enactment of the Labor Code. In “Progress and Martial Law,”<sup>38</sup> President Marcos identified the Labor Code’s fundamental aims. He said:

The Labor Code aims to attain the following three major objectives: First, industrial peace based on social justice and maximum protection of the rights of labor; second, industrial development based on the trisectoral cooperation of labor, management and government; and third, **the promotion of interests and welfare of labor**, particularly through better wages, manpower development and employment placements. [Emphasis supplied]

A summary of the final draft of P.D. 442 submitted by then Labor Secretary Blas F. Ople – considered the brains behind P.D. 442 – to former President Marcos on the eve of the Labor Code’s enactment further reveals its framer’s intent to uphold the working man’s interest and welfare via Art. 110 (originally Art. 109). This summary was attached to Mr. Ople’s memorandum to the President dated April 30, 1974, submitting the final draft of P.D. 442 for its enactment into law by President Marcos. The relevant excerpt of said summary reads:

x x x

7. Workers’ wages given priority payment in case of bankruptcy. Under the Code, the wages of workers are given first preference before any creditor can establish any claim on the assets of the employer. The purpose is to insure that the workers are not left out in the apportionment of the assets of

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<sup>38</sup> As cited in 1 ALCANTARA AND ALCANTARA, PHILIPPINE LABOR AND SOCIAL LEGISLATION ANNOTATED 3 (1999).

their employer which oftentimes (sic) happens in case of business dissolution.<sup>39</sup>

The explanatory note recognized the fact that the dissolution of an employer's business had often left its employees holding the bag after the disposition of its assets. Art. 110 (then Art 109), hence, precisely sought to eliminate this evil by recognizing the collective status of workers as creditor with a protected interest in the assets of the bankrupt employer.

#### D. Labor Code is an Exercise of Police Power

*DBP v. NLRC*<sup>40</sup> held that Art 110 as amended by R.A. 6715 should only be applied prospectively so as not to transgress the Non-Impairment Clause which provides that "No law impairing the obligation of contracts shall be passed."<sup>41</sup> The Non-Impairment Clause preserves the sanctity of a contract by barring Congress from passing any law that will alter the intention of the parties or modify their rights and obligations.

The Non-Impairment Clause, however, is not absolute and falls subordinate to the State's exercise of police power. The latter, which has been described as "the most pervasive, least limitable and most demanding" of the three inherent state powers, is the power of the State to regulate liberty and property for the promotion of the general welfare.<sup>42</sup> In *Ilusorio v. Court of Agrarian Relations*,<sup>43</sup> the Court held that:

The prohibition contained in constitutional provisions against impairing the obligation of contracts is not an absolute one and is not to be read with literal exactness like a mathematical formula. Such provisions are restricted to contracts with respect to property, or some object of value, and confer rights which may be asserted in a court of justice, and have no application to statutes relating to

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<sup>39</sup> Appendix D, P.D. 442, Official Copy with Appendices 146-147 (1974).

<sup>40</sup> 183 SCRA 328 (1990).

<sup>41</sup> Const. art. III Sec. 10.

<sup>42</sup> CRUZ CONSTITUTIONAL LAW 39 (2000).

<sup>43</sup> 17 SCRA 25 [citing *Ongsiako v. Gamboa*, 86 Phil. 50].

public subjects within the domain of the general legislative powers of the State, and involving the public right and public welfare of the entire community affected by it. They do not prevent the proper exercise by the State of its police powers. *By enacting regulations reasonably necessary to secure the health, safety, morals, comfort, or general welfare of the community, even the contracts may thereby be affected;* for such matter cannot be placed beyond the power of the State to regulate and control them.<sup>44</sup> [Emphasis supplied]

As an exercise of police power, the Labor Code can properly apply retroactively to assets previously covered by mortgage contracts as well as those already foreclosed by the creditor mortgagee. A contrary holding will only defeat the purpose of Art. 110 which is to ensure payment of an employee's wages for his and his family's continued support in the event of his employer's bankruptcy or insolvency. In *Allied Investigation Bureau, Inc. v. Ople*,<sup>45</sup> the Court said:

It is well-settled that police power legislation like the Labor Code, intended to promote public welfare, being remedial in nature, covers existing contracts; otherwise, it will be self-defeating. It must be made clear that the constitutional guaranty of non-impairment of the obligation of contracts is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare.

True, the original mortgagee or Government (as noted by Justice Cruz) may suffer a reduction in the payment of its secured credit or tax claim but such creditor will be prejudiced only to the extent of the wage claims of the debtor company's unpaid employees. Compared to the lowly worker who often solely relies on his wages for his and his family's subsistence, the mortgagee-creditor and Government can be better expected to protect their financial standing.

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<sup>44</sup> *Id.*

<sup>45</sup> 91 SCRA 265 (1979).

In *A.C. Ransom Labor Union-CCLU v. NLRC*,<sup>46</sup> the Court held that the workers' preference under Article 110 follows their employer's properties. Hence, "the worker preference applies even if the employer's properties are encumbered by means of a mortgage contract... So that when the machinery and equipment of RANSOM were sold to Revelations Manufacturing Corporation for P2,000,000.00 in 1975, the right of the 22 laborers to be paid from the proceeds should have been recognized."<sup>47</sup>

## CONCLUSION

In sum, this author submits that Art 110 be construed to vest in the working man the right of *absolute* preference in the satisfaction of his unpaid wages and monetary benefits in the assets of his former employer even in the event of bankruptcy or liquidation of its assets. The law accords the working man a right clearly superior to that of Government and his employer's other creditors.

This leads to no other conclusion but that which holds that employees can demand, as a matter of right, full satisfaction of their wages and other monetary benefits BEFORE claims of Government and all other creditors may be paid. It is a right demandable even in the absence of a declaration of bankruptcy or liquidation proceeding.

This construction, this author believes, is more in keeping with the spirit of the Labor Code and the Constitution's unending quest for social justice and the State's paramount interest in the welfare of the working man.

As Mr. Justice Cruz eloquently said in his dissent in *Republic v. Peralta*: "Social justice is not a mere catchphrase to be mouthed with sham fervor in Labor Day celebrations for the delectation and the seduction of the working class. It is a mandate we should pursue

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<sup>46</sup> 150 SCRA 498 (1987).

<sup>47</sup> *Id.*

with energy and sincerity if we are to truly insure the dignity and well being of labor.”<sup>48</sup>

It is fervently hoped that the Court would yet one day prove the skeptical wrong that Art. 110 is not an empty promise on paper but a potent instrument of social justice.

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<sup>48</sup> 150 SCRA 37, 55 (1987).