

**BOOK FIVE  
LABOR RELATIONS**

**Title I  
POLICY AND DEFINITIONS**

**Chapter I  
POLICY**

**Art. 211. Declaration of Policy.**

A. It is the policy of the State:

a. To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;

b. To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;

c. To foster the free and voluntary organization of a strong and united labor movement;

d. To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;

e. To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;

f. To ensure a stable but dynamic and just industrial peace; and

g. To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code. (As amended by Section 3, Republic Act No. 6715, March 21, 1989)

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**1. OVERVIEW AND VIEWPOINT**

“Labor Standards” refers to the minimum terms and conditions of employment which employees are legally entitled to and employers must comply with.

**LABOR RELATIONS**

“Labor Relations” refers to the interactions between employer and employees or their representatives and the mechanism by which the standards and other terms and conditions of employment are negotiated, adjusted and enforced.

The government labor relations policy is declared in Art. 211 which is a focused elaboration of the basic labor policy announced in Art.3 which, in turn, echoes the constitutional mandates. The policy intends to attain social justice through industrial peace and progress. The latter is founded on employee participation and collective interactions between employer and employees. In Management parlance, the input is the parties’ rights and duties, the process is worker’s organization and collective bargaining, and the output is industrial peace and progress towards social justice as the end goal.

Work stoppage—known as “strike” by employees or “lockout” by the employer—is not favoured in law. It is recognized as a legal right but regulated as to the purpose and manner of doing it. Deviation from the mandatory requirements has adverse consequences to the violators. Work stoppage, because it is counter-productive, is and has to be considered a measure of last resort.

The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining.

Because labor relations are primarily “domestic,” third parties, even the Government, shy away from meddling, as much as it can be helped. This is why an in-house problem solving structure, called grievance machinery, is a requirement in CBAs. If this machinery fails, the parties themselves are free to select any third party, called voluntary arbitrator, to resolve their differences.

The laws, as a force that balances the parties’ rights and obligations, are admittedly necessary in the industrial setting.<sup>1</sup>

**2. WORKERS’ ORGANIZATION**

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1 Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good.

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

A labor or trade union is a combination of workmen organized for the ultimate purpose of securing through united action the most favourable conditions as regards wages, hours of labor, conditions of employment, etc., for its members.

In the popular sense a labor union is understood to be a completely organized body of dues-paying members, operating through elected officers and constituting a militant, vital and functioning organ. It may be said that while every labor union is a labor organization, not every labor organization is a labor union. The difference is one of organization, composition and operation.

### 3. WHY WORKERS ORGANIZE

Self-help through economic action necessarily requires increasing the bargaining power of employees; hence one of the basic purposes of a labor union is to eliminate competition among employees in the labor market.

Three other human desires should be noted among the forces that led workers to organize:

- (1) One is the desire for job security.
- (2) Employees wished to substitute what we should term "the rule of law" for the arbitrary and often capricious exercise of power by the boss.
- (3) Finally, unions helped to give employees a sense of participation in the business enterprises of which they are part—a function of labor unions which became important as organizations spread into mass production industries.

The union is the recognized instrumentality and mouthpiece of the laborers.

### 4. ILO CONVENTION NO. 87

#### Chapter II DEFINITIONS

##### Art. 212. Definitions.

- a. "Commission" means the National Labor Relations Commission or any of its divisions, as the case may be, as provided under this Code.
- b. "Bureau" means the Bureau of Labor Relations and/or the Labor Relations Divisions in the regional offices established under Presidential Decree No. 1, in the Department of Labor.

c. "Board" means the National Conciliation and Mediation Board established under Executive Order No. 126.

d. "Council" means the Tripartite Voluntary Arbitration Advisory Council established under Executive Order No. 126, as amended.

e. "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

f. "Employee" includes any person in the employ of an employer. The term shall not be limited to the employees of a particular employer, unless the Code so explicitly states. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice if he has not obtained any other substantially equivalent and regular employment.

g. "Labor organization" means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.

h. "Legitimate labor organization" means any labor organization duly registered with the Department of Labor and Employment, and includes any branch or local thereof.

i. "Company union" means any labor organization whose formation, function or administration has been assisted by any act defined as unfair labor practice by this Code.

j. "Bargaining representative" means a legitimate labor organization whether or not employed by the employer.

k. "Unfair labor practice" means any unfair labor practice as expressly defined by the Code.

l. "Labor dispute" includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

m. "Managerial employee" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or

discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.

n. "Voluntary Arbitrator" means any person accredited by the Board as such or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.

o. "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

p. "Lockout" means any temporary refusal of an employer to furnish work as a result of an industrial or labor dispute.

q. "Internal union dispute" includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including any violation of the rights and conditions of union membership provided for in this Code.

r. "Strike-breaker" means any person who obstructs, impedes, or interferes with by force, violence, coercion, threats, or intimidation any peaceful picketing affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining.

s. "Strike area" means the establishment, warehouses, depots, plants or offices, including the sites or premises used as runaway shops, of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exit from said establishment. (As amended by Section 4, Republic Act No. 6715, March 21, 1989)

## **1. EMPLOYER-EMPLOYEE RELATIONSHIP ESSENTIAL**

The existence of employer-employee relationship, as explained in Book III, is determined by the presence of the following elements, namely:

- (a) selection and engagement of the employee;
- (b) payment of wages;
- (c) power to dismiss; and
- (d) power to control the employee's conduct.

The fourth is the most important element.

## **2. WHO ARE EMPLOYEES**

The term "employee":

- (1) shall include any employee
- (2) and shall not be limited to the employee of any particular employer, unless the Act so explicitly states otherwise
- (3) and shall include any individual
  - (a) whose work has ceased as a result of, or in connection with any current labor dispute
  - (b) and who has not obtained any other substantially equivalent and regular employment.

"Employee" refers to any person working for an employer. It includes one whose work has ceased in connection with any current labor dispute or because of any unfair labor practice and one who has been dismissed from work but the legality of the dismissal is being contested in a forum of appropriate jurisdiction.

"Employer" refers to any person or entity who employs the services of others, one for whom employees work and who pays their wages or salaries. An employer includes any person directly or indirectly acting in the interest of an employer. It shall also refer to the enterprise where a labor organization operates or seeks to operate.

An employer may be brought into bargaining and economic relationship with persons not in his actual employ; such persons are given the status and rights of "employees" in relation to him, in order to accord to them the protection of the Act. Thus, The nature of a "labor dispute" does not require that the disputants should stand in the proximate relation of employer and employee, with consequent protection of concerted activities carried out by many persons belonging to several employers.

### 2.1 "One whose work has ceased..."

Cessation of work due to strike or lockout, or to dismissal or suspensions constituting unfair labor practices, does not in itself affect the "employee" status, in the sense that the rights and benefits of the employee are protected as though there had been no interruption of service, effective upon actual return to work.

## 3. LABOR ORGANIZATION AS EMPLOYER

Exceptionally, a labor organization may be deemed an "employer" when it is acting as such in relation to persons rendering services under hire, particularly in connection with its activities for profit or gain.

## 4. LABOR DISPUTE

The test of whether a labor controversy comes within the definition of a labor dispute depends on whether it involves or concerns terms, conditions of employment or representation.

The existence of a labor dispute is not negative by the fact that the plaintiffs and defendants do not stand in the proximate relation of employer and employee.

## 5. LABOR DISPUTES AND REMEDIES: A SUMMARY

### 5.1 Definition

"Labor Dispute" includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

### 5.2 Tests or Criteria of "Labor Dispute"

A. Nature: Dispute arises from employer-employee relationship, although disputants need not be proximately "employee" or "employer" of the other.

B. Subject matter: Dispute concerns (1) terms or conditions of employment; or (2) association or representation of persons in negotiating, fixing, maintaining, or changing terms or conditions of employment.

### 5.3 Kinds of Labor Disputes

#### A. Labor Standards Disputes:

(1) Compensation – (underpayment of minimum wage)

(2) Benefits – (nonpayment of holiday pay)

(3) Working conditions – (unrectified work hazards)

#### B. Labor Relations Disputes:

(1) Organizational Right Dispute/ ULP – (coercion)

(2) Representation Disputes – (determination of appropriate collective bargaining unit)

(3) Bargaining Disputes – (refusal to bargain)

(4) Contract Administration or Personnel Policy Disputes – (noncompliance with CBA provision)

(5) Employment Tenure Disputes – (nonregularization of employees)

### 5.4 Remedies in Labor Disputes (*SEE TABLE 1*)

## Title II

## NATIONAL LABOR RELATIONS COMMISSION

### Chapter I

### CREATION AND COMPOSITION

Art. 213. National Labor Relations Commission. There shall be a National Labor Relations Commission which shall be attached to the Department of Labor and Employment for program and policy coordination only, composed of a Chairman and fourteen (14) Members.

Five (5) members each shall be chosen from among the nominees of the workers and employers organizations, respectively. The Chairman and the four (4) remaining members shall come from the public sector, with the latter to be chosen from among the recommendees of the Secretary of Labor and Employment.

Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.

The Commission may sit en banc or in five (5) divisions, each composed of three (3) members. Subject to the penultimate sentence of this paragraph, the Commission shall sit en banc only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches,

and formulating policies affecting its administration and operations. The Commission shall exercise its adjudicatory and all other powers, functions, and duties through its divisions. Of the five (5) divisions, the first, second and third divisions shall handle cases coming from the National Capital Region and the parts of Luzon; and the fourth and fifth divisions, cases from the Visayas and Mindanao, respectively; Provided that the Commission sitting en banc may, on temporary or emergency basis, allow cases within the jurisdiction of any division to be heard and decided by any other division whose docket allows the additional workload and such transfer will not expose litigants to unnecessary additional expense. The divisions of the Commission shall have exclusive appellate jurisdiction over cases within their respective territorial jurisdictions. [As amended by Republic Act No. 7700].

The concurrence of two (2) Commissioners of a division shall be necessary for the pronouncement of judgment or resolution. Whenever the required membership in a division is not complete and the concurrence of two (2) commissioners to arrive at a judgment or resolution cannot be obtained, the Chairman shall designate such number of additional Commissioners from the other divisions as may be necessary.

The conclusions of a division on any case submitted to it for decision shall be reached in consultation before the case is assigned to a member for the writing of the opinion. It shall be mandatory for the division to meet for purposes of the consultation ordained herein. A certification to this effect signed by the Presiding Commissioner of the division shall be issued and a copy thereof attached to the record of the case and served upon the parties.

The Chairman shall be the Presiding Commissioner of the first division and the four (4) other members from the public sector shall be the Presiding Commissioners of the second, third, fourth and fifth divisions, respectively. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the second division shall be the Acting Chairman.

The Chairman, aided by the Executive Clerk of the Commission, shall have administrative supervision over the Commission and its regional branches and all its personnel, including the Executive Labor Arbiters and Labor Arbiters.

The Commission, when sitting en banc shall be assisted by the same Executive Clerk and, when acting thru its Divisions, by said Executive Clerks for the second, third, fourth and fifth Divisions, respectively, in the performance of such similar or

equivalent functions and duties as are discharged by the Clerk of Court and Deputy Clerks of Court of the Court of Appeals. (As amended by Section 5, Republic Act No. 6715, March 21, 1989)

Art. 214. Headquarters, Branches and Provincial Extension Units. The Commission and its First, Second and Third divisions shall have their main offices in Metropolitan Manila, and the Fourth and Fifth divisions in the Cities of Cebu and Cagayan de Oro, respectively. The Commission shall establish as many regional branches as there are regional offices of the Department of Labor and Employment, sub-regional branches or provincial extension units. There shall be as many Labor Arbiters as may be necessary for the effective and efficient operation of the Commission. Each regional branch shall be headed by an Executive Labor Arbiter. (As amended by Section 6, Republic Act No. 6715, March 21, 1989)

## 1. NLRC: NATURE AND ORGANIZATION

### 1.1 Creation and Autonomy

Before the advent of the Labor Code the labor court was the Court of Industrial Relations. When martial law was declared in September 1972, PD No. 21 (October 14, 1972) abolished the CIR and replaced it with an *ad hoc* National Labor Relations Commission. This NLRC was short-lived as it gave way to the NLRC which the Labor Code created in 1974.

### 1.2 Administrative Supervision Delegated to the DOLE Secretary

Executive Order No. 204 delegated to the Secretary of Labor "administrative supervision over the NLRC, its regional branches and all its personnel." The Order cited two objectives: (1) to further improve the rate of disposition of cases and (2) to enhance existing measures for the prevention of graft and corruption in the NLRC.

### 1.3 Essential Character

Under Republic Act No. 6715 in 1989, as under the former law, the National Labor Relations Commission continues to act collegially, whether it performs administrative or rule-making functions or exercises appellate jurisdiction to review decisions and final orders of the Labor Arbiters.

### 1.4 Tripartite Composition

The same Article 213, as amended, provides that the Chairman and twenty-three members composing the National Labor Relations Commission shall be chosen from the workers, employers and the public sectors.

#### 1.5 Allocation of Powers Between NLRC *En Banc* and Its Division

The “division: is a legal entity, not the persons who sit in it. Hence, an individual commissioner has no adjudicatory power, although, of course, he can concur or dissent in deciding a case. The law lodges the adjudicatory power on each of the eight divisions, not on the individual commissioners not on the whole commission.

#### 1.6 The NLRC Rules of Procedure

“The 2005 Revised Rules of Procedure of the National Labor Relations Commission” was published in newspapers on December 23, 2005 and took effect on January 7, 2006.

Art. 215. Appointment and Qualifications. The Chairman and other Commissioners shall be members of the Philippine Bar and must have engaged in the practice of law in the Philippines for at least fifteen (15) years, with at least five (5) years experience or exposure in the field of labor-management relations, and shall preferably be residents of the region where they are to hold office. The Executive Labor Arbiters and Labor Arbiters shall likewise be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least seven (7) years, with at least three (3) years experience or exposure in the field of labor-management relations: Provided, However, that incumbent Executive Labor Arbiters and Labor Arbiters who have been engaged in the practice of law for at least five (5) years may be considered as already qualified for purposes of reappointment as such under this Act. The Chairman and the other Commissioners, the Executive Labor Arbiters and Labor Arbiters shall hold office during good behavior until they reach the age of sixty-five years, unless sooner removed for cause as provided by law or become incapacitated to discharge the duties of their office.

The Chairman, the division Presiding Commissioners and other Commissioners shall be appointed by the President, subject to confirmation by the Commission on Appointments. Appointment to any vacancy shall come from the nominees of the sector which nominated the predecessor. The Executive Labor Arbiters and Labor Arbiters shall also be appointed by the President, upon

recommendation of the Secretary of Labor and Employment and shall be subject to the Civil Service Law, rules and regulations.

The Secretary of Labor and Employment shall, in consultation with the Chairman of the Commission, appoint the staff and employees of the Commission and its regional branches as the needs of the service may require, subject to the Civil Service Law, rules and regulations, and upgrade their current salaries, benefits and other emoluments in accordance with law. (As amended by Section 7, Republic Act No. 6715, March 21, 1989)

#### REQUIRING CONFIRMATION BY COMMISSION ON APPOINTMENTS, UNCONSTITUTIONAL

Art. 216. Salaries, benefits and other emoluments. The Chairman and members of the Commission shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits as those of the Presiding Justice and Associate Justices of the Court of Appeals, respectively. The Executive Labor Arbiters shall receive an annual salary at least equivalent to that of an Assistant Regional Director of the Department of Labor and Employment and shall be entitled to the same allowances and benefits as that of a Regional Director of said Department. The Labor Arbiters shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits as that of an Assistant Regional Director of the Department of Labor and Employment. In no case, however, shall the provision of this Article result in the diminution of existing salaries, allowances and benefits of the aforementioned officials. (As amended by Section 8, Republic Act No. 6715, March 21, 1989)

#### Chapter II POWERS AND DUTIES

Art. 217. Jurisdiction of the Labor Arbiters and the Commission.

a. Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;
2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

b. The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

c. Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (As amended by Section 9, Republic Act No. 6715, March 21, 1989)

## 1. ADDITIONAL CASES

To the six (6) kinds of cases mentioned in Article 217, the following should be added:

1. Money claims arising out of employer-employee relationship or by virtue of any law or contract, involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damages, as well as employment termination of OFWs;

2. Wage distortion disputes in unorganized establishments not voluntarily settled by the parties pursuant to Republic Act No. 6727, as reflected in Article 124;

3. Enforcement of compromise agreements when there is non-compliance by any of the parties

pursuant to Article 227 of the Labor Code, as amended; and

4. Other cases as may be provided by law.

## 2. COMPULSORY ARBITRATION BY LABOR ARBITERS

In its broad sense, arbitration is the reference of a dispute to an impartial third person, chosen by the parties or appointed by statutory authority to hear and decide the case in controversy. When the consent of one of the parties is enforced by statutory provisions, the proceeding is referred to as compulsory arbitration. In labor cases, compulsory arbitration is the process of settlement of labor disputes by a government agency which has the authority to investigate and to make an award which is binding on all the parties.

### 2.1 NLRC Appellate Proceedings Not Part of Arbitration

Under the Labor Code, it is the Labor Arbiter who is clothed with the authority to conduct compulsory arbitration on cases involving termination disputes and other cases under Art. 217.

When the Labor Arbiter renders his decision, compulsory arbitration is deemed terminated because by then the hearing and determination of the controversy has ended.

### 2.2 Nature of Proceedings

The NLRC Rules describe the proceedings before the Labor Arbiter as non-litigious. Subject to the requirements of due process, the technicalities of law and procedure in the regular courts do not apply in NLRC/labor arbiter proceedings (Art. 221). The arbiter may avail himself of all reasonable means, including ocular inspection, to ascertain the facts speedily; he shall personally conduct the conference or hearings and take full control of the proceedings. (Rule V, Sec. 2, NLRC 2005 Rules of Procedure)

### 2.3 Article 217 Yields to Arts. 261<sup>2</sup> and 262<sup>3</sup>

## 3. LABOR ARBITER'S JURISDICTION, IN GENERAL

<sup>2</sup> A voluntary arbitrator, under Art. 261, has "original and exclusive" jurisdiction over disputes concerning CBA implementation or personnel policy enforcement.

<sup>3</sup> In addition, under Art. 262, the parties may submit to a voluntary arbitrator (or panel) "all other disputes including unfair labor practices and bargaining deadlocks."

The cases labor arbiter can hear and decide are employment-related.

### 3.1 Supervisory Control, Crucial

Control over the performance of the work is the crucial indicator of employment relationship, without which the labor arbiter has no jurisdiction over the dispute.

It is well-settled in law and jurisprudence that where no employer-employee relationship exists between the parties and no issue is involved which may be resolved by reference to the Labor Code, other labor statutes, or any collective bargaining agreement, it is the Regional Trial Court that has jurisdiction.

## 4. VENUE

The NLRC Rules of Procedure provides:

Section 1. Venue. - a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant or petitioner.

For purposes of venue, the workplace shall be understood as the place or locality where the employee is regularly assigned at the time the cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment, or travel. In case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries and wages or work instructions from, and report the results of their assignment to, their employers.

b) Where two (2) or more Regional Arbitration Branches have jurisdiction over the workplace of the complainant or petitioner, the Branch that first acquired jurisdiction over the case shall exclude the others.

c) When venue is not objected to before the filing of position papers such issue shall be deemed waived.

d) The venue of an action may be changed or transferred to a different Regional Arbitration Branch other than where the complaint was filed by written agreement of the parties or when the Commission or Labor Arbiter before whom the case is pending so orders, upon motion by the proper party in meritorious cases.

e) Cases involving overseas Filipino workers may be filed before the Regional Arbitration Branch having jurisdiction over the place where the complainant resides or where the principal office of any of the respondents is situated, at the option of the complainant.

### 4.1 Worker's Option

The worker, being the economically-disadvantaged party—whether as complainant/petitioner or as respondent, as the case may be—the nearest

governmental machinery to settle the dispute must be placed at his immediate disposal.

### 4.2 Waiver

The 2005 NLRC Rules, in Sec. 1(c), Rule IV states: "When venue is not objected to before the filing of position papers such issue shall be deemed waived."

## 5. LABOR ARBITER'S JURISDICTION: U.L.P. CASES

But its essence, captured in Art. 246, is any act intended or directed to weaken or defeat the worker's rights to self-organize or to engage in lawful concerted activities. In short, unfair labor practice, when committed by an employer, carries the effect of anti-unionism.

## 6. CBA VIOLATION AMOUNTING TO ULP

Certainly, violations of the collective bargaining agreement would be unfair labor practice which falls under the jurisdiction of the Labor Arbiters and the National Labor Relations Commission.

## 7. LABOR ARBITER'S JURISDICTION: TERMINATION DISPUTES

Termination disputes or illegal dismissal complaints fall within the jurisdiction of a labor arbiter, as stated in Art. 217(2).

7.1 Termination of Corporate Officer; Jurisdiction over Intra-Corporate Disputes Transferred from SEC to RTC

The dismissal of a corporate officer by a corporate board is a corporate dispute that should be brought to the regular courts.

A corporate officer's dismissal is always a corporate act, or an extra-corporate controversy and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action.

7.2 Effect of Claim for Backwages, Benefits, or Damages

In intra-corporate matters, such as those affecting the corporation, its directors, trustees, officers and shareholders, the issue of consequential damages may just as well be resolved and adjudicated by the SEC. Undoubtedly, it is still within the competence and expertise of the SEC to resolve all matters arising from or closely connected with all intra-corporate disputes.

### 7.3 Mainland v. Movilla: The “Better Policy” in Determining SEC Jurisdiction

The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is the subject of their controversy.

### 7.4 Tabang v. NLRC: SEC Jurisdiction Reaffirmed; Corporate Officer and Intra-corporate Controversy Defined

An “intra-corporate controversy” is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.

## 8. LABOR ARBITER'S JURISDICTION: MONEY CLAIMS

A money claim arising from employer-employee relations, excepting SSS/ECC/Medicare claims, is within the jurisdiction of a labor arbiter—

1. if the claim, regardless of amount, is accompanied with a claim for reinstatement; or
2. if the claim, whether or not accompanied with a claim for reinstatement, exceeds five thousand pesos (P5,000.00) per claimant.

### 8.1 Only Money Claims Not Arising from CBA

The Voluntary Arbitrator or Panel of Voluntary Arbitrators will have original and exclusive jurisdiction over money claims “arising from the interpretation or implementation of the Collective Bargaining Agreement and, those arising from the interpretation or enforcement of company personnel policies”, under Article 261.

### 8.2 Money Claims Must Have Arisen from Employment

Money claims of workers which do not arise out of or in connection with their employer-employee relationship fall within the general jurisdiction of regular courts of justice.

Where the claim to the principal relief sought is to be resolved not by reference to the Labor Code or other labor relations statute or a collective bargaining agreement but by the general civil law, the jurisdiction over the dispute belongs to the regular courts of justice and not to the Labor Arbiter and the National Labor Relations Commission.

### 8.3 Money Claims of Coop Employees

### 8.4 Jurisdiction over Claims for Damages

Money claims of workers which the labor arbiter has original and exclusive jurisdiction are comprehensive enough to include claims for moral damages of a dismissed employee against his employer.

### 8.5 Splitting of Actions Not Allowed

An employee who has been illegally dismissed so as to cause him moral damages has a cause of action for reinstatement, back wages and damages. When he institutes proceedings before the Labor Arbiter, he should make a claim for all said reliefs.

### 8.6 Employer's Complaint for Damages

An employer's claim for damages against an employee may be filed as counterclaim in the illegal dismissal case filed by the employee. Such claim for damages, arising from employment relationship, is outside the jurisdiction of the regular court.

## 9. LABOR ARBITER'S JURISDICTION: STRIKE AND LOCKOUTS

Questions relating to strikes or lockouts or any form of work stoppage including incidents thereof under Art. 264 fall within the labor arbiter's jurisdiction.

But the power to issue injunction is lodged with an NLRC division, not a labor arbiter. Moreover, “national interest” cases are handled differently. Art. 263 (g) empowers the DOLE Secretary or the President of the Republic to assume jurisdiction or refer the case to the NLRC if the labor dispute or impending strike or lockout involves an industry indispensable to national interest.

Still another limit to the arbiter's jurisdiction is the jurisdiction of the regular courts to hear and decide actions filed by third parties being affected by a strike of people who are not their employees. Finally, if a crime is committed, whether in relation to a strike or not, the prosecution of the crime has to be done not before a labor arbiter but a regular court, because in such a case the laws to be administered are primarily the penal laws of the land.

## 10. LABOR ARBITER'S JURISDICTION: OFW'S MONEY CLAIMS OR DISMISSAL

Section 10 of RA 8042, approved on June 7, 1995, known as the Migrant Workers and Overseas Filipinos Act of 1995, transfers from the POEA to Labor Arbiters the original and exclusive jurisdiction

to hear and decide claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damages.

Based on [Article 217, Labor Code and Section 10, R.A. No. 8042], labor arbiters, clearly have *original and exclusive* jurisdiction over claims arising from employer-employee relations, including *terminations disputes* involving all workers, among them whom are Overseas Filipino Workers (OFW).

## **11. LABOR ARBITER'S JURISDICTION: WGAE DISTORTION**

A salary distortion case, referred to in the Article 124, is resolved either through the CBA mechanism or, in unorganized establishments, through the NCMB. IF the NCMB fails to resolve the dispute in ten days of conciliation conferences, it shall be final to the appropriate branch of the NLRC.

## **12. LABOR ARBITER'S JURISDICTION: DISPUTES OVER COMPROMISE SETTLEMENTS**

Because labor law policy encourages voluntary resolution of disputes, compromise settlements are ordinarily final and binding upon the parties. But a compromise settlement may itself become the subject of dispute. If there is noncompliance with the compromise agreement or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion, then, according to Article 227, the NLRC through the labor arbiter may assume jurisdiction over such dispute.

## **13. SUBMISSION TO JURISDICTION**

The active participation of the party against whom the action was brought coupled with his failure to object to the jurisdiction of the Court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction, and a willingness to abide by the resolution of the case will bar said party from later on impugning the court or body's jurisdiction.

The Supreme Court frowns upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favourable, and attacking it for lack of jurisdiction when adverse.

## **14. IMMUNITY OF FOREIGN GOVERNMENTS**

In international law, "immunity" is commonly understood as an exemption of the state and its organs from the judicial jurisdiction of another state. This is anchored on the principle of the sovereign

equality of states under which one state cannot assert jurisdiction over another in violation of the maxim *par in parem non habet imperium* (an equal has no power over an equal).

As it stands now, the application of the doctrine of immunity from suit has been restricted to sovereign or governmental activities (*jure imperii*). The mantle of state immunity cannot be extended to commercial, private and proprietary acts (*jure gestionis*).

### **14.1 Immunity of the UN and Its Specialized Agencies**

## **15. EXECUTING MONEY CLAIMS AGAINST THE GOVERNMENT**

Even when a government agency enters into a business contract with a private entity, it is not the Labor Code but C.A. No. 327 that applies in pursuing a money claim (against the Government) arising from such contract.

## **16. LOCAL WATER DISTRICT**

They are quasi public corporations whose employees belong to the civil service, hence, the dismissal of those employees shall be governed by the civil service law, rules and regulations.

### **16.1 Exception: Where NLRC Jurisdiction is Invoked**

## **17. REPUBLIC ACT NO. 6715—RETROACTIVE?**

Art. 218. Powers of the Commission. The Commission shall have the power and authority:

a. To promulgate rules and regulations governing the hearing and disposition of cases before it and its regional branches, as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Code; (As amended by Section 10, Republic Act No. 6715, March 21, 1989)

b. To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and others as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Code;

c. To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been

summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable; and

d. To hold any person in contempt directly or indirectly and impose appropriate penalties therefor in accordance with law.

A person guilty of misbehavior in the presence of or so near the Chairman or any member of the Commission or any Labor Arbiter as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive personalities toward others, or refusal to be sworn, or to answer as a witness or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in direct contempt by said officials and punished by fine not exceeding five hundred pesos (P500) or imprisonment not exceeding five (5) days, or both, if it be the Commission, or a member thereof, or by a fine not exceeding one hundred pesos (P100) or imprisonment not exceeding one (1) day, or both, if it be a Labor Arbiter.

The person adjudged in direct contempt by a Labor Arbiter may appeal to the Commission and the execution of the judgment shall be suspended pending the resolution of the appeal upon the filing by such person of a bond on condition that he will abide by and perform the judgment of the Commission should the appeal be decided against him. Judgment of the Commission on direct contempt is immediately executory and unappealable. Indirect contempt shall be dealt with by the Commission or Labor Arbiter in the manner prescribed under Rule 71 of the Revised Rules of Court; and (As amended by Section 10, Republic Act No. 6715, March 21, 1989)

e. To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no

temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

1. That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
2. That substantial and irreparable injury to complainant's property will follow;
3. That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
4. That complainant has no adequate remedy at law; and
5. That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed, charged with the duty to protect complainant's property: Provided, however, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice. Such a temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days. No such temporary restraining order or temporary injunction shall be issued except on condition that complainant

shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

The undertaking herein mentioned shall be understood to constitute an agreement entered into by the complainant and the surety upon which an order may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages, of which hearing, complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the Commission for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity: Provided, further, That the reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission. (As amended by Section 10, Republic Act No. 6715, March 21, 1989)

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Art. 219. Ocular inspection. The Chairman, any Commissioner, Labor Arbiter or their duly authorized representatives, may, at any time during working hours, conduct an ocular inspection on any establishment, building, ship or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein, and ask any employee, laborer, or any person, as the case may be, for any information or data concerning any matter or question relative to the object of the investigation.

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## 1. POWERS OF THE COMMISSION

### 1.1 Rule-Making Power

The Commission has the power to promulgate rules and regulations:

- a) governing the hearing and disposition of cases before it and its regional branches;
- b) pertaining to its internal functions; and

- c) those that may be necessary to carry out the purposes of this Code.

It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies, such as the Revised Rules of the NLRC, to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect.

### 1.2 Power to Issue Compulsory Processes

The Commission has the power to:

- a) administer oaths;
- b) summon parties; and
- c) issue subpoenas *ad testificandum* and *duces tecum*.

### 1.3 Power to Investigate and Hear Disputes within Its Jurisdiction

The Commission has the power to:

- a) conduct investigation for the determination of a question, matter or controversy within its jurisdiction; and
- b) proceed to hear and determine the disputes in the manner laid down under paragraph (c) of Art. 218.

### 1.4 Contempt Power

Contempt is defined as a disobedience to the Court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.

### 1.5 Power to Conduct Ocular Inspection

Under Article 219, the Chairman, any Commissioner, Labor Arbiter or their duly authorized representatives, may, at any time during working hours:

- a) conduct an ocular inspection on any establishment, building, ship or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein; and
- b) ask any employee, laborer, or any person, as the case may be, for any information or data concerning

any matter or question relative to the object of the investigation.

### 1.6 Adjudicatory Power: Original

The NLRC has original jurisdiction over petitions for injunction or temporary restraining order under Art. 218(e).

Also, it has original jurisdiction to hear and decide "National Interest" cases certified to it by the Secretary of Labor under Art. 263(g).

### 1.7 Adjudicatory Power: Appellate

The NLRC has exclusive appellate jurisdiction over all cases decided by labor arbiters (Art. 217[b]) and the DOLE regional director or hearing officers under Art. 129.

The NLRC has no appellate jurisdiction over decisions rendered by (1) a voluntary arbitrator, or (2) the secretary of labor, or (3) the bureau of labor relations director on cases appealed from the DOLE regional offices. The decisions of these three offices are appealable rather to the Court of Appeals.

Where the labor arbiter has no jurisdiction or has not acquired jurisdiction, neither has the NLRC. Its jurisdiction over cases under Art. 217(a) is appellate, not original.

## 2. POWER TO ISSUE INJUNCTION OR TEMPORARY RESTRAINING ORDER

The NLRC has injunction power or, simply, the power to command that an act be done or not done.

The action for injunction is distinct from the ancillary remedy of preliminary injunction<sup>4</sup> which cannot exist except only as part or an incident of an independent action or proceeding.

A writ of preliminary injunction is generally based solely on initial and incomplete evidence.

### 2.1 Injunction by Labor Arbiter

Article 218 limits the grant of injunctive power to the "Commission" meaning the Commission *en banc* or any of its divisions.

### 2.2 Requisites for Issuance of Restraining Order or Injunction

<sup>4</sup> The sole object of which is to preserve the status quo until the merits can be heard.

As a rule, restraining orders or injunctions do not issue *ex parte* and only after compliance with the following requisites, to wit:

a) a hearing held "after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property;"

b) reception at the hearing of "testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath," as well as "testimony in opposition thereto, if offered x x;

c) "a finding of fact by the Commission, to the effect: (1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof; (2) That substantial and irreparable injury to complainant's property will follow; (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief; (4) That complainant has no adequate remedy at law; and (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

### 2.3 Conditions for Issuance *Ex Parte* of a Temporary Restraining Order (TRO)

A temporary restraining order (valid only for 20 days) may be issued *ex parte* under the following conditions:

a) the complainant "shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable;

b) there is "testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice;"

c) the "complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined

for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission;" and

d) the "temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days.

An injury is considered irreparable if it is of such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. It is considered irreparable injury when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property injured or when there exists no certain pecuniary standard for the measurement of damages.

"Property" includes not only tangible property but also the right to use such property.

"Public officers" means local law enforcing officers.

The "protection" contemplated is that which would enable the employer to proceed with the work.

The intent of this requirement is to take the executive function of law enforcement out of the court and leave it to the appropriate executive officers, unless they fail to function.

## 2.4 No Adequate Remedy

In addition to the other requirements which the complainant must satisfy in order to obtain injunctive relief under the Act, the complainant must show that "he has no adequate remedy at law."

An adequate remedy at law has been defined as one "that affords relief with reference to the matter in controversy, and which is appropriate to the particular circumstances of the case.

## 2.5 Cash Bond

Under the NLRC Rules of 2005, no temporary restraining order or writ of preliminary injunction shall be issued except on the condition that petitioner shall first file an undertaking to answer for the damages and post a cash bond in the amount of Fifty Thousand Pesos (P50,000.00), or such higher

amount as may be determined by the Commission. The purpose of the bond is to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

## 2.6 Scope

As to the scope of an injunction issued under the Act, both the Act itself and the cases restrict the operation of such injunction not only to the specific acts complained of in the pleadings and proven at trial as wrongful, but further, limits the injunction to only those alleged and proven guilty of actual participation, authorization or ratification of such acts.

The power of the NLRC to enjoin or restrain the commission of any or all prohibited or unlawful acts as provided in Art. 218 of the Labor Code, can only be exercised in a labor dispute.

## 2.7 Reception of Evidence

The reception of evidence "for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission."

"Labor Arbiter" in the preceding sentence may now refer to "Commission Attorney," a position created by R.A. No. 9347 (July 27, 2006) to assist the Commission and its divisions in their appellate and adjudicatory functions.

## 2.8 Twenty-day Life of TRO

A temporary restraining order (TRO), if issued at all in a petition for injunction, is valid only for twenty (20) days and becomes void *ipso facto* at the end of that period.

The TRO takes effect upon its issuance and not upon receipt of the parties.

The maximum period of 20 days includes Saturdays, Sundays, and holidays.

## 2.9 Illustrative Case: Issuance of TRO

2.10 Injunction from NLRC: Not the Proper Remedy against Employee's Dismissal

[Art. 220. Compulsory arbitration. The Commission or any Labor Arbiter shall have the power to ask the assistance of other government officials and qualified private citizens to act as compulsory arbitrators on cases referred to them and to fix and assess the fees of such compulsory arbitrators, taking into account the nature of the case, the time consumed in hearing the case, the professional standing of the arbitrators, the financial capacity of the parties, and the fees provided in the Rules of Court.] (Repealed by Section 16, Batas Pambansa Bilang 130, August 21, 1981)

Art. 221. Technical rules not binding and prior resort to amicable settlement. In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction. (As amended by Section 11, Republic Act No. 6715, March 21, 1989)

## **1. PROCEEDINGS BEFORE LABOR ARBITER OR THE COMMISSION; TECHNICAL RULES NOT APPLICABLE**

Administrative and quasi-judicial bodies, like the National Labor Relations Commission, are not bound by the technical rules of procedure in the adjudication of cases.

Simplification of procedure, without regard to technicalities of law or procedure and without sacrificing the fundamental requisites of due process, is mandated to insure a speedy administration of social justice. This Court construed Article 221 of the Labor Code as to allow the NLRC or a labor arbiter to decide a case on the basis of position papers and other documents submitted

without resorting to technical rules of evidence as observed in regular courts of justice.

### **1.1 Modicum of Admissibility; Substantial Evidence**

It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value.

Not only must there be some evidence to support a finding or conclusion, but evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

### **1.2 Cardinal Rights in Quasi-Judicial Proceedings**

There are cardinal primary rights which must be respected even in proceedings of this character:

- 1) right to a hearing;
- 2) tribunal must consider the evidence presented;
- 3) decision must be supported by something (evidence);
- 4) supporting evidence must be substantial;
- 5) Decision must be rendered on the evidence presented or at least contained in the record and disclosed to the parties affected;
- 6) the body or CIR or any of its judges must act on his own independent considerations of the law and facts, and not simply accept the views of the subordinate in arriving at a decision; and
- 7) decide in such manner that parties can know the various issues involved and the reason for the decision.

### **1.3 Verification**

Verification is intended to assure that the allegations in the pleading have been prepared in good faith or are true and correct, not mere speculations. Generally, lack of verification is merely a format defect that is neither jurisdictional nor fatal.

### **1.4 Party Respondent**

In a complaint for underpayment of wages and other money claims filed by employees of a single proprietorship business, the respondent should be the business owner. This is not necessarily the person in whose name the business is registered.

### 1.5 Prohibited Pleadings and Motions

Emphasizing the avoidance of legal technicalities, the NLRC 2005 Rules (in Rule III, Section 4) does not allow the following motions or pleadings:

- a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, improper venue, *res judicata*, prescription and forum shopping;
- b) Motion for a bill of particulars;
- c) Motion for new trial;
- d) Petition for relief from judgment when filed with the Labor Arbiter;
- e) Petition for *Certiorari*, *Mandamus* or prohibition;
- f) Motion to declare respondent in default;
- g) Motion for reconsideration or appeal from any interlocutory order of the Labor Arbiter.

## 2. MANDATORY CONCILIATION AND MEDIATION CONFERENCE; COMPROMISE ENCOURAGED

Section 2. Nature of Proceedings. - The proceedings before the Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons.

Section 3. Mandatory Conciliation and Mediation Conference. - a) The mandatory conciliation and mediation conference shall be called for the purpose of (1) amicably settling the case upon a fair compromise; (2) determining the real parties in interest; (3) determining the necessity of amending the complaint and including all causes of action; (4) defining and simplifying the issues in the case; (5) entering into admissions or stipulations of facts; and (6) threshing out all other preliminary matters. The Labor Arbiter shall preside and take full control of the proceedings.

b) Conciliation and mediation efforts shall be exerted by the Labor Arbiters all throughout the proceedings. Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing

and signed by the parties and their respective counsel or authorized representative, if any, before the Labor Arbiter.

c) In any case, the compromise agreement shall be approved by the Labor Arbiter, if after explaining to the parties, particularly to the complainants, the terms, conditions and consequences thereof, he is satisfied that they understand the agreement, that the same was entered into freely and voluntarily by them, and that it is not contrary to law, morals, and public policy.

d) A compromise agreement duly entered into in accordance with this Section shall be final and binding upon the parties and shall have the force and effect of a judgment rendered by the Labor Arbiter.

e) The mandatory conciliation and mediation conference shall, except for justifiable grounds, be terminated within thirty (30) calendar days from the date of the first conference.

f) No motion for postponement shall be entertained except on meritorious grounds.

Section 4. Effect of Failure of Conciliation and Mediation. - Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the mandatory conciliation and mediation conference, the Labor Arbiter shall terminate the conciliation and mediation stage and proceed to pursue the other purposes of the said conference as enumerated in the immediately preceding Section. Thereafter, the Labor Arbiter shall direct the parties to simultaneously file their respective position papers on the issues agreed upon by the parties and as reflected in the minutes of the proceedings.

Section 5. Non-Appearance of Parties. - The non-appearance of the complainant or petitioner during the two (2) settings for mandatory conciliation and mediation conference scheduled in the summons, despite due notice thereof, shall be a ground for the dismissal of the case without prejudice.

In case of non-appearance by the respondent during the first scheduled conference, the second conference shall proceed as scheduled in the summons. If the respondent still fails to appear at the second conference despite being duly served with summons, the Labor Arbiter shall immediately terminate the mandatory conciliation and mediation conference. The Labor Arbiter shall thereafter allow the complainant or petitioner to file his verified position paper and submit evidence in support of his causes of action, and thereupon render his decision on the basis of the evidence on record.

It is true that a compromise agreement once approved by the court has the effect of *res judicata* between the parties and should not be disturbed except for vices of consent and forgery. However, settled is the rule that the NLRC may disregard technical rules of procedure in order to give life to the constitutional mandate affording protection to labor and to conform to the need of protecting the

working class whose inferiority against the employer has always been earmarked by disadvantage.

## 2.1 Binding Effect of Compromise Agreement

The authority to compromise cannot lightly be presumed and should be established by evidence.

Section 9. Authority to Bind Party. - Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim.

Also not to be overlooked is Section 3 (c and d) of the NLRC 2005 Rules of Procedure quoted above. It requires the Labor Arbiter's approval of a compromise agreement over a case pending before the Labor Arbiter.

## 2.2 Quitclaim and Waivers

A deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled.

## 2.2a Final and Executory Judgment Cannot be Negotiated

The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

## 3. MOTION TO DISMISS

Section 6. Motion to Dismiss. - On or before the date set for the mandatory conciliation and mediation conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription, or forum shopping, shall be immediately resolved by the Labor Arbiter through a written order. An order denying the motion to dismiss, or suspending its resolution until the final determination of the case, is not appealable.

### 3.1 *Motu proprio* Dismissal of Complaint based on Prescription

### 3.2 *Res Judicata* as Reason to Dismiss Complaint

For a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: (a) it must be a final judgment or order; (b) the court rendering the same must have jurisdiction over the subject matter and over the parties; (c) it must be a judgment or order on the merits, and (d)

there must be between the two cases Identity of parties, subject matter, and causes of action.

## 3.3 No Dismissal of Complaint despite Death

## 3.4 Revival or Refiling of Dismissed Case

A dismissed case is not necessarily dead.

Section 16. Revival And Re-Opening Or Re-Filing Of Dismissed Case. - A party may file a motion to revive or re-open a case dismissed without prejudice, within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, his only remedy shall be to re-file the case in the arbitration branch of origin.

A complaint dismissed "without prejudice" simply means a tentative or temporary dismissal—the complaint may be revived through an appropriate motion.

## 4. SUBMISSION OF POSITION PAPERS AND REPLY

### 4.1 Determination of necessity of Hearing or Clarificatory Conference

Section 8. Determination of Necessity of Hearing or Clarificatory Conference. - Immediately after the submission by the parties of their position paper or reply, as the case may be, the Labor Arbiter shall, *motu proprio*, determine whether there is a need for a hearing or clarificatory conference. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

### 4.2 Role of the Labor Arbiter in hearing and clarificatory conference--

Section 9. Role of the Labor Arbiter in Hearing and Clarificatory Conference. - a) The Labor Arbiter shall take full control and personally conduct the hearing or clarificatory conference. Unless otherwise provided by law, the Labor Arbiter shall determine the order of presentation of evidence by the parties, subject to the requirements of due process. He shall examine the parties and their witnesses with respect to the matters at issue; and ask questions only for the purpose of clarifying points of law or fact involved in the case. He shall limit the presentation of evidence to matters relevant to the issue before him and necessary for a just and speedy disposition of the case.

b) In the cross-examination of witnesses, only relevant, pertinent and material questions necessary to enlighten the Labor Arbiter shall be allowed.

c) The Labor Arbiter shall make a written summary of the proceedings, including the substance of the evidence presented, in consultation with the parties. The written

summary shall be signed by the parties and shall form part of the records.

#### 4.3 Non-appearance of Parties; Postponement of Hearing and Clarificatory Conferences.

Section 10. Non-Appearance of Parties, and Postponement of Hearings and Clarificatory Conferences. - a) Non-appearance at a hearing or clarificatory conference by the complainant or petitioner, who was duly notified thereof, may be sufficient cause to dismiss the case without prejudice. Subject to Section 16 of this Rule, where proper justification is shown by proper motion to warrant the re-opening of the case, the Labor Arbiter shall call another hearing or clarificatory conference and continue the proceedings until the case is finally decided. The dismissal of the case for the second time due to the unjustified non-appearance of the complainant or petitioner, who was duly notified of the clarificatory hearing, shall be with prejudice.

b) In case the respondent fails to appear during the hearing or clarificatory conference despite due notice thereof, the complainant shall be allowed to present evidence ex-parte, without prejudice to cross-examination at the next hearing or conference. Two (2) successive non-appearances by the respondent during his scheduled presentation of evidence or opportunity to cross-examine witnesses, despite due notice thereof, shall be construed as a waiver on his part to present evidence or conduct cross-examination.

c) The parties and their counsels appearing before the Labor Arbiter shall be prepared for continuous hearing or clarificatory conference. No postponement or continuance shall be allowed by the Labor Arbiter, except upon meritorious grounds and subject always to the requirement of expeditious disposition of cases. In any case, the hearing or clarificatory conference shall be terminated within ninety (90) calendar days from the date of the initial hearing or conference.

d) Paragraph (c) of this Section notwithstanding, in cases involving overseas Filipino workers, the aggregate period for conducting the mandatory conciliation and mediation conference, including hearing on the merits or clarificatory conference, shall not exceed sixty (60) days, which shall be reckoned from the date of acquisition of jurisdiction by the Labor Arbiter over the person of the respondents.

### 5. SUBMISSION OF THE CASE FOR DECISION

#### 5.1 Position Papers as Basis of Decision

The affidavits in such case may take the place of their direct testimony. The labor arbiter may choose, if he deems it necessary, to set the case for hearing on the merits where witnesses may be presented and examined by the parties. In both instances, the burden of proving that the termination was for valid or authorized cause rests on the employer.

#### 5.2 Lack of Verification, Not Fatal

The lack of verification of the position paper-affidavit is a formal, rather than a substantial, defect. It is not fatal. It could be easily corrected by requiring an oath.

#### 5.3 Due Process: Opportunity to Be Heard

The simple meaning of procedural due process is that a party to a case must be given sufficient opportunity to be heard. Its very essence is to allow all parties opportunity to present evidence.

A formal or trial-type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.

#### 5.4 Inhibition

Section 12. Inhibition. - A Labor Arbiter may voluntarily inhibit himself from the resolution of a case and shall so state in writing the legal justifications therefor. Upon motion of a party, either on the ground of relationship within the fourth civil degree of consanguinity or affinity with the adverse party or counsel, or on question of impartiality, the Labor Arbiter may inhibit himself from further hearing and deciding the case. Such motion shall be resolved within five (5) days from the filing thereof. An order denying or granting a motion for inhibition is unappealable.

#### 5.5 Due Process Includes Impartiality of the Appeal Body

In addition, administrative due process includes (a) the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.

It is self-evident from the ruling case law that the officer who reviews a case on appeal should not be the same person whose decision is the subject of review. Thus, we have ruled that "the reviewing officer must perforce be other than the officer whose decision is under review.

### 6. SUSPENSION OF PROCEEDINGS

To allow labor cases to proceed would clearly defeat the purpose of the automatic stay and severely

encumber the management committee's time and resources.

## **7. FILING AND SERVICE OF PLEADINGS AND DECISIONS**

Section 5. Filing and Service of Pleadings. - All pleadings in connection with the case shall be filed with the appropriate docketing unit of the Regional Arbitration Branch or the Commission, as the case maybe.

The party filing the pleadings shall serve the opposing parties with a copy thereof and its supporting documents in the manner provided for in these Rules with proof of service thereof.

### **7.1 Service of Notice and Resolutions**

Section 6. Service of Notices and Resolutions. - a) Notices or summons and copies of orders, shall be served on the parties to the case personally by the Bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; Provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail; Provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; Provided finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as may be practicable, which shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended.

For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

b) The Bailiff or officer serving the notice, order, resolution or decision shall submit his return within two (2) days from date of service thereof, stating legibly in his return his name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail, the Bailiff or officer shall write in the return, the names of persons served and the date of mailing of the resolution or decision. If no service was effected, the service officer shall state the reason therefor in the return.

### **7.2 Proof and Completeness of Service**

Section 7. Proof and Completeness of Service. - The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.

Section 4, Rule 13 of the Rules of Court which is supplementary to the rules of the NLRC, provides as follows:

Section 4. Personal Service. — Service of the papers may be made by delivering personally a copy to the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or attorney's residence, if known, with a person of sufficient discretion to receive the same.

## **8. RESOLUTION OF DOUBT IN LAW OR EVIDENCE**

It is now a familiar rule that doubt as to the interpretation of labor laws and regulations has to be resolved in favor of labor. This precept is etched in the Labor Code (Art. 4) and, in similar tenor, the Civil Code (Art. 1702).

But this precept is not limited to interpretation of legal provisions. It extends likewise to doubts about the evidence of the disputants.

## **9. DECISION OF LABOR ARBITER**

Section 13. Period to Decide Case. - The Labor Arbiter shall render his decision within thirty (30) calendar days, without extension, after the submission of the case by the parties for decision, even in the absence of stenographic notes; Provided however, that cases involving overseas Filipino workers shall be decided within ninety (90) calendar days after the filing of the complaint which shall commence to run upon acquisition by the Labor Arbiter of jurisdiction over the respondents.

### **9.1 Contents of Decisions**

Section 14. Contents of Decisions. - The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: a) facts of the case; b) issues involved; c) applicable laws or rules; d) conclusions and the reasons therefor; and e) specific remedy or relief granted. In cases involving monetary awards, the decisions or orders of the Labor Arbiter shall contain the amount awarded.

In case the decision of the Labor Arbiter includes an order of reinstatement, it shall likewise contain: a) a statement that the reinstatement aspect is immediately executory; and b) a directive for the employer to submit a report of compliance within ten (10) calendar days from receipt of the said decision.

### **9.2 No Motions for Reconsideration and Petition for Relief from Judgment**

Section 15. Motions for Reconsideration and Petitions for Relief from Judgment. - No motions for reconsideration or petitions for relief from judgment of any decision,

resolution or order of a Labor Arbiter shall be allowed. However, when one such motion for reconsideration is filed, it shall be treated as an appeal provided that it complies with the requirements for perfecting an appeal. In the case of a petition for relief from judgment, the Labor Arbiter shall elevate the case to the Commission for disposition.

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#### Art. 222. Appearances and Fees.

a. Non-lawyers may appear before the Commission or any Labor Arbiter only:

1. If they represent themselves; or
2. If they represent their organization or members thereof.

b. No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining agreement shall be imposed on any individual member of the contracting union: Provided, However, that attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void. (As amended by Presidential Decree No. 1691, May 1, 1980)

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### 1. APPEARANCE OF NON-LAWYERS

Section 8. Appearances. - b) A non-lawyer may appear as counsel in any of the proceedings before the Labor Arbiter or Commission only under the following conditions:

- (1) he represents himself as party to the case;
- (2) he represents a legitimate labor organization, as defined under Article 212 and 242 of the Labor Code, as amended, which is a party to the case: Provided, that he presents: (i) a certification from the Bureau of Labor Relations (BLR) or Regional Office of the Department of Labor and Employment attesting that the organization he represents is duly registered and listed in the roster of legitimate labor organizations; (ii) a verified certification issued by the secretary and attested to by the president of the said organization stating that he is authorized to represent the said organization in the said case; and (iii) a copy of the resolution of the board of directors of the said organization granting him such authority;
- (3) he represents a member or members of a legitimate labor organization that is existing within the employer's establishment, who are parties to the case: Provided, that he presents: (i) a verified certification attesting that he is authorized by such member or members to represent them in the case; and (ii) a verified certification issued by the secretary and attested to by the president of the said organization stating that the person or persons he is representing are members of their organization which is existing in the employer's establishment;

### LABOR RELATIONS

(4) he is a duly-accredited member of any legal aid office recognized by the Department of Justice or Integrated Bar of the Philippines: Provided, that he (i) presents proof of his accreditation; and (ii) represents a party to the case;

(5) he is the owner or president of a corporation or establishment which is a party to the case: Provided, that he presents: (i) a verified certification attesting that he is authorized to represent said corporation or establishment; and (ii) a copy of the resolution of the board of directors of said corporation, or other similar resolution or instrument issued by said establishment, granting him such authority.

### 2. CHANGE OF LAWYER

No substitution of attorneys will be allowed unless the following requisites concur:

- 1) there must be filed a written application for substitution;
- 2) there must be filed the written consent of the client to the substitution;
- 3) there must be filed the written consent of the attorney to be substituted, if such consent can be obtained;
- 4) in case such written consent cannot be procured, there must be filed with the application for substitution, proof of the service of notice of such motion in the manner required by the rules, on the attorney to be substituted.

### 3. AUTHORITY TO BIND PARTY

Section 9. Authority to Bind Party. - Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim.

### 4. ATTORNEY'S FEE

The purpose of the provision is to prevent imposition on the workers of the duty to individually contribute their respective shares in the fee to be paid the attorney for his services on behalf of the union in its negotiations with the management. The obligation to pay the attorney's fees belongs to the union and cannot be shunted to the workers as their direct responsibility.

#### 4.1 Negotiation Fee

The 105 negotiation fee which covers attorney's fees, agency fee, and the like is based on the amount of backwages receivable under the CBA which is beyond what the law grants.

#### 4.2 For Services Rendered by Union Officers

Article 222 (b) prohibits attorney's fees, negotiations fees and similar charges arising out of the conclusion of a collective bargaining agreement from being imposed on any individual union member. The collection of the special assessment partly for the payment for services rendered by union officers, consultants and others may not be in the category of "attorney's fees or negotiations fees." But there is no question that it is an exaction which falls within the category of a "similar charge," and, therefore, within the coverage of the prohibition in the aforementioned article.

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### Chapter III APPEAL

Art. 223. Appeal. Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- a. If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- c. If made purely on questions of law; and
- d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose

reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders. (As amended by Section 12, Republic Act No. 6715, March 21, 1989)

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### 1. NO MOTION FOR RECONSIDERATION OF LABOR ARBITER'S DECISION

If any grounds mentioned in this Article exists, the losing party may appeal the Labor Arbiter's decision to the NLRC within ten (10) days from receipt of the decision.

#### 1.1 Final Decision Cannot Be Amended

If not appealed on time, the Labor Arbiter's decision becomes final and cannot be amended.

The perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executor, thus depriving the appellate court of jurisdiction to alter the final judgment, much less entertain the appeal.

### 2. PERIOD TO APPEAL FROM LABOR ARBITER

#### 2.1 Ten Calendar Days

A period of ten (10) days from receipt of any order is granted to either or to both parties involved to appeal to the National Labor Relations Commission.

After mature and careful deliberation, We have arrived at the conclusion that the shortened period of ten (10) days fixed by Article 223 contemplates calendar days and not working days. We are persuaded to this conclusion, if only because We believe that it is precisely in the interest of labor that the law has commanded that labor cases be promptly, if not peremptorily, dispose of.

This Court reiterates the doctrine enunciated in said case that the 10-day period provided in Art. 223 of the Labor Code refers to 10 calendar days and not 10 working days. This means that Saturdays, Sundays and Legal Holidays are not to be excluded, but included, in counting the 10-day period. This is in line with the objective of the law for speedy disposition of labor cases with the end in view of protecting the interests of the working man.

## 2.2 Ten-Calendar-Day Rule Not Applicable Prior to Vir-Jen Case

## 2.3 Under the 2005 NLRC Rules of Procedure

Section 1. Periods of Appeal. - Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions, resolutions or orders of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

## 2.4 Date of Receipt by Mail

The rule is that service by registered mail is complete either upon actual receipt by the addressee or at the end of five (5) days, if he does not claim it within five (5) days from the first notice of the postmaster. (Rule 13, §8) The purpose is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure.

## 2.5 Failure to Give Copy of Appeal to Adverse Party Within Ten Days

The failure to give copy of appeal to the appellee within ten (10) days is not fatal if the appellee was not prejudiced by the delay in the service of said copy of appeal.

## 2.6 No Extension of Period

Section 1. Periods of Appeal. - No motion or request for extension of the period within which to perfect an appeal shall be allowed.

## 2.7 Periods Generally Mandatory

Such periods are imposed with a view to prevent needless delays and to ensure the orderly and speedy discharge of judicial business. Strict compliance with such rule is both mandatory and imperative.

## 3. GROUNDS OF APPEAL

Section 2. Grounds. - The appeal may be entertained only on any of the following grounds:

- a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director;
- b) If the decision, resolution or order was secured through fraud or coercion, including graft and corruption;
- c) If made purely on questions of law; and/or
- d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

## 4. WHERE TO FILE APPEAL

Section 3. Where Filed. - The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

## 5. REQUISITES FOR PERFECTION OF APPEAL

Section 4. requisites For Perfection Of Appeal. - a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period for perfecting an appeal.

c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his answer or reply within the said period may be construed as a waiver on his part to file the same.

d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

## 6. FRIVOLOUS APPEAL

Section 11, Rule VI of the NLRC Rules of Procedure empowers not only the Commission but also the Labor Arbiter to impose reasonable penalties,

including fines and censures, upon a party for filing a frivolous appeal. This implies that even when the appeal is still with the Labor-Arbiter, and not yet transmitted to the Commission, the former may already find it frivolous and, there and then, terminate that appeal.

#### 6.1 Unverified Letter Not Proper Appeal

### 7. PAYMENT OF APPEAL FEES

Section 5. Appeal Fee. - The appellant shall pay an appeal fee of One Hundred Fifty Pesos (P150.00) to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

The failure to pay the appeal docketing fee confers a directory and not a mandatory power to dismiss an appeal, and such power must be exercised with a sound discretion and with a great deal of circumspection considering all attendant circumstances.

### 8. APPEAL BOND; FILING ON TIME; EXCEPTIONS

Section 6. Bond. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

- a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.
- b) an indemnity agreement between the employer-appellant and bonding company;
- c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;
- d) a certificate of authority from the Insurance Commission;
- e) certificate of registration from the Securities and Exchange Commission;
- f) certificate of authority to transact surety business from the Office of the President;

g) certificate of accreditation and authority from the Supreme Court; and

h) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure or cite in contempt the responsible parties and their counsels, or subject them to reasonable fine or penalty.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

The bond is *sine qua non* to the perfection of appeal from the labor arbiter's monetary award.

#### 8.1 Motion to Reduce Bond under NLRC Rules

A motion to reduce the amount of the bond may be entertained, but, meantime, a bond in reasonable amount must be filed anyway.

#### 8.2 No Bond, No Appeal Perfected

The lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be considered completed.

#### 8.2a Relaxing the Ten-day Period

8.3 No Distinction Between "Filing" and "Perfection" of Appeal; Star Angel Decision, Not "Venerable"

#### 8.4 Amount of Appeal Bond Excludes Damages

An appeal is deemed perfected upon the posting of the bond equivalent to the monetary award *exclusive of moral and exemplary damages as well as attorney's fees.*

### 8.5 Is Property Bond Acceptable? YES.

### 8.6 Supersedeas Bond

Substantial justice demands that it fulfill its commitment to post the bond in order to stay execution of the judgment against it pending resolution of the appeal therefrom. This consideration cannot be outweighed by the claim that procedural errors were committed by the Labor Arbiter.

## 9. RECORDS AND TRANSMITTAL

Section 7. Records of Case on Appeal. - The records of a case shall have a corresponding index of its contents which shall include the following: a) the original copy of the complaint; b) other pleadings and motions; c) minutes of the proceedings, notices, transcripts of stenographic notes, if any; d) decisions, orders, and resolutions as well as proof of service thereof, if available; e) the computation of the award; f) memorandum of appeal and the reply or answer thereto, if any, and proof of service, if available; g) official receipt of the appeal fee; and h) the appeal bond, if any.

The records shall be chronologically arranged and paged prominently.

Section 8. Transmittal Of Records Of Case On Appeal. - Within forty-eight (48) hours after the filing of the appeal, the records of the case shall be transmitted by the Regional Arbitration Branch or office of origin to the Commission.

## 10. EFFECT OF APPEAL OF ARBITER'S DECISION

Section 9. Perfection Of Appeal; Effect. - Without prejudice to immediate reinstatement pending appeal under Section 6 of Rule XI, once an appeal is filed, the Labor Arbiter loses jurisdiction over the case. All pleadings and motions pertaining to the appealed case shall thereafter be addressed to and filed with the Commission.

### 10.1 Execution or Reinstatement Pending Appeal

Section 6. Execution of Reinstatement Pending Appeal. - In case the decision includes an order of reinstatement, and the employer disobeys the directive under the second paragraph of Section 14 of Rule V or refuses to reinstate the dismissed employee, the Labor Arbiter shall immediately issue writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement at the rate specified in the decision.

The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same. If he disobeys the writ, such employer or person may be cited for contempt in accordance with Rule IX.

### 10.2 Effect of Perfection of Appeal on Execution

Section 9. Effect of Perfection of Appeal on Execution. - The perfection of an appeal shall stay the execution of the decision of the Labor Arbiter on appeal, except execution for reinstatement pending appeal.

## 11. FRIVOLOUS OR DILATORY APPEALS

Section 10. Frivolous or Dilatory Appeals. - No appeal from an interlocutory order shall be entertained. To discourage frivolous or dilatory appeals, including those taken from interlocutory orders, the Commission may censure or cite in contempt the erring parties and their counsels, or subject them to reasonable fine or penalty.

## 12. APPEALS FROM DECISION OF OTHER AGENCIES

Section 11. Appeals from Decision of Other Agencies. - The Rules provided herein governing appeals from the decisions or orders of Labor Arbiters shall apply to appeals to the Commission from decisions or orders of the other offices or agencies appealable to the Commission according to law.

## 13. PROCEEDING BEFORE THE COMMISSION

Section 2. Composition and Internal Functions of the Commission En Banc and Its Divisions. - b) Commission En Banc. - The Commission shall sit en banc only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before its Divisions and Regional Arbitration Branches, and for the formulation of policies affecting its administration and operations. It may, on temporary or emergency basis, allow cases within the jurisdiction of any Division to be heard by any other Division whose docket allows the additional workload and such transfer will not expose litigants to unnecessary additional expense.

c) Divisions. - Unless otherwise provided by law, the Commission shall exercise its adjudicatory and all other powers, functions and duties through its five (5) Divisions. Each Division shall consist of one member from the public sector who shall act as the Presiding Commissioner and one member each from the workers and employers sectors, respectively.

Section 4. Commission En Banc Session, Quorum and Vote. - c) Division. - The presence of at least two (2) Commissioners of a Division shall constitute a quorum. The concurrence of two (2) Commissioners of a Division shall be necessary for the pronouncement of a judgment or resolution.

Whenever the required membership in a Division is not complete and the concurrence of two (2) Commissioners to arrive at a judgment or resolution cannot be obtained, the Chairman shall designate such number of additional Commissioners from the other Divisions as may be necessary from the same sector.

d) Role of Chairman in the Division. - The Chairman of the Commission may convene and preside over the session of any Division to consider any case pending before it and participate in its deliberations, if in his judgment, his presence therein will best serve the interests of labor justice. He shall not however, participate in the voting by the Division, except when he is acting as Presiding Commissioner of the Division in the absence of the regular Presiding Commissioner

### 13.1 Issues on Appeal

Section 4(d) Rule VI of the NLRC Rules of Procedure, the Commission shall, in cases of perfected appeals, limit itself to reviewing those issues which were raised on appeal.

### 13.2 Technical Rules Not Binding

Section 10. Technical Rules Not Binding. - The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

In any proceeding before the Commission, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner to exercise complete control of the proceedings at all stages.

### 13.2a Evidence Submitted on Appeal to NLRC

The settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. In fact, labor officials are mandated by the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

### 13.3 Conciliation/Mediation

Section 11. Conciliation and Mediation. - In the exercise of its exclusive, original and appellate jurisdiction, the Commission may exert all efforts towards the amicable settlement of a labor dispute.

The settlement of cases on appeal, to be valid and binding between the parties, shall be made before the Commissioner or his authorized representative.

### 13.4 Consultation

Section 5. Consultation. - The conclusions of a Division on any case or matter submitted to it for decision shall be reached in consultation before the case is assigned to a member for the writing of the opinion. It shall be mandatory for the Division to meet for the purpose of the consultation ordained herein.

A certification to this effect signed by the Presiding Commissioner of the Division shall be issued and a copy thereof attached to the record of the case and served upon the parties.

### 13.5 Dissenting Opinion

Section 6. Dissenting Opinion. - Should any member of a Division indicate his intention to write a dissenting opinion, he may file the same within the period prescribed for deciding or resolving the appeal; otherwise, such written dissenting opinion shall not be considered part of the records of the case.

### 13.5 Inhibition

Section 7. Inhibition. - No motion to inhibit the entire Division of the Commission shall be entertained. However, any Commissioner may inhibit himself from the consideration and resolution of any case or matter before the Division and shall so state in writing the legal or justifiable grounds therefor. In the event that a member inhibits himself, the case shall be raffled by the Executive Clerk or Deputy Executive Clerk to either of the two (2) remaining Commissioners. In case two (2) Commissioners in a Division inhibit themselves in a case or matter before it, the Chairman shall, as far as practicable, appoint two (2) Commissioners from other Divisions representing the sector of the Commissioners who inhibited themselves.

## 14. FORM OF DECISION, RESOLUTION AND ORDER

Section 13. Form of Decision, Resolution and Order. - The decision, resolution and order of the Commission shall state clearly and distinctly the findings of facts, issues, and conclusions of law on which it is based, and the relief granted, if any. If the decision, resolution or order involves monetary awards, the same shall contain the specific amount awarded as of the date the decision is rendered.

Under Art. 223, the Commission shall decide II cases within twenty calendar days from receipt of the answer of the appellee.

The decision of the Commission shall be final and executory after ten calendar days from receipt thereof by the parties.

### 14.1 Reasoned Reversal

While it is within respondent Commission's competence, as an appellate agency reviewing decisions of Labor Arbiters, to disagree with and set aside the latter's findings, it stands to reason that it should state an acceptable cause therefor. It would otherwise be a whimsical, capricious, oppressive, illogical, unreasonable exercise of quasi-judicial prerogative, subject to invalidation by the extraordinary writ of *certiorari*.

14.2 Extended Meaning of “Appeal” under Article 223; NLRC May Issue Writ of *Certiorari*

## 15. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT

Section 14. Finality Of Decision Of The Commission And Entry Of Judgment. - a) Finality of the Decisions, Resolutions or Orders of the Commission. - Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties.

b) Entry of Judgment. - Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties.

## 16. MOTION FOR RECONSIDERATION

Section 15. MOTIONS FOR RECONSIDERATION. - Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

Should a motion for reconsideration be entertained pursuant to this section, the resolution shall be executory after ten (10) calendar days from receipt thereof.

The NLRC Rules does not allow a second motion for reconsideration. The NLRC abuses its discretion when it violates its own rules by entertaining such a motion.

A supplemental motion for reconsideration filed outside the 10-day appeal period cannot be entertained.

16.1 Party Who Failed to Appeal on Time From Decision of Labor Arbiter May Still File Motion for Reconsideration of NLRC Decision

It is also an accepted postulate that issues not raised in the lower court or the labor arbiter may not be raised for the first time on appeal.

## 17. CERTIFIED CASES

## 18. APPEAL FROM THE NATIONAL LABOR RELATIONS COMMISSION

18.1 Review by *Certiorari* by the Court of Appeals; St. Martin case

In a nutshell, the St. Martin precedent states:

(1) the way to review NLRC decisions is through the special civil action of *certiorari* under Rule 65;

(2) the jurisdiction over such action belongs to both the Supreme Court and the Court of Appeals; but

(3) in line with the doctrine n hierarchy of courts, the petition should be initially presented to the lower of the two courts, that is, the Court of Appeals.

## 18.2 When and Where to File Petition

Section 4. When and where petition filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (4a) (Bar Matter No. 803, 21 July 1998; A.M. No. 00-2-03-SC)

## 18.2a One Day Late

The 60-day period must carefully be observed.

Reglementary periods are indispensable interdictions against needless delays.

## 18.2b Certified True Copy of NLRC Decision

Numerous decisions issued by this Court emphasize that in appeals under Rule 45 and in original civil actions for *certiorari* under Rule 65 in relation to Rules 46 and 56, what is required to be certified is the copy of the questioned judgment, final order or resolution. Since the LA's Decision was not the

questioned ruling, it did not have to be certified. What had to be certified was the NLRC Decision.

### 18.3 Effect on NLRC's Decision

Section 10. Effect of Petition for *Certiorari* on Execution. - A petition for *certiorari* with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

### 18.4 Appeal to Labor Secretary Abolished

Presidential Decree No. 1391 amended Article 223 and abolished appeals to the Secretary of Labor.

### 18.5 Grounds for *Certiorari*

A party may seasonably avail of the special civil action for *certiorari*, where the tribunal, board or officer exercising judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion, and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

In spite of statutory provisions making 'final' the decisions of certain administrative agencies, the Supreme Court [or Court of Appeals] using the power of judicial review, has taken cognizance of petitions questioning the decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law were brought to its attention.

The writ of *certiorari* will issue to undo those acts, and do justice to the aggrieved party.

### 18.6 "Grave Abuse of Discretion"

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

### 18.7 Sole Office of *Certiorari*

The appellate court's jurisdiction to review a decision of the NLRC in a petition for *certiorari* is confined to issues of jurisdiction or grave abuse of discretion. An extraordinary remedy, a petition for *certiorari* is available only and restrictively in truly exceptional cases. The sole office of the writ of *certiorari* is the

correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. A party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of *certiorari* will lie.

### 18.8 Appeal from OSEC to CA; St. Martin Ruling Applies

Though appeals from the NLRC to the Secretary of Labor were eliminated, presently there are several instances in the Labor Code and its implementing and related rules where an appeal can be filed with the Office of the Secretary of Labor or the Secretary of Labor issues a ruling, to wit:

(1) Under the Rules and Regulations Governing Recruitment and Placement Agencies for Local Employment 14 dated June 5, 1997 superseding certain provisions of Book I (Pre-Employment) of the implementing rules, the decision of the Regional Director on complaints against agencies is appealable to the Secretary of Labor within ten (10) working days from receipt of a copy of the order, on specified grounds, whose decision shall be final and unappealable.

(2) Art. 128 of the Labor Code provides that an order issued by the duly authorized representative of the Secretary of Labor in labor standards cases pursuant to his visatorial and enforcement power under said article may be appealed to the Secretary of Labor.

Sec. 2 in relation to Section 3 (a), Rule X, Book III (Conditions of Employment) of the implementing rules gives the Regional Director the power to order and administer compliance with the labor standards provisions of the Code and other labor legislation. Section 4 gives the Secretary the power to review the order of the Regional Director, and the Secretary's decision shall be final and executory.

Sec. 1, Rule IV (Appeals) of the Rules on the Disposition of Labor Standards Cases in the Regional Offices dated September 16, 1987 15 provides that the order of the Regional Director in labor standards cases shall be final and executory unless appealed to the Secretary of Labor.

Sec. 5, Rule V (Execution) provides that the decisions, orders or resolutions of the Secretary of Labor and Employment shall become final and executory after ten (10) calendar days from receipt of the case records. The filing of a petition for *certiorari* before the Supreme Court shall not stay the execution of the order or decision unless

the aggrieved party secures a temporary restraining order from the Court within fifteen (15) calendar days from the date of finality of the order or decision or posts a supersedeas bond.

Sec. 6 of Rule VI (Health and Safety Cases) provides that the Secretary of Labor at his own initiative or upon the request of the employer and/or employee may review the order of the Regional Director in occupational health and safety cases. The Secretary's order shall be final and executory.

(2) Art. 236 provides that the decision of the Labor Relations Division in the regional office denying an applicant labor organization, association or group of unions or workers' application for registration may be appealed by the applicant union to the Bureau of Labor Relations within ten (10) days from receipt of notice thereof.

Sec. 4, Rule V, Book V (Labor Relations), as amended by Department Order No. 9 dated May 1, 1997 16 provides that the decision of the Regional Office denying the application for registration of a workers association whose place of operation is confined to one regional jurisdiction, or the Bureau of Labor Relations denying the registration of a federation, national or industry union or trade union center may be appealed to the Bureau or the Secretary as the case may be who shall decide the appeal within twenty (20) calendar days from receipt of the records of the case.

(3) Art. 238 provides that the certificate of registration of any legitimate organization shall be canceled by the Bureau of Labor Relations if it has reason to believe, after due hearing, that the said labor organization no longer meets one or more of the requirements prescribed by law.

Sec. 4, Rule VIII, Book V provides that the decision of the Regional Office or the Director of the Bureau of Labor Relations may be appealed within ten (10) days from receipt thereof by the aggrieved party to the Director of the Bureau or the Secretary of Labor, as the case may be, whose decision shall be final and executory.

(4) Art. 259 provides that any party to a certification election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor who shall decide the same within fifteen (15) calendar days.

Sec. 12, Rule XI, Book V provides that the decision of the Med-Arbiter on the petition for certification election may be appealed to the Secretary.

Sec. 15, Rule XI, Book V provides that the decision of the Secretary of Labor on an appeal from the Med-Arbiter's decision on a petition for certification election shall be final and executory. The implementation of the decision of the Secretary affirming the decision to conduct a certification election shall not be stayed unless restrained by the appropriate court.

Sec. 15, Rule XII, Book V provides that the decision of the Med-Arbiter on the results of the certification election may be appealed to the Secretary within ten (10) days from receipt by the parties of a copy thereof, whose decision shall be final and executory.

Sec. 7, Rule XVIII (Administration of Trade Union Funds and Actions Arising Therefrom), Book V provides that the decision of the Bureau in complaints filed directly with said office pertaining to administration of trade union funds may be appealed to the Secretary of Labor within ten (10) days from receipt of the parties of a copy thereof.

Sec. 1, Rule XXIV (Execution of Decisions, Awards, or Orders), Book V provides that the decision of the Secretary of Labor shall be final and executory after ten (10) calendar days from receipt thereof by the parties unless otherwise specifically provided for in Book V.

(5) Art. 263 provides that the Secretary of Labor shall decide or resolve the labor dispute over which he assumed jurisdiction within thirty (30) days from the date of the assumption of jurisdiction. His decision shall be final and executory ten (10) calendar days after receipt thereof by the parties.

#### 18.9 Exhaustion of Administrative Remedies; Motion for Reconsideration Required

The remedy of an aggrieved party in a decision or resolution of the Secretary of the DOLE is to timely file a motion for reconsideration as a precondition of or any further or subsequent remedy, and then seasonably file a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

Petitioner's failure to file its motion for reconsideration seasonably is fatal to its cause and in effect, renders final and executor the Resolution of the Secretary of the DOLE.

A petition for *certiorari* should be preceded by exhaustion of administrative remedies.

When an administrative remedy is provided by law, relief must be sought by first exhausting that remedy before seeking judicial intervention. Failure to do so is fatal.

#### 18.10 Exceptions

It has been held that the requirement of a motion for reconsideration may be dispensed with in the following instances: (1) when the issue raised is one purely of law; (2) where public interest is involved; (3) in cases of urgency; and (4) where special circumstances warrant immediate or more direct action. On the other hand, among the accepted exceptions to the rule on exhaustion of administrative remedies are: (1) where the question in dispute is purely a legal one; and (2) where the

controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction.

## 19. CERTIFICATION OF NON-FORUM SHOPPING

Forum shopping is the act or attempt to present the same dispute to different adjudicators in the hope of securing a favourable ruling.

In relation thereto, Rule 7, Section 5 of the Rules of Court provides:

Certification against forum shopping.—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:

(a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;

(b) if there is such other pending action or claim, a complete statement of the present status thereof; and

(c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

### 19.1 Certification of Nonforum Shopping Must be Made by Petitioner

The certification must be made by petitioner himself and not by counsel since it is petitioner who is in the best position to know whether he has previously commenced any similar action involving the same issues in any other tribunal or agency.

## 20. DISPOSITION BY THE COURT OF APPEALS

### 20.1 Remand

### 20.2 Dismissal of Appeal

### 20.3 Findings of Facts Generally Final

As a general rule, the findings of administrative agencies are accorded not only respect but even finality.

The doctrine that the findings of facts of the NLRC are binding on this Court if supported by substantial evidence is well established. However, in the same way that the findings of facts unsupported by substantial and credible evidence do not bind the Supreme Court [or Court of Appeals], neither will we uphold erroneous conclusions of the NLRC when we find that the latter committed grave abuse of discretion in reversing the decision of the labor arbiter, especially if the findings of NLRC based on practically the same facts established in the hearings before the arbiter are speculative and conjectural

### 20.4 Exceptions:

(1) when the findings are grounded entirely on speculation, surmises, or conjectures;

(2) when the inference made is manifestly mistaken, absurd, or impossible;

(3) when there is grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of facts are conflicting;

(6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7) when the findings are contrary to the trial court;

(8) when the findings are conclusions without citation of specific evidence on which they are based;

(9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

## 20.5 Examples: Some Findings of Facts Reversed

**21. FROM CA TO SC: ONLY QUESTION OF LAW, RULE 45**

It must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration.

The special civil action of *certiorari* under Rule 65 cannot be used as a substitute for an appeal under Rule 45 that the petitioner already lost.

## Art. 224. Execution of decisions, orders or awards.

a. The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or Med-Arbiter or Voluntary Arbitrator may, *motu proprio* or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or regional director, the Commission, the Labor Arbiter or med-arbiter, or voluntary arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsels of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

b. The Secretary of Labor and Employment, and the Chairman of the Commission may designate special sheriffs and take any measure under existing laws to ensure compliance with their decisions, orders or awards and those of the Labor Arbiters and voluntary arbitrators, including the imposition of administrative fines which shall not be less than P500.00 nor more than P10,000.00. (As amended by Section 13, Republic Act No. 6715, March 21, 1989)

**1. EXECUTION**

A writ of "Execution" is an order to carry out, to implement, a final judgment.

Under Art. 224, a writ of execution may be issued by the following officials for the final decisions, order or awards promulgated by them:

a) Secretary of Labor and Employment;

b) any Regional Director;

c) the Commission;

d) the Labor Arbiter;

e) the Med-Arbiter;

f) the Voluntary Arbitrator; or

g) the Panel of Arbitrators.

The writ of execution on a judgment may be issued *motu proprio* or on motion of any interested party within five (5) years from the date it becomes final and executory

Execution is done through the regular or special sheriff. But alternatively, the Secretary, the Commission, any Labor Arbiter, the Regional Director or the Director of the Bureau of Labor Relations in appropriate cases may depute the Philippine National Police or any law enforcement agencies in the enforcement of final awards, orders or decisions.

1.1 Article 224 is Execution, Not Appeal, Procedure

1.2 Both Party and Counsel Should Be Notified

**2. EXECUTION UPON FINALITY OF DECISION OR ORDER**

Section 1. Execution Upon Finality of Decision or Order. -

a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that finally disposes of the action or proceedings after the parties and their counsels or authorized representatives are furnished with copies of the decision or order in accordance with these Rules, but only after the expiration of the period to appeal if no appeal has been filed, as shown by the certificate of finality. If an appeal has been filed, a writ of execution may be issued when there is an entry of judgment as provided for in Section 14 of Rule VII.

b) No motion for execution shall be entertained nor a writ of execution be issued unless the Labor Arbiter or the Commission is in possession of the records of the case which shall include an entry of judgment if the case was appealed; except that, as provided for in Section 14 of Rule V and Section 6 of this Rule, and in those cases where partial execution is allowed by law, the Labor Arbiter shall retain duplicate original copies of the decision to be implemented and proof of service thereof for the purpose of immediate enforcement.

Section 2. Pre-Execution Conference. - Within two (2) working days from receipt of a motion for the issuance of a writ of execution, and subject to Section 1, paragraph (b) of this Rule, the Labor Arbiter shall schedule a pre-execution conference or hearing to thresh out matters

relevant to execution, including the computation of the award.

Section 3. Form and Contents of a Writ of Execution. - The writ of execution must be issued in the name of the Republic of the Philippines signed by the Commission or Labor Arbiter requiring the Sheriff to execute the decision, order, or award of the Commission or Labor Arbiter, and must contain the dispositive portion thereof, the amount, if any, to be demanded, and all lawful fees to be collected from the losing party or any other person required by law to obey the same.

Section 4. Computation During Execution. - Where further computation of the award in the decision, resolution or order is necessary during the course of the execution proceedings, no writ of execution shall be issued until after the computation has been approved by the Labor Arbiter in an order issued after the parties have been duly notified and heard on the matter.

Section 5. Execution of Monetary Judgment. - a) Immediate payment on demand. - The Sheriff shall enforce a monetary judgment by demanding the immediate payment of the full amount stated in the writ of execution and all lawful fees from the losing party or any other person required by law to obey the same.

b) In the event of failure or refusal of the losing party to pay the judgment award, the Sheriff shall immediately proceed against the cash deposit or surety bond posted by the losing party, if any;

c) If the bonding company refuses to comply with the writ of execution, then its president and officers or authorized representatives shall be cited for contempt, and the bonding company shall be barred from transacting business with the Commission;

d) Should the cash deposit or surety bond be insufficient, or in case the surety bond cannot be proceeded against for any reason, the Sheriff shall, within five (5) days from demand, execute the monetary judgment by levying on the property, personal and real, of the losing party not exempt from execution, sufficient to cover the judgment award, which may be disposed of for value at a public auction to the highest bidder.

e) Proceeds of execution shall be deposited with the Cashier of the concerned Division or Regional Arbitration Branch, or with an authorized depository bank. Where payment is made in the form of a check, the same shall be payable to the Commission.

Section 7. Enforcement of Writ of Execution. - In executing a decision, resolution or order, the Sheriff, or other authorized officer acting as Sheriff of the Commission, shall be guided strictly by these Rules, and by the Manual on Execution of Judgment, which shall form part of these Rules. In the absence of applicable rules, the Rules of Court, as amended, shall be applied in a suppletory manner.

Section 8. Execution By Motion or By Independent Action. - A decision or order may be executed on motion within five (5) years from the date it becomes final and executory.

After the lapse of such period, the judgment shall become dormant, and may only be enforced by an independent action within a period of ten (10) years from date of its finality.

Section 10. Effect of Petition for Certiorari on Execution. - A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.

Section 11. Resolution of Motion to Quash. - The mere filing of a motion to quash shall not stay execution proceedings. A motion to quash shall be resolved by the Labor Arbiter within ten (10) working days from submission of said motion for resolution.

### **3. APPEAL ON THE EXECUTION OF DECISION; SUPERVENING EVENTS**

A judgment becomes final and executory by operation of law, not by judicial declaration. Accordingly, finality of judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected. In such a situation, the prevailing party is entitled as a matter of right to a writ of execution; and issuance thereof is a ministerial duty, compellable by mandamus.

### **4. GENERAL RULE: REGIONAL TRIAL COURT CANNOT ISSUE INJUNCTION AGAINST NLRC**

Precedents abound confirming the rule that said courts have no labor jurisdiction to act on labor cases or various incidents arising therefrom, including the execution of decisions, awards or orders. Jurisdiction to try and adjudicate such cases pertains exclusively to the proper labor official concerned under the Department of Labor and Employment. To hold otherwise is to sanction split jurisdiction which is obnoxious to the orderly administration of justice.

4.1 Execution Over Property Owned Only by Judgment Debtor; Remedies of Third Party Claimant; The Yupangco Case

A third party whose property has been levied upon by a sheriff to enforce a decision against a judgment debtor is afforded with several alternative remedies to protect its interests. The third party may avail himself of alternative remedies cumulatively, and one will not preclude the third party from availing himself of the other alternative remedies in the event he failed in the remedy first availed of.

Thus, a third party may avail himself of the following alternative remedies:

a) File a third party claim with the sheriff of the Labor Arbiter, and

b) If the third party claim is denied, the third party may appeal the denial to the NLRC.

Even if a third party claim was denied, a third party may still file a proper action with a competent court to recover ownership of the property illegally seized by the sheriff.

The right of a third-party claimant to file an independent action to vindicate his claim of ownership over the properties seized is reserved by Section 17 (now 16), Rule 39 of the Rules of Court.

The aforesaid remedies are nevertheless without prejudice to 'any proper action' that a third-party claimant may deem suitable to vindicate 'his claim to the property.

Quite obviously, too, this 'proper action' would have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim.

The remedies above mentioned are cumulative and may be resorted to by a third-party claimant independent of or separately from and without need of availing of the others.

#### 4.2 RTC Injunction against Labor Arbiter or NLRC, When Allowed

The regional trial court where the reinvincatory action is filed can issue an injunction or temporary restraining order against the execution ordered by a labor arbiter or the NLRC.

The general rule that no court has the power to interfere by injunction with the judgments or decrees of another court with concurrent or coordinate jurisdiction possessing equal power to grant injunctive relief, applies only when no third-party claimant is involved.

Jurisprudence is likewise replete with rulings that since the third-party claimant is not one of the parties to the action, he could not, strictly speaking, appeal from the order denying his claim, but should file a separate reinvincatory action against the execution creditor or the purchaser of the property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff.

#### 4.3 Third Party Claim

Section 12. Third Party Claim. - A third party claim shall be filed within five (5) days from the last day of posting or publication of the notice of execution sale; otherwise the claim shall be forever barred. The third party claimant shall execute an affidavit stating his title to the property or right to possession thereof with supporting evidence, and shall file the same with the Sheriff and the Commission or Labor Arbiter who issued the writ of execution. Upon receipt of the third party claim, all proceedings, with respect to the execution of the property subject of such claim, shall automatically be suspended. The Labor Arbiter who issued the writ may require the third party claimant to adduce additional evidence in support of his third party claim and to post a cash or surety bond equivalent to the amount of his claim, as provided for in Section 6 of Rule VI, without prejudice to the posting by the prevailing party of a supersedeas bond in an amount equivalent to that posted by the third party claimant. The Labor Arbiter shall resolve the propriety of such third party claim within ten (10) working days from submission of said claim for resolution.

#### 4.4 Simulated Sale, Void *Ab Initio*

A third-party claim on a levied property does not automatically prevent execution. When a third-party claim is filed, the sheriff is not bound to proceed with the levy of the property unless the judgment creditor or the latter's agent posts an indemnity bond against the claim. Where the bond is filed, the remedy of the third-party claimant is to file an independent reivindicatory action against the judgment creditor or the purchaser of the property at public auction.

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Art. 225. Contempt powers of the Secretary of Labor. In the exercise of his powers under this Code, the Secretary of Labor may hold any person in direct or indirect contempt and impose the appropriate penalties therefor.

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### **Title III BUREAU OF LABOR RELATIONS**

Art. 226. Bureau of Labor Relations. The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor, shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces, whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.

The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by

agreement of the parties. (As amended by Section 14, Republic Act No. 6715, March 21, 1989).

## 1. BLR JURISDICTION

The Bureau of Labor Relations (BLR) no longer handles "all" labor-management disputes; rather, its functions and jurisdiction are largely confined to union matters, collective bargaining registry, and labor education.

Section 16. Bureau of Labor Relations. - The Bureau of Labor Relations shall set policies, standards, and procedures on the registration and supervision of legitimate labor union activities including denial, cancellation and revocation of labor union permits. It shall also set policies, standards, and procedure relating to collective bargaining agreements, and the examination of financial records of accounts of labor organizations to determine compliance with relevant laws.

## 2. INTER-UNION AND INTRA-UNION DISPUTES; D.O. NO. 40-03

"Inter-Union Dispute" refers to any conflict between and among legitimate labor unions involving representation questions for purposes of collective bargaining or to any other conflict or dispute between legitimate labor unions.

"Intra-Union Dispute" refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or affiliation of union.

In inter/intra-union dispute the complaint may be filed by a union or union members; in a "related labor relations dispute" the complaint may be filed by a party-in-interest who is not necessarily a union or union member.

Whether the dispute be of the first or the second category, the complainant or petition, if it involves an independent union, a chartered local, or a worker's association, shall be filed with the DOLE Regional Office where the labor organization is registered. But if the complaint involves a federation or an industry/national union, it shall be filed with the BLR itself.

### 2.1 D.O. No. 40-03

The Order appears to aim the following specific objectives:

1. to simplify the formation and registration of unions, especially chartered locals
2. to simplify and expedite the holding of certification elections
3. to promote responsible unionism, particularly in administration of union funds
4. to authorize union merger, consolidation, and change of name
5. to authorize deregistration of collective bargaining agreements

### 2.2 Effect of Pendency

Section 3. Effects of the filing/pendency of inter/intra-union and other related labor relations disputes. - The rights, relationships and obligations of the parties litigants against each other and other parties-in-interest prior to the institution of the petition shall continue to remain during the pendency of the petition and until the date of finality of the decision rendered therein.

### 2.3 Appeal

Section 16. Appeal. - The decision of the Med-Arbitrator and Regional Director may be appealed to the Bureau by any of the parties within ten (10) days from receipt thereof, copy furnished the opposing party. The decision of the Bureau Director in the exercise of his/her original jurisdiction may be appealed to the Office of the Secretary by any party within the same period, copy furnished the opposing party.

The appeal shall be verified under oath and shall consist of a memorandum of appeal specifically stating the grounds relied upon by the appellant, with supporting arguments and evidence.

Section 17. Where to file appeal. - The memorandum of appeal shall be filed in the Regional Office or Bureau where the complaint or petition originated. Within twenty-four (24) hours from receipt of the memorandum of appeal, the Bureau or Regional Director shall cause the transmittal thereof together with the entire records of the case to the Office of the Secretary or the Bureau, as the case may be.

Section 18. Finality of Decision. - Where no appeal is filed within the ten-day period, the Bureau and Regional Director or Med-Arbitrator, as the case may be, shall enter the finality of the decision in the records of the case and cause the immediate implementation thereof.

Section 19. Period to reply. - A reply to the appeal may be filed by any party to the complaint or petition within ten (10) days from receipt of the memorandum of appeal. The reply shall be filed directly with the Bureau or the Office of the Secretary, as the case may be.

Section 20. Decision of the Bureau/Office of the Secretary. - The Bureau Director or the Secretary, as the case may be, shall have twenty (20) days from receipt of the entire records of the case within which to decide the appeal. The filing of the memorandum of appeal from the decision of the Med-Arbitrator or Regional Director and Bureau Director stays the implementation of the assailed decision.

The Bureau or Office of the Secretary may call the parties to a clarificatory hearing in aid of its appellate jurisdiction.

Section 21. Finality of Decision of Bureau/Office of the Secretary. - The decision of the Bureau or the Office of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties, unless a motion for its reconsideration is filed by any party therein within the same period. Only one (1) motion for reconsideration of the decision of the Bureau or the Office of the Secretary in the exercise of their appellate jurisdiction shall be allowed.

Section 22. Execution of decision. - The decision of the Med-Arbitrator and Regional Director shall automatically be stayed pending appeal with the Bureau. The decision of the Bureau in the exercise of its appellate jurisdiction shall be immediately executory upon issuance of entry of final judgment.

The decision of the Bureau in the exercise of its original jurisdiction shall automatically be stayed pending appeal with the Office of the Secretary. The decision of the Office of the Secretary shall be immediately executory upon issuance of entry of final judgment.

### 3. EXTENT OF BLR AUTHORITY

In the interest of industrial peace and for the promotion of the salutary constitutional objectives of social justice and protection to labor, the competence of the governmental entrusted with supervision over disputes involving employers and employees as well as "inter-union and intra-union conflicts," is broad and expensive.

### 4. KATARUNGANG PAMBARANGAY, NOT APPLICABLE TO LABOR DISPUTES

Presidential Decree No. 1508 applies only to courts of justice and not to labor relations commissions or labor arbitrators' offices.

*Note:* Conciliation-mediation is now done by NCMV not BLR.

Instead of simplifying labor proceedings designed at expeditious settlement or referral to the proper court or office to decide it finally, the position taken by the petitioner would only duplicate the conciliation proceedings and unduly delay the disposition of the labor case.

Art. 227. Compromise agreements. Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court, shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion.

### 1. COMPROMISE AGREEMENTS

The assistance of the BLR or the regional office of the DOLE in the execution of a compromise settlement is a basic requirement; without it, there can be no valid compromise settlement.

The NLRC or any court shall not assume jurisdiction over issues involved therein, except:

a) in case of noncompliance with the compromise agreement, or

b) if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion.

Along the same line, the Court reiterated in 2005:

There are legitimate waivers that represent a voluntary and reasonable settlement of a worker's claim which should be respected by the courts as the law between the parties. Indeed, not all quitclaims are per se invalid or against public policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their faces; in these cases, the law will step in to annul the questionable transactions. Such quitclaims are regarded as ineffective to bar the workers from claiming the full measure of their legal rights.

### 2. FORMAL REQUIREMENTS OF COMPROMISE AGREEMENT

Compromise agreements involving labor standards cases must be reduced to writing and signed in the presence of the Regional Director or his duly authorized representative.

### 3. VALID COMPROMISE AND QUITCLAIM

The law looks with disfavor upon quitclaims and releases by employees who are inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities. On the other hand, there are

legitimate waivers that represent a voluntary settlement of laborer's claims that should be respected by the courts as the law between the parties.

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.

#### **4. COMPROMISE SHOULD BE DULY AUTHORIZED**

Section 9. Authority to Bind Party. - Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim.

The authority to compromise cannot lightly be presumed and should be duly established by evidence.

#### **5. RULINGS ON COMPROMISE SETTLEMENTS SUMMARIZED**

#### **6. WHEN TO EFFECT COMPROMISE: FINAL DECISION, NEGOTIABLE?**

A compromise agreement may be effected at any stage of the proceedings and even when there is already a final and executor judgment.

#### **7. OPTIONS WHEN COMPROMISE AGREEMENTS IS VIOLATED**

Under Article 2041 of the Civil Code, should a party fail or refuse to comply with the terms of a compromise or amicable settlement, the other party could either: (1) enforce the compromise by a writ of execution, or (2) regard it as rescinded and so insist upon his original demand.

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[Art. 228. Indorsement of cases to Labor Arbiters.

a. Except as provided in paragraph (b) of this Article, the Labor Arbiter shall entertain only cases endorsed to him for compulsory arbitration by the Bureau or by

the Regional Director with a written notice of such indorsement or non-indorsement. The indorsement or non-indorsement of the Regional Director may be appealed to the Bureau within ten (10) working days from receipt of the notice.

b. The parties may, at any time, by mutual agreement, withdraw a case from the Conciliation Section and jointly submit it to a Labor Arbiter, except deadlocks in collective bargaining.](Repealed by Section 16, Batas Pambansa Bilang 130, August 21, 1981)

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Art. 229. Issuance of subpoenas. The Bureau shall have the power to require the appearance of any person or the production of any paper, document or matter relevant to a labor dispute under its jurisdiction, either at the request of any interested party or at its own initiative.

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Art. 230. Appointment of bureau personnel. The Secretary of Labor and Employment may appoint, in addition to the present personnel of the Bureau and the Industrial Relations Divisions, such number of examiners and other assistants as may be necessary to carry out the purpose of the Code. (As amended by Section 15, Republic Act No. 6715, March 21, 1989)

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Art. 231. Registry of unions and file of collective bargaining agreements. The Bureau shall keep a registry of legitimate labor organizations. The Bureau shall also maintain a file of all collective bargaining agreements and other related agreements and records of settlement of labor disputes and copies of orders and decisions of voluntary arbitrators. The file shall be open and accessible to interested parties under conditions prescribed by the Secretary of Labor and Employment, provided that no specific information submitted in confidence shall be disclosed unless authorized by the Secretary, or when it is at issue in any judicial litigation, or when public interest or national security so requires.

Within thirty (30) days from the execution of a Collective Bargaining Agreement, the parties shall submit copies of the same directly to the Bureau or the Regional Offices of the Department of Labor and Employment for registration, accompanied with verified proofs of its posting in two conspicuous places in the place of work and ratification by the majority of all the workers in the bargaining unit. The Bureau or Regional Offices shall act upon the application for registration of such Collective Bargaining Agreement within five (5) calendar days

from receipt thereof. The Regional Offices shall furnish the Bureau with a copy of the Collective Bargaining Agreement within five (5) days from its submission.

The Bureau or Regional Office shall assess the employer for every Collective Bargaining Agreement a registration fee of not less than one thousand pesos (P1,000.00) or in any other amount as may be deemed appropriate and necessary by the Secretary of Labor and Employment for the effective and efficient administration of the Voluntary Arbitration Program. Any amount collected under this provision shall accrue to the Special Voluntary Arbitration Fund.

The Bureau shall also maintain a file and shall undertake or assist in the publication of all final decisions, orders and awards of the Secretary of Labor and Employment, Regional Directors and the Commission. (As amended by Section 15, Republic Act No. 6715, March 21, 1989)

#### **REGISTRY OF UNIONS AND CBAs**

The Bureau shall keep a registry of legitimate labor organizations.

The Bureau shall also maintain a file of all Collective Bargaining Agreements (CBAs) and other related agreements.

Art. 232. Prohibition on certification election. The Bureau shall not entertain any petition for certification election or any other action which may disturb the administration of duly registered existing collective bargaining agreements affecting the parties except under Articles 253, 253-A and 256 of this Code. (As amended by Section 15, Republic Act No. 6715, March 21, 1989)

#### **THE CONTRACT-BAR RULE**

Article 232 speaks of the contract-bar rule which means that while a valid and registered CBA is subsisting, the Bureau is not allowed to hold an election contesting the majority status of the incumbent union. The existence of the CBA does not allow, that is, it bars, the holding of the inter-union electoral contest. The election is legally allowed, says Art. 256, only during the "freedom period" which refers to the last 60 days of the fifth year of a CBA.

The objective of the rule, obviously, is to minimize union "politicking" until the proper time comes.

Art. 233. Privileged communication. Information and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them.

### **Title IV LABOR ORGANIZATIONS**

#### **Chapter I REGISTRATION AND CANCELLATION**

Art. 234. Requirements of Registration. - A federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

- (a) Fifty pesos (P50.00) registration fee;
- (b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;
- (c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;
- (d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and
- (e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it. (As amended by Republic Act No. 9481, May 25, 2007)

Art. 234-A. Chartering and Creation of a Local Chapter. - A duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate.

The chapter shall be entitled to all other rights and privileges of a legitimate labor organization only

upon the submission of the following documents in addition to its charter certificate:

(a) The names of the chapter's officers, their addresses, and the principal office of the chapter; and

(b) The chapter's constitution and by-laws: Provided, That where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

The additional supporting requirements shall be certified under oath by the secretary or treasurer of the chapter and attested by its president.

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Art. 235. Action on application. The Bureau shall act on all applications for registration within thirty (30) days from filing.

All requisite documents and papers shall be certified under oath by the secretary or the treasurer of the organization, as the case may be, and attested to by its president.

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Art. 236. Denial of registration; appeal. The decision of the Labor Relations Division in the regional office denying registration may be appealed by the applicant union to the Bureau within ten (10) days from receipt of notice thereof.

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Art. 237. Additional requirements for federations or national unions. Subject to Article 238, if the applicant for registration is a federation or a national union, it shall, in addition to the requirements of the preceding Articles, submit the following:

a. Proof of the affiliation of at least ten (10) locals or chapters, each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates, supporting the registration of such applicant federation or national union; and

b. The names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved.

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[Art. 238. Conditions for registration of federations or national unions. No federation or national union shall be registered to engage in any organization activity in more than one industry in any area or region, and no federation or national union shall be registered to engage in any organizational activity in more than one industry all over the country.

The federation or national union which meets the requirements and conditions herein prescribed may organize and affiliate locals and chapters without registering such locals or chapters with the Bureau.

Locals or chapters shall have the same rights and privileges as if they were registered in the Bureau, provided that such federation or national union organizes such locals or chapters within its assigned organizational field of activity as may be prescribed by the Secretary of Labor.

The Bureau shall see to it that federations and national unions shall only organize locals and chapters within a specific industry or union.] (Repealed by Executive Order No. 111, December 24, 1986)

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## 1. LABOR ORGANIZATION: TWO BROAD PURPOSES

A "labor organization" is not always a union; it may be an "association of employees." And, the purpose is not only or necessarily "collective bargaining" but also dealing with employers concerning terms and conditions of employment.

"Labor Organization" refers to any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection, or other lawful purposes.

"Legitimate Labor Organization" refers to any labor organization in the private sector registered or reported with the Department in accordance with Rules III and IV of these Rules.

"Union" refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purposes.

We should note that not every union is "legitimate;" only those properly registered are considered LLO. But non-registration does not mean it is "illegitimate;" it simply is unregistered and has no legal personality. It exists legally but does not possess the rights of an LLO.

"Exclusive Bargaining Representative" refers to a legitimate labor union duly recognized or certified as the sole and exclusive bargaining representative or agent of all the employees in a bargaining unit.

"Workers' Association" refers to an association of workers organized for the mutual aid and protection

of its members or for any legitimate purpose other than collective bargaining.

"Legitimate Workers' Association" refers to an association of workers organized for mutual aid and protection of its members or for any legitimate purpose other than collective bargaining registered with the Department in accordance with Rule III, Sections 2-C and 2-D of these Rules.

### 1.1 Distinction Between "Collective Bargaining" and "Dealing with Employer"

To bargain collectively is a right that may be acquired by a labor organization after registering itself with the Department of Labor and Employment and after being recognized or certified by DOLE as the exclusive bargaining representative (EBR) of the employees.

Dealing with employer, on the other hand, is a generic description of interaction between employer and employees concerning grievances, wages, work hours and other terms and conditions of employment, even if the employee's group is not registered with the Department of Labor and Employment.

## 2. CLASSIFICATION OF LABOR ORGANIZATIONS

"National Union/Federation" means any labor organization with at least ten (10) locals or chapters each of which must be a duly recognized collective bargaining agent.

"Industry Union" means any group of legitimate labor organizations operating within an identified industry, organized for collective bargaining or for dealing with employers concerning terms and conditions of employment within an industry, or for participating in the formulation of social and employment policies, standards and programs in such industry, which is duly registered with the Department. D.O. No. 40-03, however, does not carry this term and this definition, although under Rule III, Section 2-B, "labor organizations operating within an identified industry may also apply for registration as a federation or national union within the specified industry by submitting to the Bureau the same set of documents (as required of federations and national unions.)"

"Trade Union Center" means any group of registered national unions or federations organized for the mutual aid and protection of its members, for assisting such members in collective bargaining, or for participating in the formulation of social and employment policies, standards and programs, which is duly registered with the Department.

An "alliance" is an aggregation of unions existing in one line of industry, or in a conglomerate, a group of franchises, a geographical area, or an industrial center.

A "company-union" is a labor organization which, in whole or in part, is employer-controlled or employer-denominated. Article 248(d) prohibits being a company union.

### 2.1 Unions at Enterprise Level

A labor union at the enterprise level may be created either by (a) independent registration or (b) chartering. Independent registration is obtained by the union organizers in an enterprise through their own action instead of through issuance of a charter by a federation or national union. An independent union has a legal personality of its own not derived from that of a federation.

"Independent Union" refers to a labor organization operating at the enterprise level that acquired legal personality through independent registration under Article 234 of the Labor Code and Rule III, Section 2-A of these Rules.

Chartering, on the other hand, takes place when a duly registered federation or national union issue a charter to a union in an enterprise and registers the creation of the chapter with the Regional Office where the applicants operates. The union recipient of the charter is called a chapter or local or chartered local. Its legal personality is derived from the federation/ national union but it may subsequently register itself independently.

## 3. REGISTRATION RATIONALE

A labor organization may be registered or not. If registered with DOLE, it is considered "legitimate labor organization" (LLO). But the reverse is not true, that is, a labor organization is not "illegitimate" just because it is unregistered. It is still lawful organization and can deal with the employer, but it has no legal personality to demand collective bargaining with the employer. It cannot petition for a certification election and cannot hold a legal strike.

Registration is merely a condition *sine qua non* for the acquisition of legal personality by labor organizations, associations or unions and the possession of the rights and privileges granted by law to legitimate labor organizations.

Such requirement is a valid exercise of the police power, because the activities in which labor organizations, associations and union of workers are

engaged affect public interest, which should be protected.

### 3.1 Effect of Registration Under the Corporation Law

A labor organization may be organized under the Corporation Law as a non-stock corporation and issued a certificate of incorporation by the Securities and Exchange Commission. But such incorporation has only the effect of giving to it juridical personality before regular courts of justice. Such incorporation does not grant the rights and privileges of a legitimate labor organization.

## 4. WHERE TO REGISTER

Applications for registration of independent labor unions, chartered locals, and worker's association shall be filed with the Regional Office where the applicant principally operates.

If the Regional Office denies the application, the denial is appealable to the Bureau and from there to the Court of Appeals (not to the Secretary of Labor) if proper grounds exist.

## 5. REGISTRATION REQUIREMENTS

### 5.1 Independent Labor Union

Section 2. Requirements for application. - A. The application for registration of an independent labor union shall be accompanied by the following documents:

- (a) the name of the applicant labor union, its principal address, the name of its officers and their respective addresses, approximate number of employees in the bargaining unit where it seeks to operate, with a statement that it is not reported as a chartered local of any federation or national union;
- (b) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
- (c) the name of all its members comprising at least 20% of the employees in the bargaining unit;
- (d) the annual financial reports if the applicant has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- (e) the applicant's constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting. In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s).

### 5.2 Federation or National Union

B. The application for registration of federations and national unions shall be accompanied by the following documents:

- (a) a statement indicating the name of the applicant labor union, its principal address, the name of its officers and their respective addresses;
- (b) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
- (c) the annual financial reports if the applicant union has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- (d) the applicant union's constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting(s). In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s);
- (e) the resolution of affiliation of at least ten (10) legitimate labor organizations, whether independent unions or chartered locals, each of which must be a duly certified or recognized bargaining agent in the establishment where it seeks to operate; and
- (f) the name and addresses of the companies where the affiliates operate and the list of all the members in each company involved.

Labor organizations operating within an identified industry may also apply for registration as a federation or national union within the specified industry by submitting to the Bureau the same set of documents.

### 5.3 Worker's Association

C. The application for registration of a workers' association shall be accompanied by the following documents:

- (a) the name of the applicant association, its principal address, the name of its officers and their respective addresses;
- (b) the minutes of the organizational meeting(s) and the list of members who participated therein;
- (c) the financial reports of the applicant association if it has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- (d) the applicant's constitution and by-laws to which must be attached the names of ratifying members, the minutes of adoption or ratification of the constitution and by-laws and the date when ratification was made, unless ratification was done in the organizational meeting(s), in which case such fact shall be reflected in the minutes of the organizational meeting(s).

## 5.4 Chartered Local

### 5.4a When Does a Chartered Local Become an LLO

The acquisition of legal personality cannot be the *date of filing* of the documents. Section 3 (Department Order No. 9, 1997) was defeating the very purpose of registration of unions which was to block off fly-by-night unions.

### 5.4b When Does a Chartered Local Acquire Legal Personality under D.O. No. 40, Series of 2003

Section 8. Effect of registration. - The labor union or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration or certificate of creation of chartered local

The determinative date now is not the date the required documents were filed but the date the certificate was issued. And the date of issuance is likely to be the date the documents were filed because D.O. No. 40-D-05, supplementing D.O. No. 40-03, requires the Regional Office or the Bureau to either approve or deny the application for registration "within one (1) day from receipt thereof."

### 5.4c Recognition by BLR not a Ministerial Duty

### 5.4d Chartered Local Has to be Registered; Requirements

### 5.4e Registration Requirements for a Chartered Local

E. A duly-registered federation or national union may directly create a chartered local by submitting to the Regional Office two (2) copies of the following:

(a) A charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter;

(b) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and

(c) The local/chapter's constitution and by-laws, provided that where the local/chapter's constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.

All of the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested by its President. (As amended by DO 40-B-03.)

### 5.4f Requirements Relaxed

The creation of a local does not need subscription by a minimum number of members. The 20 percent initial membership mentioned in Article 234(c) is required of an independent union but not of a chartered local.

### 5.5 Union's Legitimacy not Subject to Collateral Attack

Such legal personality may be questioned only through an independent petition for cancellation of union registration in accordance with Rule XIV of these Rules, and not by way of collateral attack in petition for certification election proceedings under Rule VIII.

## 6. COLLECTIVE BARGAINING UNIT (CBU)

"Bargaining Unit" refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.

While officers lead and represent a union, a union represents a CBU. The representative is the union; the group represented is the CBU. The representative union, once determined, will represent even the members of other unions as long as they are part of the CBU. This is why the representative union (also called bargaining agent or majority union) is called "exclusive bargaining representative" (EBR).

## 7. CONSTITUTION, BY-LAWS, AND REGULATIONS

Like other voluntary associations, labor unions have the right to adopt constitutions, rules, and by-laws within the scope of the lawful purposes of the union and bind their members thereby, provided they are reasonable, uniform, and not discriminatory, and provided they are not contrary to public policy or the law of the land.

The articles of agreement of a labor union, whether called a constitution, charter, by-laws, or any other name, constitutes a contract between the members which the courts will enforce, if not immoral or contrary to public policy or the law of the land.

A union's constitution and by-laws govern the relationship between and among its members. As in the interpretation of contracts, if the terms are clear and leave no doubt as to the intentions of the parties, the literal meaning of the stipulation shall control.

### 7.1 Limitation to By-laws

Under Art. 234(e) it is implied that the members are the ones to adopt or ratify the union's constitution and by-laws. It being a governing law of the union, the CBL should be democratically ratified.

## 7.2 Amendments

A union's constitution and by-laws may be amended, modified and extended by the duly constituted union authorities under the laws of the state, In the absence of other requirements, and subject to vested rights, a union constitution may be made, changed, unmade, or superseded by a majority vote of the members or its constituent body.

Under Art. 241(d), major policy questions are to be deliberated upon and decided by secret ballot by the members.

## 8. PROVISIONS COMMON TO THE REGISTRATION OF LABOR ORGANIZATIONS AND WORKER'S ASSOCIATION

### 8.1 Attestation, Fee, Copies of Documents

Section 1. Attestation requirements. - The application for registration of labor unions and workers' associations, notice for change of name, merger, consolidation and affiliation including all the accompanying documents, shall be certified under oath by its Secretary or Treasurer, as the case may be, and attested to by its President.

Section 3. Accompanying documents. - One (1) original copy and two (2) duplicate copies of all documents accompanying the application or notice shall be submitted to the Regional Office or the Bureau.

### 8.2 Action on the Application/Notices

Section 4. Action on the application/notice. - The Regional Office or the Bureau, as the case may be, shall act on all applications for registration or notice of change of name, affiliation, merger and consolidation within ten (10) days from receipt either by: (a) approving the application and issuing the certificate of registration/acknowledging the notice/report; or (b) denying the application/notice for failure of the applicant to comply with the requirements for registration/notice.

### 8.3 Denial of Application/Return of Notice

Section 5. Denial of Application/Return of Notice. - Where the documents supporting the application for registration/notice of change of name, affiliation, merger and consolidation are incomplete or do not contain the required certification and attestation, the Regional Office or the Bureau shall, within five (5) days from receipt of the application/notice, notify the applicant/labor organization concerned in writing of the necessary requirements and complete the same within thirty (30) days from receipt of notice. Where the applicant/labor organization concerned fails to complete the requirements within the time

prescribed, the application for registration shall be denied, or the notice of change of name, affiliation, merger and consolidation returned, without prejudice to filing a new application or notice.

Section 6. Form of Denial of Application/Return of Notice; Appeal. - The notice of the Regional Office or the Bureau denying the application for registration/returning the notice of change of name, affiliation, merger or consolidation shall be in writing stating in clear terms the reasons for the denial or return.

### 8.4 Appeal

Section 6. Form of Denial of Application/Return of Notice; Appeal. - The denial may be appealed to the Bureau if denial is made by the Regional Office or to the Secretary if denial is made by the Bureau, within ten (10) days from receipt of such notice, on the ground of grave abuse of discretion or violation of these Rules.

Section 7. Procedure on appeal. - The memorandum of appeal shall be filed with the Regional Office or the Bureau that issued the denial/return of notice. The memorandum of appeal together with the complete records of the application for registration/notice of change of name, affiliation, merger or consolidation, shall be transmitted by the Regional Office to the Bureau or by the Bureau to the Office of the Secretary, within twenty-four (24) hours from receipt of the memorandum of appeal.

The Bureau or the Office of the Secretary shall decide the appeal within twenty (20) days from receipt of the records of the case.

## 9. AFFILIATION

An affiliate is an independently registered union that enters into an agreement of affiliation with a federation or a national union. It also refers to a chartered local which applies for and is granted an independent registration but does not disaffiliate from its mother federation or national union.

A union, either an independent or a local, affiliates with a federation or national union for a number of reasons. The most common ones are to secure support or assistance particularly during the formative stage of unionization; or to utilize expertise in preparing and pursuing bargaining proposals; or to marshal mind and manpower in the course of a group action such as strike.

The relationship between a local or chapter and the labor federation or national union is generally understood to be that of agency, where the local is the principal and the federation the agent.

### 9.1 Report of Affiliation; Requirements

Section 6. Report of Affiliation with federations or national unions; Where to file. - The report of affiliation of an

independently registered labor union with a federation or national union shall be filed with the Regional Office that issued its certificate of registration.

Section 7. Requirements of affiliation. - The report of affiliation of independently registered labor unions with a federation or national union shall be accompanied by the following documents:

- (a) resolution of the labor union's board of directors approving the affiliation;
- (b) minutes of the general membership meeting approving the affiliation;
- (c) the total number of members comprising the labor union and the names of members who approved the affiliation;
- (d) the certificate of affiliation issued by the federation in favor of the independently registered labor union; and
- (e) written notice to the employer concerned if the affiliating union is the incumbent bargaining agent.

## 10. DISAFFILIATION

The sole essence of affiliation is to increase, by collective action, the common bargaining power of local unions for the effective enhancement and protection of their interests. Admittedly, there are times when without succor and support local unions may find it hard, unaided by other support groups, to secure justice for themselves.

Yet the local unions remain the basic units of association, free to serve their own interests subject to the restraints imposed by the constitution and by-laws of the national federation, and free also to renounce the affiliation upon the terms laid down in the agreement which brought such affiliation into existence.

To disaffiliate is a right, but to observe the terms of affiliation is an obligation

10.1 Local Union is the Principal, Federation the Agent

Disaffiliation of employees from their mother union and their formation into a new union do not terminate their status as employees of the corporation, as the employees and members of the local union did not form a new union but merely exercised their right to register their local union.

### 10.2 When to Disaffiliate

While it is true that a local union is free to serve the interest of all its members and enjoys the freedom to disaffiliate, such right to disaffiliate may be exercised

and is thus considered a protected labor activity only when warranted by circumstances. Generally, a labor union may disaffiliate from the mother union to form a local or independent union only during the 60-day freedom period immediately preceding the expiration of the CBA.

The "freedom period" refers to the last 60-days of the fifth and last year of a CBA.

But even before the onset of the freedom period (and despite the closed-shop provision in the CBA between the mother union and management) disaffiliation may still be carried out, but such disaffiliation must be effected by a majority of the members in the bargaining unit.

This ruling is true **ONLY** if the contract of affiliation does not specify the period for possible disaffiliation.

### 10.3 Disaffiliation must be by Majority Decision

Article 241(d) applies to disaffiliation, thus, it has to be decided by the entire membership through secret balloting.

### 10.4 Disaffiliation: Effect on Legal Status

When a union which is not independently registered disaffiliates from the federation, it is not entitled to the rights and privileges granted to a legitimate labor organization. It cannot file a petition for certification election.

### 10.5 Disaffiliation: Effect on Union Dues

The obligation of an employee to pay union dues is coterminous with his affiliation or membership.

A contract between an employer and the parent organization as bargaining agent for the employees is terminated by the disaffiliation of the local of which the employees are members.

### 10.6 Disaffiliation: Effect on Existing CBA; the "Substitutionary" Doctrine

The "substitutionary doctrine" provides that the employees cannot revoke the validly executed collective bargaining contract with their employer by the simple expedient of changing their bargaining agent. The new agent must respect the contract.

## 11. REVOCATION OF CHARTER

A federation, national union or workers' association may revoke the charter issued to a local/chapter or branch by serving on the latter a verified notice of revocation, copy furnished the Bureau, on the

ground of disloyalty or such other grounds as may be specified in the constitution and bylaws of the federation, national union or workers' association. The revocation shall divest the local/chapter of its legal personality upon receipt of the notice by the Bureau, unless in the meantime the local/chapter has acquired independent registration in accordance with these Rules.

#### 11.1 Effect of Cancellation of Registration of Federation or National Union on Locals/Chapter

The cancellation of registration of a federation or national union shall operate to divest its local/chapter of their status as legitimate labor organizations, unless the locals/chapters are covered by a duly registered collective bargaining agreement.

### 12 MERGER AND CONSOLIDATION

Section 10. Effect of merger or consolidation. - Where there is a merger of labor organizations, the legal existence of the absorbed labor organization(s) ceases, while the legal existence of the absorbing labor organization subsists. All the rights, interests and obligations of the absorbed labor organizations are transferred to the absorbing organization.

Where there is consolidation, the legal existence of the consolidating labor organizations shall cease and a new labor organization is created. The newly created labor organization shall acquire all the rights, interests and obligations of the consolidating labor organizations.

Consolidation usually occurs between two unions that are approximately the same size, whereas merger often involves a larger union merging with a smaller union.

Why do unions merge? They merge for reasons similar to those behind corporate mergers.

First, a small union may merge with a larger union in order to gain access to greater resources and expertise.

Second, unions that have traditionally competed with each other for members may merge in order to eliminate inter-organizational conflicts.

Third, unions whose members' skills have been outmoded by technological and economic changes may merge with a stronger union in order to maintain job security and institutional survival.

#### 12.1 Notice of Merger/Consolidation of Labor Organizations'; Where to File

Section 8. Notice of Merger/Consolidation of labor organizations; Where to file. - Notice of merger or

consolidation of independent labor unions, chartered locals and workers' associations shall be filed with and recorded by the Regional Office that issued the certificate of registration/certificate of creation of chartered local of either the merging or consolidating labor organization. Notice of merger or consolidation of federations or national unions shall be filed with and recorded by the Bureau.

#### 12.2 Requirements of Notice of Merger/Consolidation

The notice of merger of labor organizations shall be accompanied by the following documents:

(a) the minutes of merger convention or general membership meeting(s) of all the merging labor organizations, with the list of their respective members who approved the same; and

(b) the amended constitution and by-laws and minutes of its ratification, unless ratification transpired in the merger convention, which fact shall be indicated accordingly.

#### 12.3 Certificate of Registration

Section 10. Certificate of Registration. - The certificate of registration issued to merged labor organizations shall bear the registration number of one of the merging labor organizations as agreed upon by the parties to the merger.

The certificate of registration shall indicate the following: (a) the new name of the merged labor organization; (b) the fact that it is a merger of two or more labor organizations; (c) the name of the labor organizations that were merged; (d) its office or business address; and (e) the date when each of the merging labor organization.

### 13. CHANGE OF NAME

Section 3. Notice of change of name of labor organizations; Where to file. - The notice for change of name of a registered labor organization shall be filed with the Bureau or the Regional Office where the concerned labor organization's certificate of registration or certificate of creation of a chartered local was issued.

Section 4. Requirements for notice of change of name. - The notice for change of name of a labor organization shall be accompanied by the following documents:

(a) proof of approval or ratification of change of name; and

(b) the amended constitution and by-laws.

#### 13.1 Effect of Change of Name

The change of name of a labor organization shall not affect its legal personality. All rights and obligations of a labor organization under its old name shall continue to be exercised by the labor organization under its new name.

Art. 238. Cancellation of Registration. - The certificate of registration of any legitimate labor organization, whether national or local, may be cancelled by the Bureau, after due hearing, only on the grounds specified in Article 239 hereof. (As amended by Republic Act No. 9481, May 25, 2007)

Art. 238-A. Effect of a Petition for Cancellation of Registration. - A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.

In case of cancellation, nothing herein shall restrict the right of the union to seek just and equitable remedies in the appropriate courts. (As amended by Republic Act No. 9481, May 25, 2007)

Art. 239. Grounds for Cancellation of Union Registration. - The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members. (As amended by Republic Act No. 9481, May 25, 2007)

Art. 239-A. Voluntary Cancellation of Registration. - The registration of a legitimate labor organization may be cancelled by the organization itself. Provided, That at least two-thirds of its general membership votes, in a meeting duly called for that purpose to dissolve the organization: Provided, further, That an application to cancel registration is thereafter submitted by the board of the organization, attested to by the president thereof. (As amended by Republic Act No. 9481, May 25, 2007)

## **1. CANCELLATION OF REGISTRATION; GROUNDS**

While registration is the act that converts a labor organization to a legitimate labor organization, cancellation is the government act that [divests] it of that status. It thereby reverts to its character prior to the registration. Although it does not cease to exist

or become an unlawful organization, its juridical personality as well as its statutory rights and privileges [are] suspended. It loses entitlement to the rights enumerated in Article 242 of the Labor Code. It cannot demand recognition by or bargaining with the employer, cannot file a petition for certification election, and cannot strike.

### **1.1 "Cabo"**

"Cabo" refers to a person or group or persons or to a labor group which, in the guise of a labor organization, supplies workers to an employer, with or without any monetary or other consideration whether in the capacity of an agent of the employer or as an ostensible independent contractor.

### **1.2 Administrative Cancellation; the "reportorial requirements"**

Section 1. Reporting requirements. - It shall be the duty of every legitimate labor unions and workers associations to submit to the Regional Office or the Bureau which issued its certificate of registration or certificate of creation of chartered local, as the case may be, two (2) copies of each of the following documents:

(a) any amendment to its constitution and by-laws and the minutes of adoption or ratification of such amendments, within thirty (30) days from its adoption or ratification;

(b) annual financial reports within thirty (30) days after the close of each fiscal year or calendar year;

(c) updated list of newly-elected officers, together with the appointive officers or agents who are entrusted with the handling of funds, within thirty (30) days after each regular or special election of officers, or from the occurrence of any change in the officers of agents of the labor organization or workers association;

(d) updated list of individual members of chartered locals, independent unions and workers' associations within thirty (30) days after the close of each fiscal year; and

(e) updated list of its chartered locals and affiliates or member organizations, collective bargaining agreements executed and their effectivity period, in the case of federations or national unions, within thirty (30) days after the close of each fiscal year, as well as the updated list of their authorized representatives, agents or signatories in the different regions of the country.

As understood in these Rules, the fiscal year of a labor organization shall coincide with the calendar year, unless a different period is prescribed in the constitution and by-laws.

Failure of the labor organization to submit the reports mentioned above for five (5) consecutive years authorizes the Bureau to institute cancellation proceedings upon its own initiative or upon complaint by any party-in-interest.

## 2. WHO FILES PETITION FOR CANCELLATION

Section 2. Who may file. - Any party-in-interest may commence a petition for cancellation of registration, except in actions involving violations of Article 241, which can only be commenced by members of the labor organization concerned.

Section 3. Grounds for cancellation. - The following shall constitute grounds for cancellation of registration of labor organizations:

(g) commission of any of the acts enumerated under Article 241 of the Labor Code; provided that no petition for cancellation based on this ground may be granted unless supported by at least thirty (30%) percent of all the members of the respondent labor organization;

The petition shall be under oath and shall state clearly and concisely the facts and grounds relied upon, accompanied by proof of service to the respondent. But such petition cannot be entertained in the petition for certification election filed by the union.

## 3. WHERE TO FILE PETITION

Section 1. Where to file. - Subject to the requirements of notice and due process, the registration of any legitimate independent labor union, chartered local and workers' association may be cancelled by the Regional Director, or in the case of federations, national or industry unions and trade union centers, by the Bureau Director, upon the filing of an independent complaint or petition for cancellation.

Cancellation orders issued by the Regional Director are appealable to the BLR. The latter's decision is final and executor, hence, not appealable to the DOLE Secretary but it may be elevated to the Court of Appeals by *certiorari*.

BLR decisions on cancellation cases that originated at the BLR itself may be appealed to the Secretary and, again, by *certiorari* to the CA.

## 4. PROCEDURE

Section 2. Procedure. - The Labor Relations Division of the Regional Office shall make a report of the labor organization's non-compliance and submit the same to the Bureau for verification with its records. The Bureau shall send by registered mail with return card to the labor organization concerned, a notice for compliance indicating the documents it failed to submit and the corresponding period in which they were required, with notice to comply with the said reportorial requirements and to submit proof thereof to the Bureau within ten (10) days from receipt thereof.

Where no response is received by the Bureau within thirty (30) days from the release of the first notice, another notice for compliance shall be made by the Bureau, with

warning that failure on its part to comply with the reportorial requirements within the time specified shall cause the continuation of the proceedings for the administrative cancellation of its registration.

Section 3. Publication of notice of cancellation of registration. - Where no response is again received by the Bureau within thirty (30) days from release of the second notice, the Bureau shall cause the publication of the notice of cancellation of registration of the labor organization in two (2) newspapers of general circulation. The Bureau may conduct an investigation within the employer's premises and at the labor organization's last known address to verify the latter's existence.

Art. 240. Equity of the incumbent. All existing federations and national unions which meet the qualifications of a legitimate labor organization and none of the grounds for cancellation shall continue to maintain their existing affiliates regardless of the nature of the industry and the location of the affiliates.

## Chapter II RIGHTS AND CONDITIONS OF MEMBERSHIP

Art. 241. Rights and conditions of membership in a labor organization. The following are the rights and conditions of membership in a labor organization:

a. No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;

b. The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization;

c. The members shall directly elect their officers, including those of the national union or federation, to which they or their union is affiliated, by secret ballot at intervals of five (5) years. No qualification requirements for candidacy to any position shall be imposed other than membership in good standing in subject labor organization. The secretary or any other responsible union officer shall furnish the Secretary of Labor and Employment with a list of the newly-elected officers, together with the appointive officers or agents who are entrusted with the handling of funds, within thirty (30) calendar days after the election of officers or from the occurrence of any change in the list of officers of the labor organization; (As amended by Section 16, Republic Act No. 6715, March 21, 1989)

d. The members shall determine by secret ballot, after due deliberation, any question of major policy

affecting the entire membership of the organization, unless the nature of the organization or force majeure renders such secret ballot impractical, in which case, the board of directors of the organization may make the decision in behalf of the general membership;

e. No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;

f. No person who has been convicted of a crime involving moral turpitude shall be eligible for election as a union officer or for appointment to any position in the union;

g. No officer, agent or member of a labor organization shall collect any fees, dues, or other contributions in its behalf or make any disbursement of its money or funds unless he is duly authorized pursuant to its constitution and by-laws;

h. Every payment of fees, dues or other contributions by a member shall be evidenced by a receipt signed by the officer or agent making the collection and entered into the record of the organization to be kept and maintained for the purpose;

i. The funds of the organization shall not be applied for any purpose or object other than those expressly provided by its constitution and by-laws or those expressly authorized by written resolution adopted by the majority of the members at a general meeting duly called for the purpose;

j. Every income or revenue of the organization shall be evidenced by a record showing its source, and every expenditure of its funds shall be evidenced by a receipt from the person to whom the payment is made, which shall state the date, place and purpose of such payment. Such record or receipt shall form part of the financial records of the organization.

Any action involving the funds of the organization shall prescribe after three (3) years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier: Provided, That this provision shall apply only to a legitimate labor organization which has submitted the financial report requirements under this Code: Provided, further, that failure of any labor organization to comply with the periodic financial reports required by law and such rules and regulations promulgated thereunder six (6) months after the effectivity of this

Act shall automatically result in the cancellation of union registration of such labor organization; (As amended by Section 16, Republic Act No. 6715, March 21, 1989)

k. The officers of any labor organization shall not be paid any compensation other than the salaries and expenses due to their positions as specifically provided for in its constitution and by-laws, or in a written resolution duly authorized by a majority of all the members at a general membership meeting duly called for the purpose. The minutes of the meeting and the list of participants and ballots cast shall be subject to inspection by the Secretary of Labor or his duly authorized representatives. Any irregularities in the approval of the resolutions shall be a ground for impeachment or expulsion from the organization;

l. The treasurer of any labor organization and every officer thereof who is responsible for the account of such organization or for the collection, management, disbursement, custody or control of the funds, moneys and other properties of the organization, shall render to the organization and to its members a true and correct account of all moneys received and paid by him since he assumed office or since the last day on which he rendered such account, and of all bonds, securities and other properties of the organization entrusted to his custody or under his control. The rendering of such account shall be made:

1. At least once a year within thirty (30) days after the close of its fiscal year;
2. At such other times as may be required by a resolution of the majority of the members of the organization; and
3. Upon vacating his office.

The account shall be duly audited and verified by affidavit and a copy thereof shall be furnished the Secretary of Labor.

m. The books of accounts and other records of the financial activities of any labor organization shall be open to inspection by any officer or member thereof during office hours;

n. No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members in a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of

such assessment or fees. The record shall be attested to by the president.

o. Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; and

p. It shall be the duty of any labor organization and its officers to inform its members on the provisions of its constitution and by-laws, collective bargaining agreement, the prevailing labor relations system and all their rights and obligations under existing labor laws.

For this purpose, registered labor organizations may assess reasonable dues to finance labor relations seminars and other labor education activities.

Any violation of the above rights and conditions of membership shall be a ground for cancellation of union registration or expulsion of officers from office, whichever is appropriate. At least thirty percent (30%) of the members of a union or any member or members specially concerned may report such violation to the Bureau. The Bureau shall have the power to hear and decide any reported violation to mete the appropriate penalty.

Criminal and civil liabilities arising from violations of above rights and conditions of membership shall continue to be under the jurisdiction of ordinary courts.

## 1. DEMOCRATIZATION OF UNIONS

As unionism's aim is to install industrial democracy, the unions themselves must be democratic. This is a rationale behind Article 241.

To democratize the unions, Article 241 requires that the union officers be elected directly by the members through secret ballot and that the major policy decisions, as a rule, be made by the union members, again, by secret ballot. As in a republic where sovereignty resides in the people, the members of the union are the keepers and dispensers of authority. The governing power is the members, not the officers.

## 2. NATURE OF RELATIONSHIP BETWEEN UNION AND ITS MEMEBERS

The union has been evolved as an organization of collective strength for the protection of labor against the unjust exactions of capital, but equally important is the requirement of fair dealing between the union and its members, which is fiduciary in nature, and arises out of two factors: "one is the degree of dependence of the individual employee on the union organization; the other, a corollary of the first, is the comprehensive power vested in the union with respect to the individual." The union may be considered but the agent of its members for the purpose of securing for them fair and just wages and good working conditions and is subject to the obligation of giving the members as its principals all information relevant to union and labor matters entrusted to it.

### 2.1 Duty of Court to Protect Laborers from Unjust Exploitation by Oppressive Employers and Union Leaders

Just as this Court has stricken down unjust exploitation of laborers by oppressive employers, so will it strike down their unfair treatment by their own unworthy leaders. The Constitution enjoins the State to afford protection to labor. Fair dealing is equally demanded of unions as well as of employers in their dealings with employees.

The union constitution is a covenant between the union and its members and among the members.

## 3. RIGHTS OF UNION MEMBERS

The rights and conditions of membership laid down in Art. 241 may be summarized as follows:

(1) Political right – the member's right to vote and be voted for, subject to lawful provisions on qualifications and disqualifications.

(2) Deliberative and decision-making right – the member's right to participate in deliberations on major policy questions and decide them by secret ballot.

(3) Rights over money matters – the member's right against excessive fees; the right against unauthorized collection of contributions or unauthorized disbursements; the right to require adequate records of income and expenses and the right of access to financial records; the right to vote on officers' compensation; the right to vote on proposed special assessments and be deducted a special assessment only with the member's written authorization.

(4) Right to Information – the member's right to be informed about the organization's constitution and

by-laws and the collective bargaining agreement and about labor laws.

Although not so denominated, Article 241 of the Labor Code carries the character of a bill of rights of union members.

### 3.1 Eligibility for Membership

When, how, and under what conditions does an employee become a union member? The answer depends on the union's constitution and by-laws inasmuch as Article 249 gives a labor organization the right to prescribe its own rules for acquisition or retention of membership. Nonetheless, under Art. 277 an employee is already qualified for union membership starting on his first day of service.

Qualifying for union membership does not necessarily mean inclusion in the coverage of the CBA. The reverse is equally true: membership in the CBU does not automatically mean membership in the union.

To sum up:

Inclusion in the CBU depends on the determination of its appropriateness under Art. 234 and Art. 255.

Inclusion or membership in a union depends on the union's constitution and by-laws, without prejudice to Art. 277(c).

Inclusion or coverage in the CBA depends on the stipulations in the CBA itself.

## 4. ELECTION OF UNION OFFICERS

The officers of the union are elected by the members in secret ballot voting. The election takes place at intervals of five years which is the term of office of the union officers including those of a national union, federation, or trade union center.

The Implementing Rules (Rule XII, Section 1) require the incumbent president to create an election committee within 60 days before expiration of the incumbent officers' term.

If the officers with expired term do not call an election, the remedy, according to Rule XII, is for at least 30% of the members to file a petition with the DOLE Regional Office.

The member's frustration over the performance of the union officers, as well as their fear of a "fraudulent" election to be held under the latter's supervision, does not justify disregard of the union's constitution and by-laws.

### 4.1 Eligibility of Voters

Only members of the union can take part in the election of union officers.

Member in good standing is any person who has fulfilled the requirements for membership in the union and who has neither voluntarily withdrawn from membership nor been expelled or suspended from membership after appropriate proceedings consistent with the lawful provisions of the union's constitution and by-laws.

A labor organization may prescribe reasonable rules and regulations with respect to voting eligibility.

A labor organization may condition the exercise of the right to vote on the payment of dues, since paying dues is a basic obligation of membership. However, this rule is subject to two qualifications in that (a) any rule denying dues-delinquent members the right to vote must be applied uniformly; and (b) members must be afforded a reasonable opportunity to pay dues, including a grace period during which dues may be paid without any loss of rights.

Submission of the employees names with the BLR as qualified members of the union is not a condition sine qua non to enable said members to vote in the election of union's officers.

### 4.2 Union Officers Must Be an Employee

(f) No person who is not an employee or worker of the company or establishment where an independently registered union, affiliate, local or chapter of a labor federation or national union operates shall henceforth be elected or appointed as an officer of such union, affiliate, local or chapter.

In short, one should be employed in the company to qualify as officer of a union in that company.

### 4.3 Disqualification of Union Officers

"Moral turpitude" has been defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man or conduct contrary to justice, honesty, modesty, or good morals.

### 4.4 Union Election Protest: Proclamation of Winners

Section 13. Protest; when perfected. - Any party-in-interest may file a protest based on the conduct or mechanics of the election. Such protests shall be recorded in the

minutes of the election proceedings. Protests not so raised are deemed waived.

The protesting party must formalize its protest with the Med-Arbiter, with specific grounds, arguments and evidence, within five (5) days after the close of the election proceedings. If not recorded in the minutes and formalized within the prescribed period, the protest shall be deemed dropped.

## 5. ACTION AGAINST UNION OFFICERS

A union officer, after his election, may not be expelled from the union for past malfeasance or misfeasance. To do so would nullify the choice made by the union members.

The remedy against erring union officers is not referendum but union expulsion, *i.e.*, to expel them from the Union.

It is the better part of conventional or pragmatic solutions in cases of this nature, absent overriding considerations to the contrary, to respect the will of the majority of the workers who voted in the elections. Although decreed under a different setting, it is apropos to recall the ruling that where the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any.

## 6. DUE PROCESS IN IMPEACHMENT

### 7. EXPULSION OF MEMBER

Just as an officer is entitled to due process, so does a member. In a case, the Court explicitly ruled that a member of a labor union may be expelled only for a valid cause and by following the procedure outlined in the constitution and by-laws of the union.

Expulsion of a member for arbitrary or impetuous reason may amount to unfair labor practice by the union.

## 8. RELIEF WITHIN THE UNION

Generally, redress must first be sought within the union itself in accordance with its constitution and by-laws.

If intra-union remedies have failed to correct any violations of the internal labor organization procedures, a case can be filed with the Bureau of Labor Relations, which is authorized to hear and decide cases of this nature.

### 8.1 Exceptions

Where exhaustion of remedies within the union itself would practically amount to a denial of justice, or would be illusory or vain, it will not be insisted upon, particularly where property rights of the members are involved, as a condition to the right to invoke the aid of a court.

## 9. CONSEQUENCES OF VIOLATION OF RIGHTS

If the conditions of membership, or the right of the members, are violated, the violation may result in the cancellation of the union registration or the expulsion of the culpable officers.

Section 4. Actions arising from Article 241. - Any complaint or petition with allegations of mishandling, misappropriation or non-accounting of funds in violation of Article 241 shall be treated as an intra-union dispute. It shall be heard and resolved by the Med-Arbiter pursuant to the provisions of Rule XI.

### 9.1 Exception: When 30% Not Required

When such violation directly affects only one or two members, then only one or two members would be enough to report such violation.

It states that a report of a violation of rights and conditions of membership in a labor organization may be made by "(a)t least thirty percent (30%) of all the members of a union or any member or members specially concerned.

## 10. VISITORIAL POWER

Article 247 authorizes the Secretary of Labor and Employment or his duly authorized representative to inquire into the financial activities of any labor organization on the basis of a complaint under oath, supported by 20 percent of the membership in order to determine compliance or noncompliance with the laws and to aid in the prosecution of any violation thereof.

## 11. CHECK-OFF AND ASSESSMENTS

A check-off is a method of deducting from an employee's pay at prescribed period, the amounts due the union for fees, fines, or assessments. The right of a union to collect union dues is recognized under Article 277(a).

### 11.1 Assessments, like dues, may also be checked off

Dues are defined as payments to meet the union's general and current obligations. The payment must be regular, periodic, and uniform. Payments used for a special purpose, especially if required only for a limited time, are regarded as assessment.

ART. 241. Rights and conditions of membership in a labor organization. — The following are the rights and conditions of membership in a labor organization.

(o) Other than for mandatory activities under the Code, no special assessment, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due an employee without an individual written authorization duly signed by an employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction.

Attorney's fees may not be deducted or checked off from any amount due to an employee without his written consent except for mandatory activities under the Code.

A mandatory activity has been defined as a judicial process of settling dispute laid down by the law. An amicable settlement entered into by the management and the union is not a mandatory activity under the Code. Moreover, the law explicitly requires the individual written authorization of each employee concerned, to make the deduction of attorney's fees valid.

Deductions for union service fee are authorized by law and do not require individual check-off authorizations.

Notwithstanding its "compulsory" nature, "compulsory arbitration" is not the "mandatory activity" under the Code which dispenses with individual written authorizations for check-offs.

(1) Requirements — The failure of the Union to comply strictly with the requirements set out by the law invalidates the questioned special assessment. Substantial compliance is not enough in view of the fact that the special assessment will diminish the compensation of the union members. Their express consent is required, and this consent must be obtained in accordance with the steps outlined by law, which must be followed to the letter. No shortcuts are allowed.

It submitted only minutes of the local membership meetings when what is required is a written resolution adopted at the general meeting. Worse still, the minutes of three of those local meetings held were recorded by a union director and not by the union secretary. The minutes submitted to the Company contained no list of the members present and no record of the votes cast. Since it is quite evident that the Union did not comply with the law at every turn, the only conclusion that may be made therefrom is that there was no valid levy of the special assessment pursuant to paragraph (n) of Article 241 of the Labor Code.

(2) Effects of withdrawal of authorizations — Paragraph (o) on the other hand requires an individual written authorization duly signed by every employee in order that a special assessment may be validly checked-off. Even

assuming that the special assessment was validly levied pursuant to paragraph (n), and granting that individual written authorizations were obtained by the Union, nevertheless there can be no valid check-off considering that the majority of the union members had already withdrawn their individual authorizations. A withdrawal of individual authorizations is equivalent to no authorization at all.

(3) Forms of disauthorization — The Union points out, however, that said disauthorizations are not valid for being collective in form, as they are "mere bunches of randomly procured signatures, under loose sheets of paper." The contention deserves no merit for the simple reason that the documents containing the disauthorizations have the signatures of the union members. The Court finds these retractions to be valid. There is nothing in the law which requires that the disauthorization must be in individual form.

(4) Purpose of the special assessment — Of the stated purposes of the special assessment, as embodied in the board resolution of the Union, only the collection of a special fund for labor and education research is mandated, as correctly pointed out by the Union. The two other purposes, namely, the purchase of vehicles and other items for the benefit of the union officers and the general membership, and the payment of services rendered by union officers, consultants and others, should be supported by the regular union dues, there being no showing that the latter are not sufficient to cover the same.

(5) Article 222(b) of the Labor Code, "similar charge" — The last stated purpose is contended by petitioners to fall under the coverage of Article 222 (b) of the Labor Code. The contention is impressed with merit. Article 222 (b) prohibits attorney's fees, negotiations fees and similar charges arising out of the conclusion of a collective bargaining agreement from being imposed on any individual union member. The collection of the special assessment partly for the payment for services rendered by union officers, consultants and others may not be in the category of "attorney's fees or negotiations fees." But there is no question that it is an exaction which falls within the category of a "similar charge," and, therefore, within the coverage of the prohibition in the aforementioned article.

(6) Unlimited discretion of union president, disallowed — There is an additional proviso giving the Union President unlimited discretion to allocate the proceeds of the special assessment. Such a proviso may open the door to abuse by the officers of the Union considering that the total amount of the special assessment is quite considerable — P1,027,694.33 collected from those union members who originally authorized the deduction, and P1,267,863.39 from those who did not authorize the same, or subsequently retracted their authorizations.

The Court, therefore, stakes down the questioned special assessment for being a violation of Article 241, paragraphs (n) and (o), and Article 222 (b) of the Labor Code.

## 11.2 Three Requisites to Collect Special Assessment

Article 241 speaks of three (3) requisites that must be complied with in order that the special assessment for Union's incidental expenses, attorney's fees and representation expenses, as stipulated in Article XII of the CBA, be valid and upheld namely: 1) authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned.

### 11.3 Check-off of Agency Fee

This is the amount, equivalent to union dues, which a non-union member pays to the union because he benefits from the CBA negotiated by the union. In negotiating the CBA the union served as the employee's agent. Check-off of agency fee is allowed under Art. 248(e).

### 11.4 ~~Illegal Check-off Ground for cancellation~~

### 11.5 Employer's Liability in Check-off Arrangement

Check-offs in truth impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by management at the instance of the union and for its benefit, in order to facilitate the collection of dues necessary for the latter's life and sustenance. But the obligation to pay union dues and agency fees obviously devolves not upon the employer, but the individual employee. It is a personal obligation not demandable from the employer upon default or refusal of the employee to consent to a check-off. The only obligation of the employer under a check-off is to effect the deductions and remit the collections to the union.

### 11.6 Jurisdiction Over Check-off Disputes

The Regional Director of DOLE, not the labor arbiter, has jurisdiction over check-off disputes.

## Chapter III RIGHTS OF LEGITIMATE LABOR ORGANIZATIONS

Art. 242. Rights of legitimate labor organizations. A legitimate labor organization shall have the right:

- a. To act as the representative of its members for the purpose of collective bargaining;
- b. To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;

c. To be furnished by the employer, upon written request, with its annual audited financial statements, including the balance sheet and the profit and loss statement, within thirty (30) calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representative of the employees in the bargaining unit, or within sixty (60) calendar days before the expiration of the existing collective bargaining agreement, or during the collective bargaining negotiation;

d. To own property, real or personal, for the use and benefit of the labor organization and its members;

e. To sue and be sued in its registered name; and

f. To undertake all other activities designed to benefit the organization and its members, including cooperative, housing, welfare and other projects not contrary to law.

Notwithstanding any provision of a general or special law to the contrary, the income and the properties of legitimate labor organizations, including grants, endowments, gifts, donations and contributions they may receive from fraternal and similar organizations, local or foreign, which are actually, directly and exclusively used for their lawful purposes, shall be free from taxes, duties and other assessments. The exemptions provided herein may be withdrawn only by a special law expressly repealing this provision. (As amended by Section 17, Republic Act No. 6715, March 21, 1989)

Art. 242-A. Reportorial Requirements. - The following are documents required to be submitted to the Bureau by the legitimate labor organization concerned:

(a) Its constitution and by-laws, or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification of the constitution and by-laws within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;

(b) Its list of officers, minutes of the election of officers, and list of voters within thirty (30) days from election;

(c) Its annual financial report within thirty (30) days after the close of every fiscal year; and

(d) Its list of members at least once a year or whenever required by the Bureau.

Failure to comply with the above requirements shall not be a ground for cancellation of union registration but shall subject the erring officers or members to suspension, expulsion from membership, or any appropriate penalty. (As amended by Republic Act No. 9481, May 25, 2007)

## **1. NOT ANY L.L.O.**

The first three rights mentioned in this article do not pertain to just about any union but only to the union that has been selected as the bargaining representative of the employees in the bargaining unit. This article must be read in relation to Article 255.

## **2. RIGHTS OF UNION TO REPRESENT ITS MEMBERS**

It is the function of a labor union to represent its members against the employer's unfair labor practices. It can file in their behalf without the cumbersome procedure of joining each and every member as a separate party.

A labor union has the requisite personality to sue on behalf of its members for their individual money claims. It would be an unwarranted impairment of the right to self-organization if such collective entities would be barred from instituting an action in their representative capacity.

### **2.1 Members Doubting Their Union**

A labor union is one such party authorized to represent its members under Article 242(a) of the Labor Code which provides that a union may act as the representative of its members for the purpose of collective bargaining. This authority includes the power to represent its members for the purpose of enforcing the provisions of the CBA.

The intervention may be allowed when there is a suggestion of fraud or collusion or that the representative will not act in good faith for the protection of all interests represented by the union.

## **3. COMPROMISE BINDING UPON MINORITY MEMBERS OF UNION; EXCEPTION**

It is an accepted rule under our laws that the will of the majority should prevail over the minority and that the action taken by petitioners as minority members of the Union is contrary to the policy of the Magna Carta of Labor, which promotes the settlement of differences between management and labor by mutual agreement, and that if said action were tolerated, no employer would ever enter into any compromise agreement for the minority

members of the Union will always dishonor the terms of the agreement and demand for better terms.

## **4. COMPROMISE OF MONEY CLAIMS**

Money claims due to laborers cannot be the object of settlement or compromise effected by a union or counsel without the specific individual consent of each laborer concerned. The beneficiaries are the individual complainants themselves. The union to which they belong can only assist them but cannot decide for them. Awards in favor of laborers after long years of litigation must be attended to with mutual openness and in the best of faith. Only thus can we really give meaning to the constitutional mandate of giving laborers maximum protection and security.

Under the philosophy of collective responsibility, an employer who bargains in good faith should be entitled to rely upon the promises and agreements of the union representatives with whom he must deal under the compulsion of law and contract. The collective bargaining process should be carried on between parties who can mutually respect and rely upon the authority of each other." Where, however, collective bargaining process is not involved, and what is at stake are back wages already earned by the individual workers by way of overtime, premium and differential pay, and final judgment has been rendered in their favor, the present case, the real parties in interest with direct material interest, as against the union which has only served as a vehicle for collective action to enforce their just claims, are the individual workers themselves. Authority of the union to waive or quitclaim all or part of the judgment award in favor of the individual workers cannot be lightly presumed but must be expressly granted, and the employer, as judgment debtor, must deal in all good faith with the union as the agent of the individual workers. The Court in turn should certainly verify and assure itself of the fact and extent of the authority of the union leadership to execute any compromise or settlement of the judgment on behalf of the individual workers who are the real judgment creditors.

## **5. RIGHT TO BE FURNISHED WITH FINANCIAL STATEMENT**

To better equip the union in preparing for or in negotiating with the employer, the law gives it the right to be furnished with the employer's audited financial statements. There are four points in time when the union may ask in writing for these statements:

- (1) after the union has been recognized by the employer as sole bargaining representative of the employees in the bargaining unit; or
- (2) after the union is certified by DOLE as such sole bargaining representative; or
- (3) within the last 60 days of the life of a CBA; or

(4) during the collective bargaining negotiation.

The audited statements, including the balance sheet and the profit and loss statement, should be provided by the employer within 30 calendar days after receipt of the union's request.

## **6. RIGHT TO COLLECT DUES**

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