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CRITICAL AREAS IN LABOR LAW

(LABOR RELATIONS)

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CRITICAL ARTICLES:

1 **BOOK FIVE:** Articles 219,224,225,229,232,233,234, 238, 240,241,245,246,247,249,250, 253,254,255,256,257,258,259,260,263,264,,265,266,267,268 to 272, 273 to 276,278 to 280,284,285 and 289

2. **BOOK SIX:** Articles 294 to302

3. **BOOK SEVEN:** Articles 305 and306

Constitutional and Labor Code Provisions

2007, 1995, 1994 Bar Examinations

Section 3, Article XIII, 1987 Constitution in relation to Article 218 (g)

Workers right to participate in policy and decision-making processes

Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. (***Article 267 [255], Labor Code, as amended by Section 22, Republic Act No. 6715, March 21, 1989***) The right of the workers right to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law is the principle of co-determination under Article XIII, Section 3 of the 1987 Constitution.

Creation of labor-management/other councils for purposes of co-determination

2011 Bar Examination

The Department shall promote the formation of labor-management councils in organized and unorganized establishments to enable the workers to participate in policy and decision-making processes in the establishment, insofar as said processes will directly affect their rights, benefits and welfare, except those which are covered by collective bargaining agreements or are traditional areas of bargaining. (***Section 1, Rule XXI, Book V, Rules to Implement the Labor Code***)

Definitions of terms under Article 219 [212]

1990 Bar Examination

(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.

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"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. (**Rule I, Section 1[r], Rules to Implement the Labor Code**)

1996 Bar Examination

(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.

2012 and 2011 Bar Examinations

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

2004 Bar Examination

(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.

2000 Bar Examination

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

1997, 1992 and 1991 Bar Examinations

(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.

2008, 2002, 2000 and 1998 Bar Examinations

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

2004 Bar Examination

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

1991 Bar Examination

(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.

2003, 2002, 1996, 1995 and 1994 Bar Examinations

(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.

2006, 2004, and 2000 Bar Examinations

(h) "Certification Election" or "Consent Election" refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for

purposes of collective bargaining or negotiation. A certification election is ordered by the Department, while a consent election is voluntarily agreed upon by the parties, with or without the intervention by the Department. (**Rule I, Section 1[h], Rules to Implement the Labor Code**)

Jurisdiction

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

1993 Bar Examination

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. (***Rule VII, Section 2 [b], 2011 NLRC Rules of Procedure, As Amended in relation to Article 220 of the Labor Code***)

1993 and 1992 Bar Examinations

Power to issue inunction and temporary restraining order

1. Kinds of injunction

a. To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or

b. 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. (***Article 225 (e) [218 (e)], as amended by Section 10, Republic Act No. 6715, March 21, 1989***)

2015 Bar Examination

2. When to issue temporary/permanent injunction

The following are the requisites for issuance of temporary or permanent injunction

1. 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

2. 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. (***Article 225 (e) [218 (e)], as amended by Section 10, Republic Act No. 6715, March 21, 1989***)

NLRC'S JURISDICTION

2018, 2015, 2014 and 1995 Bar Examinations

The Commission shall exercise **exclusive**, **original**, and **appellate jurisdiction** in accordance with law. (***Rule VII, Section 1, 2011 NLRC Rules of Procedure, As Amended***)

1. Original jurisdiction of the Commission

The Commission shall have original jurisdiction over the following cases:

1. Direct and indirect contempt. (***Article 225 (d) [218 (d)] of the Labor Code; Rule IX, Section 2, 2011 NLRC Rules of Procedure, As Amended***);
2. Injunction in ordinary labor disputes. (***Article 225 (e) [218 (e)] in relation to Article 266 [254] of the Labor Code; Rule X, Section 1, 2011 NLRC Rules of Procedure, As Amended***);

3. Injunction in strikes or lockouts involving prohibited activities under Article 279 [264] of the Labor Code (***Rule X, Section 2, 2011 NLRC Rules of Procedure, As Amended***);

4. On certified labor disputes under Article 278 (g) [263 (g)] of the Labor Code (***Article 266 [254] of the Labor Code; Rule VII, Section 2, 2011 NLRC Rules of Procedure, As Amended***);

5. Extraordinary Remedies. (***Rule XII, Section 1, 2011 NLRC Rules of Procedure, As Amended***);

2. Exclusive appellate jurisdiction of the Commission

The Commission shall have exclusive appellate jurisdiction over the following cases:

1. Over all cases decided by Labor Arbiters (***Article 224 [b], Labor Code***);
2. The direct contempt cases adjudged by the Labor Arbiter (***Rule IX, Section 1, 2011 NLRC Rules of Procedure, As Amended***);
3. Any decision or resolution of the Regional Director or hearing officer under Article 129 of the Labor Code (***Article 129, Labor Code***);

LABOR ARBITERS

2018, 2015 and 1995 Bar Examinations

Original and exclusive jurisdiction of Labor Arbiters

Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural:

(a) Unfair labor practice cases;
(b) Termination disputes[1];
(c) 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;
(d) Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations[2];
(e) Cases arising from any violation of Article 264 (now 279) of the Labor Code, as amended, including questions involving the legality of strikes and lockouts;
(f) Except claims for employees compensation not included in the next succeeding paragraph, 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), whether or not accompanied with a claim for reinstatement[3]; (***Article 224; Rule V, Section 1, 2011 NLRC Rules of Procedure, As Amended***)
(g) Wage distortion disputes in unorganized establishments not voluntarily settled by the parties pursuant to Republic Act No. 6727[4]; (***Article 124 par. 5; Rule V, Section 1, 2011 NLRC Rules of Procedure, As Amended***)
(h) Enforcement of compromise agreements when there is non-compliance by any of the parties pursuant to Article 233 of the Labor Code, as amended[5]; (***Article 233; Rule V, Section 1, 2011 NLRC Rules of Procedure, As Amended***)

[1] 2012, 1991 and 1990 Bar Examinations
[2] 2001 Bar Examination
[3] 2011 Bar Examination
[4] 2012 Bar Examination
[5] 2007 Bar Examination

(i) 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 provided by Section 10 of RA 8042, as amended by RA 10022[6]; and
(j) Other cases as may be provided by law.

Requirements for Labor Arbiters' exercise of jurisdiction under Article 224

The following are the rules related to the exercise of jurisdiction of the Labor Arbiters under Article 224:

1999 and 1995 Bar Examinations

1. Existence of employer-employee relationship

In ***Sorreda v. Cambridge Electronics Corporation, G. R. No. 172927, February 11, 2010*** it was ruled that there should be employer-employee relation for the Labor Arbiter to exercise jurisdiction. Thus, the High Court said:

> In ***Pioneer Concrete Philippines, Inc. v. Todaro, G.R. No. 154830, 8 June 2007, 524 SCRA 153, 163***. the Court reiterated that where no employer-employee relationship exists between the parties, and the Labor Code or any labor statute or collective bargaining agreement is not needed to resolve any issue raised by them, it is the Regional Trial Court which has jurisdiction.

2009 Bar Examination

2. Jurisdiction of labor arbiters under Section 10 of R.A. No. 8042 even in the absence of employer-employee relationship

In ***Santiago v. CF Sharp Crew Management , Inc., G. R. No. 162419, July 10, 2007***, the issue to be resolved is whether the seafarer, who was prevented from leaving the port of Manila and refused deployment without valid reason but whose POEA-approved employment contract provides that the employer-employee relationship shall commence only upon the seafarer's actual departure from the port in the point of hire, is entitled to relief? The High Court ratiocinated" Despite the absence of an employer-employee relationship between petitioner and respondent, the Court rules that the NLRC has jurisdiction over petitioner's complaint. The jurisdiction of labor arbiters is not limited to claims arising from employer-employee relationships. Section 10 of R.A. No. 8042 (Migrant Workers Act). This ruling was reiterated in Bright Maritime Corp. v. Fantonial, G.R. No. 165935, February 8, 2012.

3. "Reasonable causal connection" rule

In ***Pepsi Cola Distributors of the Philippines, Inc. v. Galang. G. R. No. 89621, September 24, 1991***, the Supreme Court explained the "reasonable causal connection" to put the case under Article 217 (now Article 224). The Court said: It must be stressed that not every controversy involving workers and their employers can be resolved only by the labor arbiters. This will be so only if there is a "reasonable causal connection" between the claim asserted and employee-employer relations to put the case under the provisions of Article 217. Absent such a link, the complaint will be cognizable by the regular courts of justice in the exercise of their civil and criminal jurisdiction.

4. Meaning of "reasonable causal connection" rule

"Reasonable causal connection" those claims which arise out of or in connection with the employer-employee relationship, or some aspect or incident of such relationship. (***San Miguel Corporation v. National Labor Relations Commission, G. R. No. 80774, May 31, 1988***)

Bureau of Labor Relations and Labor Relations Divisions

2012, 1996 Bar Examination

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:

[6] 2012, 2009 and 2004 Bar Examinations

a. All inter-union and intra-union conflicts; and

b. All disputes, grievances or problems arising from or affecting labor-management relations in all workplaces, whether agricultural or non-agricultural. (***Article 232 [226], Labor Code***)

Equity of the incumbent

2015 Bar Examination

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. (***Article 249 [240], Labor Code***). Rule XXVI, Section 2 of the Rules to Implement the Labor Code, with title equity of the incumbent, provides: "Industry unions or trade union centers registered by virtue of the old rules as amended by Department Order No. 9, series of 1997, shall maintain their legitimate status with all rights and obligations appurtenant thereto."

2002 and 2001 Bar Examinations

Special assessment or other extraordinary fees

No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless:

(1) ***authorized by*** a ***written resolution*** of a majority of all the members in a general membership meeting duly called for the purpose;

(2) the secretary of the organization shall record the

(a) ***minutes*** of the ***meeting*** including;

(b) ***list of*** all ***members present***;

(c) ***votes cast***;

(d) ***purpose*** of the special assessment or fees; and

(e) ***recipient*** of such assessment or fees;

(f) ***record*** shall be ***attested*** to ***by*** the ***president***. (***Article 250 (n) [241 (n)], Labor Code***)

2013 and 2012 Bar Examinations

Rights of legitimate labor organizations

A legitimate labor organization shall have the right:

(a) To act as the representative of its members for collective bargaining;

(b) To be certified as the exclusive representative in an appropriate bargaining unit;

(c) To be furnished by the employer with its annual audited financial statements, balance sheet and the profit and loss statement;

(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;.

Coverage and employees' right to self-organization

Those covered by the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining are the following:

1. All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not[7]; (***Article 253 [243], Labor Code, As amended by Batas Pambansa Bilang 70, May 1, 1980, Section 1, Rule II, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-C-05, Series of 2005***)

2. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection. (***Article 253 [243], Labor Code, As amended by Batas Pambansa Bilang 70, May 1, 1980, Section 1, Rule II,***

[7] 2011, 2002 and 2000 Bar Examinations

Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-C-05, Series of 2005)

3. Right of supervisory employees. Supervisory employees has been defined as 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. (***Article 219 [m] [212 (m)], Labor Code***) Supervisory employees shall not be eligible for membership in the collective bargaining unit of the rank-and-file employees but may join, assist or form separate collective bargaining unit and/or labor organizations of their own. (***Article 255 [245], Labor Code, Section 1, Rule II, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-C-05, Series of 2005***)

4. "Employee". According to Article 219 [f] [212 (f)] of the Labor Code, 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. Further, Article 292 [c] [277 (c)] of the Labor Code) provides that, "Any employee, whether employed for a definite period or not, shall, beginning on his first day of service, be considered as an employee for purposes of membership in any labor union;

5. Aliens employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor unions for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs, or which has ratified ILO Convention No. 87 and ILO Convention No. 98.[8] (***Article 284 [269], Labor Code, As amended by Section 29, Republic Act No. 6715, March 21, 1989, Section 1, Rule II, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-C-05, Series of 2005***)

6. Right of employees in the public service. Employees of government corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. All other employees in the civil service shall have the right to form associations for purposes not contrary to law. (***Article 254 [244], Labor Code, As amended by Executive Order No. 111, December 24, 1986***).

7. Homeworkers. (***Section 3, Rule XIV, Book III, Rules to Implement the Labor Code***)

8. Contractor's employees. (***Section 8, Department Order No. 18-A Series of 2011***)

9. Employees of a cooperative who are not members thereof are entitled to exercise the rights of all workers to form, join or assist labor organizations for purposes of collective bargaining. (***Albay Electric Cooperative I v. Trajano, G.R. No. 74560 November 9, 1988***)

10. Members of the Iglesia ni Cristo. (***Reyes v. Trajano, G.R. No. 84433, June 2, 1992***)

11. Security guards (***Republic Act No. 6715 and E.O. 111, Manila Electric Company v. NLRC, G. R. No. 91902, May 20, 1991***)

12. Working child. (***Article 111, Title VI, Chapter 3, Presidential Decree No. 608, as amended by Presidential Decree No. 1179***)

Excluded from the coverage and employees' right to self-organization

1. High-level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees. (***Section 3, Executive Order No. 180***)

2. Employees of cooperatives who are members.[9] (***Cooperative Rural Bank of Davao City, Inc. vs. Ferrer Calleja, et al. [G.R. No. 7795, September 26,1988] and reiterated in the cases of Batangas-Electric Cooperative Labor Union v. Young, et al. [G.R. Nos. 62386, 70880 and 74560 November 9, 1988] and San Jose City Electric Service Cooperative, Inc. v. Ministry of Labor and Employment, et al. [G.R. No. 77231, May 31, 1989]*** cited in ***Bneguet Electric Cooperative, Inc. v. Ferrer-Calleja, G. R. No. 79025, December 29, 1989***)

(3.) Managerial employees. (***Article 219 [m] [212 (m)], 255 [245], Labor Code***)

[8] 2000 Bar Examinations

[9] 2012, 2010 and 2002 Bar Examinations

(4.) Members of the Armed Forces of the Philippines, including police officers, policemen, firemen and jail guards.AFP and police personnel, firemen and jail guards. (***Section 3, Executive Order No. 180***)

(5.) Confidential employees. (***San Miguel Foods, Incorporated v. San Miguel Corporation Supervisors and Exempt Union, G. R. No. 146206, August 1, 2011***)

(6.) Employees of International Organization with immunity.

(7.) Non-employees

Who may join employees' organizations in the public sector

Employees in agencies of the national government and their regional offices, attached agencies and their regional offices, state universities and colleges, government-owned or controlled corporations with original charters, and local government units, except as may be hereinafter provided, can form, join or assist employees' organizations, labor-management committees, work councils and other forms of employees' participation schemes of their own choosing for the purposes above-stated[10]. (***Section 2, Rule II, Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize, dated September 28, 2004***)

Those not eligible to join employees' organizations in the public sector

The following shall not be eligible to form, join or assist any employees' organization for purposes of collective negotiations:

(a) high level, highly confidential and coterminous employees;

(b) members of the Armed Forces of the Philippines;

(c) members of the Philippine National Police;

(d) firemen;

(e) jail guards; and,

(f) other personnel who, by the nature of their functions, are authorized to carry firearms, except when there is express written approval from management[11]. (***Section 2, Rule II, Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize, dated September 28, 2004***)

Confidential employees covered by the prohibition

2014, 2011, 2009, 2002 and 1999 Bar Examinations

In ***Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. SIA Brewery, Inc., G. R. No. 162025, August 3, 2010***, the High Court explained, who are those confidential employees covered by the prohibition to join, form and assist any labor organization under Article 245 [now 255] of the Labor Code, as follows:

> Confidential employees are defined as those who (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations. The two (2) criteria are cumulative, and both must be met if an employee is to be considered a confidential employee that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to *labor relations.* The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the confidential employee rule. (***San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma, G.R. No. 110399, August 15, 1997, 277 SCRA 370, 374-375, citing Westinghouse Electric Corp. v. NLRB (CA6) 398 F2d 669 (1968), Ladish Co., 178 NLRB 90 (1969) and B.F. Goodrich Co., 115 NLRB 722 [1956]***)

Effect of inclusion as members of employees outside the bargaining unit

2010 and 1999 Bar Examinations

The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed

[10] 2014, 2009 and 1996 Bar Examinations

[11] 2011 Bar Examination

from the list of membership of said union. (***Article 256. [245-A], Labor Code, introduced as new provision by Section 9, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Concept of unfair labor practice

2012 and 1996 Bar Examinations

Unfair labor practices:

1. Violate the constitutional right of workers and employees to self-organization;
2. Inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect;
3. Disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.
4. Unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided. (***Article 258 [247], Labor Code, as amended by Batas Pambansa Bilang 70, May 1, 1980 and later further amended by Section 19, Republic Act No. 6715, March 21, 1989***)

Civil aspects of unfair labor practices and its jurisdiction

2007 Bar Examination

Subject to the exercise by the President or by the Secretary of Labor and Employment of the powers vested in them by Articles 263 and 264 of this Code, the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters. The Labor Arbiters shall give utmost priority to the hearing and resolution of all cases involving unfair labor practices. They shall resolve such cases within thirty (30) calendar days from the time they are submitted for decision. (***Article 258 [247], Labor Code, as amended by Batas Pambansa Bilang 70, May 1, 1980 and later further amended by Section 19, Republic Act No. 6715, March 21, 1989***)

Comparative table of ULP of Employers and Labor Organizations

UNFAIR LABOR PRACTICES	
OF EMPLOYERS	**OF LABOR ORGANIZATIONS, OFFICERS, AGENTS/ REPRESENTATIVES**
(a) To ***interfere*** with, ***restrain*** or ***coerce*** employees ***in the exercise of*** their ***right to self-organization***;	(a) To ***restrain*** or ***coerce*** employees ***in the exercise of their right to self-organization***. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;
(b) To require ***as a condition of employment*** that a person or an employee ***shall not join a labor organization*** or ***shall with-draw*** from one to which he belongs(referred as **yellow dog contract**);	No similar provision
(c) To ***contract out services or functions*** being performed by union members ***when such will interfere*** with, ***restrain*** or ***coerce*** employees ***in the exercise of their rights to self-organization***;	No similar provision
(d) To ***initiate***, ***dominate***, ***assist*** or ***otherwise interfere with the formation*** or ***administration of any labor organization***, including the ***giving of financial*** or ***other support*** to it or its ***organizers or supporters***;	No similar provision
(e) To ***discriminate*** in regard ***to wages***, ***hours of work*** and ***other terms*** and ***conditions of employment*** in order ***to encourage or discourage membership*** in any labor organization. Nothing in this Code or in any other	(b) To ***cause*** or ***attempt to cause*** an employer ***to discriminate*** against an employee, ***including discrimination*** against an employee ***with respect to whom membership in such organization has been***

law shall stop the parties ***from requiring membership in a recognized collective bargaining agent as a condition for employment***, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. ***Employees*** of an appropriate bargaining unit who are ***not members*** of the recognized collective bargaining agent ***may be assessed a reasonable fee equivalent to the dues*** and ***other fees paid by members of the recognized collective bargaining agent***, if such non-union members accept the benefits under the collective bargaining agreement: Provided, that the ***individual authorization required under Article 251***, ***paragraph (o)*** of this Code ***shall not apply to the non-members*** of the recognized collective bargaining agent;	***denied*** or ***to terminate an employee on any ground other than*** the usual ***terms and conditions*** under which ***membership or continuation of membership is made available to other members***;
(f) To ***dismiss***, ***discharge*** or otherwise ***prejudice*** or ***discriminate*** against an employee ***for having given*** or being ***about to give testimony under this Code***;	No similar provision
(g) To ***violate the duty to bargain collectively*** as prescribed by this Code;	(c) To ***violate the duty***, or ***refuse to bargain collectively*** with the employer, provided it is the representative of the employees;
(h) To ***pay negotiation*** or ***attorney's fees*** to the union or its officers or agents ***as*** part of the ***settlement of any issue in collective bargaining*** or ***any other dispute***; (resulting CBA is a **sweetheart contract**) or	(e) To ***ask for*** or ***accept negotiation*** or ***attorney's fees*** from employers ***as*** part of the ***settlement of any issue in collective bargaining*** or ***any other dispute***; (resulting CBA is a **sweetheart contract**) or
(i) To ***violate a collective bargaining agreement***.	(f) To ***violate a collective bargaining agreement***.
No similar provision	(d) To ***cause*** or ***attempt to cause*** an employer ***to pay*** or ***deliver*** or ***agree to pay*** or ***deliver any money*** or ***other things of value***, ***in the nature of an exaction***, for ***services*** which are ***not performed*** or ***not to be performed***, ***including*** the ***demand*** for ***fee for union negotiations*** (referred as **featherbedding**);

Meaning of runaway shop

2009 Bar Examination

In ***Complex Electronics Employees Association (CEAA) v. NLRC, G.R. No. 121315, July 19, 1999***, discussed the concept of runaway shop as follows:

> A runaway shop is defined as an industrial plant moved by its owners from one location to another to escape union labor regulations or state laws, but the term is also used to describe a plant removed to a new location in order to discriminate against employees at the old plant because of their union activities. (***See Textile Workers Union v. Darlington Mfg. Co., 380 US 263, 12 L Ed. 2d 827, 85, S Ct 994***) It is one wherein the employer moves its business to another location or it temporarily closes its business for anti-union purposes. A runaway shop in this sense, is a relocation motivated by anti-union *animus* rather than for business reasons.

Kinds of Union Security Clause

2015 and 1999 Bar Examinations

The case of ***Bank of the Philippine Islands v. BPI Employees Union Davao Chapter-Federation of Union in BPI Unibank, G. R. No. 164301, August 10, 2010***, provided the following kinds of union security as follows:

There is **union shop** when all new regular employees are required to join the union within a certain period for their continued employment.

There is **maintenance of membership shop** when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated.

A **closed-shop**, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part. (***Inguillo v. First Philippine Scales, Inc., G.R. No. 165407, June 5, 2009, 588 SCRA 471, 485-486***)

Agency shop agreement under Article 258 (e) [247 (e)]

2015, 2010, 2009 and 1997 Bar Examinations

Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent. (***Article 259 (e) [248 (e)], Labor Code***) The fees assessed and collected is called the agency fee.

Under the agency shop agreement, also known as the "Maintenance of Treasury Shop Arrangement," those who choose not to join the bargaining union and who decide not to remain members are required, during the existence of the collective-bargaining agreement, to pay to the union treasury a sum equal to the fees and dues paid by the members of the bargaining union. This type of employment arrangement, which is also known as "union-agency shop" or "agency-shop" employment arrangements, is to discourage free riders. (***Labor Relations Law with Notes and Cases, Third Edition 1999, Rufus B. Rodriguez, page 436***)

Employees exempt from the coverage of union shop clause

2005 and 1996 Bar Examinations

As ruled in ***Bank of the Philippine Islands v. BPI Employees Union Davao Chapter-Federation of Union in BPI Unibank, G. R. No. 164301, August 10, 2010***, the following are the employees exempt from the coverage of union shop clause:

All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. **However, under law and jurisprudence, the following kinds of employees are exempted from its coverage**, namely:

1. Employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds; (***Victoriano v. Elizalde Rope Workers Union, G.R. No. L-25246, September 12, 1974, 59 SCRA 54, 68***)

2. **Employees already in the service and already members of a union other than the majority at the time the union shop agreement took effect**; (***Freeman Shirt Manufacturing Co. v. Court of Industrial Relations, G.R. No. L-16561, January 28,1961, 1 SCRA 353, 356; Sta. Cecilia Sawmills v. Court of Industrial Relations, G.R. No. L-19273-4, February 29, 1964, 10 SCRA 433, 437)***

3. ***Confidential employees who are excluded from the rank and file bargaining unit; (Metrolab Industries, Inc. v. Confesor, G.R. No. 108855, February 28, 1996, 254 SCRA 182, 197***) and

4. **Employees excluded from the union shop by express terms of the agreement**.

ULP in Collective Bargaining under Article 259 (g) [248(g)] of the Labor

The unfair labor practices in Collective Bargaining under Article 259 (g) [248(g)] of the Labor Code are as follows:

1. Bargaining in bad faith
2. Refusal to bargain;
3. Individual bargaining;
4. Blue sky bargaining; and
5. Surface bargaining

a. Bargaining in bad faith and refusal to bargain

1997 Bar Examination

In ***General Milling Corporation v. Court of Appeals, G.R. No. 146728, February 11, 2004***, the Supreme Court explained bargaining in bad faith and refusal to bargain as follows:

> The law mandates that the representation provision of a CBA should last for five years. The relation between labor and management should be undisturbed until the last 60 days of the fifth year. Hence, it is indisputable that when the union requested for a renegotiation of the economic terms of the CBA on November 29, 1991, it was still the certified collective bargaining agent of the workers, because it was seeking said renegotiation within five (5) years from the date of effectivity of the CBA on December 1, 1988. The union's proposal was also submitted within the prescribed 3-year period from the date of effectivity of the CBA, albeit just before the last day of said period. It was obvious that GMC had no valid reason to refuse to negotiate in good faith with the union. For refusing to send a counter-proposal to the union and to bargain anew on the economic terms of the CBA, the company committed an unfair labor practice under Article 248 of the Labor Code.
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> xxx
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> Under Article 252 above cited, both parties are required to perform their mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement. The union lived up to this obligation when it presented proposals for a new CBA to GMC within three (3) years from the effectivity of the original CBA. But GMC failed in its duty under Article 252. What it did was to devise a flimsy excuse, by questioning the existence of the union and the status of its membership to prevent any negotiation.
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> It bears stressing that the procedure in collective bargaining prescribed by the Code is mandatory because of the basic interest of the state in ensuring lasting industrial peace.
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> xxx
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> GMC's failure to make a timely reply to the proposals presented by the union is indicative of its utter lack of interest in bargaining with the union. Its excuse that it felt the union no longer represented the workers, was mainly dilatory as it turned out to be utterly baseless.
>
> We hold that GMC's refusal to make a counter-proposal to the union's proposal for CBA negotiation is an indication of its bad faith. Where the employer did not even bother to submit an answer to the bargaining proposals of the union, there is a clear evasion of the duty to bargain collectively. (***Colegio De San Juan De Letran v. Association of Employees and Faculty of Letran, G.R. No. 141471, 18 September 2000, 340 SCRA 587, 595***)
>
> Failing to comply with the mandatory obligation to submit a reply to the union's proposals, GMC violated its duty to bargain collectively, making it liable for unfair labor practice.

Effect of bargaining in bad faith or refusal to bargain

1999 Bar Examination

In ***General Milling Corporation v. Court of Appeals, G.R. No. 146728, February 11, 2004***, the Supreme Court declared the employer to have lost its right to bargain the terms and conditions of the CBA and impose on the erring company the CBA proposed by its employees union as effects of bargaining in bad faith or refusal to bargain. Thus, the High Court said:

In ***Kiok Loy vs. NLRC, No. L-54334, 22 January 1986, 141 SCRA 179, 188*** we found that petitioner therein, Sweden Ice Cream Plant, refused to submit any counter proposal to the CBA proposed by its employees certified bargaining agent. We ruled that the former had thereby lost its right to bargain the terms and conditions of the CBA. Thus, we did not hesitate to impose on the erring company the CBA proposed by its employees union - lock, stock and barrel. Our findings in *Kiok Loy* are similar to the facts in the present case, to wit:

> petitioner Company's approach and attitude stalling the negotiation by a series of postponements, non-appearance at the hearing conducted, and undue delay in submitting its financial statements, lead to no other conclusion except that it is unwilling to negotiate and reach an agreement with the Union. Petitioner has not at any instance, evinced good faith or willingness to discuss freely and fully the claims and demands set forth by the Union much less justify its objection thereto. (***Supra***)

Likewise, in ***Divine Word University of Tacloban vs. Secretary of Labor and Employment, 213 SCRA 759, 11 September 1992*** petitioner therein, Divine Word University of Tacloban, refused to perform its duty to bargain collectively. Thus, we upheld the unilateral imposition on the university of the CBA proposed by the Divine Word University Employees Union. We said further:

> That being the said case, the petitioner may not validly assert that its consent should be a primordial consideration in the bargaining process. By its acts, no less than its action which bespeak its insincerity, it has forfeited whatever rights it could have asserted as an employer. (***Supra***)

c. (Bargaining in) Bad faith is a question of fact and is evidentiary

2011 Bar Examination

Tabangao Shell Refineery Employees Association v. Pilipinas Shell Petroleum Corporation, G.R. No. 170007, April 7, 2014: The existence of bad faith is a question of fact and is evidentiary. (***Belle Corporation v. De Leon-Banks, G.R. No. 174669, September 19, 2012, 681 SCRA 351, 362***) The crucial question of whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case, and good faith or bad faith is an inference to be drawn from the facts. (***Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission, 346 Phil. 524, 534 [1997]***) Thus, the issue of whether or not there was bad faith on the part of the company when it was bargaining with the union is a question of fact. It requires that the reviewing court look into the evidence to find if indeed there is proof that is substantial enough to show such bad faith.

In ***Kiokloy v. NRLC, G. R. No. L-54334 January 22, 1986****,* the circumstances indicating bad faith were noted by the Supreme Court as follows:

> It has been indubitably established that (1) respondent Union was a duly certified bargaining agent; (2) it made a definite request to bargain, accompanied with a copy of the proposed Collective Bargaining Agreement, to the Company not only once but twice which were left unanswered and unacted upon; and (3) the Company made no counter proposal whatsoever all of which conclusively indicate lack of a sincere desire to negotiate. (***National Labor Relations Board vs. George Piling & Sons Co., 119 F. (2nd) 32***) A Company's refusal to make counter proposal if considered in relation to the entire bargaining process, may indicate bad faith and this is specially true where the Union's request for a counter proposal is left unanswered. (***Teller, II Labor Disputes & Collective Bargaining 889, citing Glove Cotton Mills vs. NLRB 103 F. (2nd) 91***) Even during the period of compulsory arbitration before the NLRC, petitioner Company's approach and attitude-stalling the negotiation by a series of postponements, non-appearance at the hearing conducted, and undue delay in submitting its financial statements, lead to no other conclusion except that it is unwilling to negotiate and reach an agreement with the Union. Petitioner has not at any instance, evinced good faith or willingness to discuss freely and fully the claims and demands set forth by the Union much less justify its opposition thereto. (***Herald Delivery Carriers Union (PAFLU) vs. Herald Publications, Inc., 55 SCRA 713 (1974), citing NLRB vs. Piling & Sons, Co., 119 F. (2nd) 32 [1941]***)

> The case at bar is not a case of first impression, for in the ***Herald Delivery Carriers Union (PAFLU) vs. Herald Publications, 55 SCRA 713 (1974)*** the rule had been laid down that "unfair labor practice is committed when it is shown that the respondent employer, after having been served with a written bargaining proposal by the petitioning Union, did not even bother to submit an answer or reply to the said proposal This doctrine was reiterated anew in ***Bradman vs. Court of Industrial Relations 78 SCRA 10 (1977), citing Prof. Archibald Cox, "The Duty to Bargain in Good Faith", 71 Harv.***

Law Rev. 1401, 1405 (1934) wherein it was further ruled that "while the law does not compel the parties to reach an agreement, it does contemplate that both parties will approach the negotiation with an open mind and make a reasonable effort to reach a common ground of agreement

d. Individual bargaining

In ***The Insular Life Assurance Co., Ltd., Employees Association-NATU v. The Insular Life Assurance Co., Ltd. G. R. No. L-25291 January 30, 1971***, explained the inidivual bargaining and its effect as follows:

> The respondents contend that the sending of the letters, exhibits A and B, constituted a legitimate exercise of their freedom of speech. We do not agree. The said letters were directed to the striking employees individually — by registered special delivery mail at that — without being coursed through the Unions which were representing the employees in the collective bargaining.
>
> Indeed, it is an unfair labor practice for an employer operating under a collective bargaining agreement to negotiate or to attempt to negotiate with his employees individually in connection with changes in the agreement. And the basis of the prohibition regarding individual bargaining with the strikers is that although the union is on strike, the employer is still under obligation to bargain with the union as the employees' bargaining representative (***Melo Photo Supply Corporation vs. National Labor Relations Board, 321 U.S. 332***).

e. Blue-sky bargaining

In ***Standard Chartered Bank Employees Union (NUBE) v. Confessor, G. R. No. 114974 June 16, 2004***, the concept of blue-sky bargaining was explained as follows:

We, likewise, do not agree that the Union is guilty of ULP for engaging in blue-sky bargaining or making exaggerated or unreasonable proposals. (***Arthur A. Sloane and Fred Witney, Labor Relations, 7th Edition 1991, p. 195***) The Bank failed to show that the economic demands made by the Union were exaggerated or unreasonable. The minutes of the meeting show that the Union based its economic proposals on data of rank and file employees and the prevailing economic benefits received by bank employees from other foreign banks doing business in the Philippines and other branches of the Bank in the Asian region.

f. Surface bargaining

In ***Standard Chartered Bank Employees Union (NUBE) v. Confessor, G.R. No. 114974 June 16, 2004***, the concept of surface bargaining are as follows:

> Surface bargaining is defined as going through the motions of negotiating without any legal intent to reach an agreement. (***K-Mart Corporation vs. National Labor Relations Board, 626 F.2d 704 [1980]***) The resolution of surface bargaining allegations never presents an easy issue. The determination of whether a party has engaged in unlawful surface bargaining is usually a difficult one because it involves, at bottom, a question of the intent of the party in question, and usually such intent can only be inferred from the totality of the challenged partys conduct both at and away from the bargaining table. (***Luck Limousine, 312 NLRB 770, 789 [1993]***) It involves the question of whether an employers conduct demonstrates an unwillingness to bargain in good faith or is merely hard bargaining. (***Queen Mary Restaurants Corp. and Q.M. Foods, Inc. vs. National Labor Relations Board, 560 F.2d 403 [1977]***)

Substitutionary doctrine

2009 and 2000 Bar Examinations

In ***Benguet Consolidated, Inc. vs. BCI Employees and WOrkers Union-PAFLU, G.R. No. L-24711 April 30, 1968***, the substitutionary doctrine was discussed as follows:

> Stated otherwise, the *"substitutionary" doctrine* only provides that the employees cannot revoke the validly executed collective bargaining contract with their employer by the simple expedient of changing their bargaining agent. And it is in the light of this that the phrase "said new agent would have to respect said contract" must be understood. It only means that the employees, thru their new bargaining agent, cannot renege on their collective bargaining contract, except of course to negotiate with management for the shortening thereof.

The "substitutionary" doctrine, therefore, cannot be invoked to support the contention that a newly certified collective bargaining agent automatically assumes all the personal undertakings — like the no-strike stipulation here — in the collective bargaining agreement made by the deposed union. When BBWU bound itself and its officers not to strike, it could not have validly bound also all the other rival unions existing in the bargaining units in question. BBWU was the agent of the employees, not of the other unions which possess distinct personalities. To consider UNION contractually bound to the no-strike stipulation would therefore violate the legal maxim that *res inter alios nec prodest nec nocet*.

Jurisdictional preconditions of collective bargaining

2001 and 1996 Bar Examinations

While it is a mutual obligation of the parties to bargain, the employer, however, is not under any legal duty to initiate contract negotiation. (***National Labor Relations Board vs. Columbian Enameling & Stamping Co., 306 U.S. 292 '83 L. Ed. 660,59 Ct 501 [1939]***) The mechanics of collective bargaining is set in motion only when the following jurisdictional preconditions are present, namely, (1) possession of the status of majority representation of the employees' representative in accordance with any of the means of selection or designation provided for by the Labor Code; (2) proof of majority representation; and (3) a demand to bargain under Article 251, par. (a) of the New Labor Code . ... all of which preconditions are undisputedly present in the instant case. (***Kiokloy v. National Labor Relations Commission, G.R. No. L-54334 January 22, 1986***)

Status quo of CBA (Automatic Renewal Clause/Evergreen Clause/Hold-over)

2009, 2008, 2001 and 1999 Bar Examinations

It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. (***Article 264 [253], Labor Code***). The period of status quo and effectivity of the existing CBA is during the freedom period (60-day period) and/or until a new agreement is reached by the parties.

Hold-over principle

In the case of ***Manila Electric Company v. Quisumbing, G.R. No. 127598. August 1, 2000,*** explained the hold-over principle as follows:

During the interregnum between the expiration of the economic provisions of the CBA and the date of effectivity of the arbitral award, it is understood that the hold-over principle shall govern, *viz:*

> "[I]t shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day freedom period and/or until a new agreement is reached by the parties." Despite the lapse of the formal effectivity of the CBA the law still considers the same as continuing in force and effect until a new CBA shall have been validly executed. (***National Congress of Unions in the Sugar Industry of the Philippines v. Ferrer-Calleja, 205 SCRA 478, 485 [1992]***)

Terms of a collective bargaining agreement

1. As to representation aspect

Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. (***Article 265 [253-A], Labor Code, as amended by Section 21, Republic Act No. 6715, March 21, 1989***)

2. When to question majority status of incumbent bargaining agent and to conduct certification election

2011 and 2009 Bar Examinations

No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of

the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. (***Article 265 [253-A], Labor Code, as amended by Section 21, Republic Act No. 6715, March 21, 1989***) The period referred here is the freedom period (60-day period) where it is prohibited to entertain a petition questioning the majority status of the incumbent bargaining agent and the conduct of a certification election.

Retroactivity of CBA entered within six (6) months from its expiration date

Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. (***Article 265 [253-A], Labor Code, as amended by Section 21, Republic Act No. 6715, March 21, 1989***)

Retroactivity of CBA entered beyond six (6) months from its expiration date

If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. (***Article 265 [253-A], Labor Code, as amended by Section 21, Republic Act No. 6715, March 21, 1989***)

2001 and 1994 Bar Examinations

Retroactivity of (CBA) arbitral award

In the case of ***Manila Electric Company v. Quisumbing, G. R. No. 127598, August 1, 2000,*** MERALCO assailed the February 22, 2000, Resolution of the Honorable Supreme Court, particularly that portion which says:

> "Labor laws are silent as to when an arbitral award in a labor dispute where the Secretary (of Labor and Employment) had assumed jurisdiction by virtue of Article 263 (g) of the Labor Code shall retroact. In general, a CBA negotiated within six months after the expiration of the existing CBA retroacts to the day immediately following such date and if agreed thereafter, the effectivity depends on the agreement of the parties. On the other hand, the law is silent as to the retroactivity of a CBA arbitral award or that granted not by virtue of the mutual agreement of the parties but by intervention of the government. Despite the silence of the law, the Court rules herein that CBA arbitral awards granted after six months from the expiration of the last CBA shall retroact to such time agreed upon by both employer and the employees or their union. Absent such an agreement as to retroactivity, the award shall retroact to the first day after the six-month period following the expiration of the last day of the CBA should there be one. In the absence of a CBA, the Secretary's determination of the date of retroactivity as part of his discretionary powers over arbitral awards shall control." Thus, the High Court has re-examined the assailed portion of the Resolution in this case vis--vis the rulings cited by petitioner. Invariably, these cases involve Articles 253-A in relation to Article 263 (g) of the Labor Code. xxx."

In resolving the motion for reconsideration in this case, this Court took into account the fact that petitioner belongs to an industry imbued with public interest. As such, this Court can not ignore the enormous cost that petitioner will have to bear as a consequence of the full retroaction of the arbitral award to the date of expiry of the CBA, and the inevitable effect that it would have on the national economy. On the other hand, under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. (***Felix Uy, et al. v. Commission on Audit, G.R. No. 130685, March 21, 2000; citing Ditan v. POEA Administrator, 191 SCRA 823, 829 [1990]***) Balancing these two contrasting interests, this Court turned to the dictates of fairness and equitable justice and thus arrived at a formula that would address the concerns of both sides. Hence, this Court held that the arbitral award in this case be made to retroact to the first day after the six-month period following the expiration of the last day of the CBA, *i.e.*, from June 1, 1996 to May 31, 1998.

This Court, therefore, maintains the foregoing rule in the assailed Resolution *pro hac vice*. It must be clarified, however, that consonant with this rule, the two-year effectivity period must start from June 1, 1996 up to May 31, 1998, not December 1, 1995 to November 30, 1997.

During the interregnum between the expiration of the economic provisions of the CBA and the date of effectivity of the arbitral award, it is understood that the hold-over principle shall govern, *viz:*

> "[I]t shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day freedom period and/or until a new agreement is reached by the parties." Despite the lapse of the formal

effectivity of the CBA the law still considers the same as continuing in force and effect until a new CBA shall have been validly executed. (***National Congress of Unions in the Sugar Industry of the Philippines v. Ferrer-Calleja, 205 SCRA 478, 485 [1992]***)

Article 253-A [now 265] speak of agreements of the parties and not arbitral awards

In ***St. Luke's Medical Center, Inc. v. Torres, G.R. No. 99395 June 29, 1993*** the High Court explained the application of Article 253-A [now 265] of the Labor Code as follows:

> Finally, the effectivity of the Order of January 28, 1991, must retroact to the date of the expiration of the previous CBA, contrary to the position of petitioner. Under the circumstances of the case, Article 253-A cannot be property applied to herein case. As correctly stated by public respondent in his assailed Order of April 12, 1991 dismissing petitioner's Motion for Reconsideration —
>
> > Anent the alleged lack of basis for the retroactivity provisions awarded, we would stress that the provision of law invoked by the Hospital, Article 253-A of the Labor Code, speak of agreements by and between the parties, and not arbitral awards . . . (p. 818, *Rollo*.)

SOLE's plenary and discretionary powers to determine the effectivity of an arbitral award

The Supreme Court in ***Mindanao Terminal and Brokerage Service, Inc. v, Confessor,. G. R. No. 111809, May 5, 1997*****,** citing the earlier case of *St. Luke's Medical Center, Inc. v. Torres* explained the SOLE's plenary and discretionary powers to determine the effectivity of an arbitral award as follows:

> In ***St. Luke's Medical Center, Inc. v. Torres, 223 SCRA 779 (1993)*** a deadlock also developed during the CBA negotiations between management and the union. The Secretary of Labor assumed jurisdiction and ordered the retroaction of their CBA to the date of expiration of the previous CBA. As in this case, it was alleged that the Secretary of Labor gravely abused his discretion in making his award retroactive. In dismissing this contention this Court held:
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> > Therefore, in the absence of a specific provision of law prohibiting retroactivity of the effectivity of arbitral awards issued by the Secretary of Labor pursuant to Article 263(g) of the Labor Code, such as herein involved, public respondent is deemed vested with plenary and discretionary powers to determine the effectivity thereof.

Also in ***Manila Central Line Corporation v. Manila Central Line Corporation Free Workers Union-National Federation of Labor, G.R. No. 109383 June 15, 1998*** petitioner also contends that in ordering the new CBA to be effective on March 15, 1989, the expiry date of the old CBA, the labor arbiter acted contrary to Art. 253-A of the Labor Code. In resovling the issue. The Supreme Court said:

> Art. 253-A refers to collective bargaining agreements entered into by the parties as a result of their mutual agreement. The CBA in this case, on the other hand, is part of an arbitral award. As such, it may be made retroactive to the date of expiration of the previous agreement. As held In *St. Luke's Medical Center, Inc. v. Torres*:
>
> > Finally, the effectivity of the Order of January 28, 1991, must retroact to the date of the expiration of the previous CBA, contrary to the position of petitioner. Under the circumstances of the case, Article 253-A cannot be properly applied to herein case. As correctly stated by public respondent in his assailed Order of April 12, 1991 dismissing petitioner's Motion for Reconsideration —
> >
> > > Anent the alleged lack of basis for the retroactivity provisions awarded, we would stress that the provision of law invoked by the Hospital, Article 253-A of the Labor Code, speaks of agreements by and between the parties, and not arbitral awards . . . (p. 818 *Rollo*).
>
> Therefore, in the absence of a specific provision of law prohibiting retroactivity of the effectivity of arbitral awards issued by the Secretary of Labor pursuant to Article 263(g) of the Labor Code, such as herein involved, public respondent is deemed vested with plenary and discretionary powers to determine the effectivity thereof. (***223 SCRA 779, 729-793 (1993); reiterated in Philippine Airlines, Inc. v. Confessor, 231 SCRA 41 [1994]***)

Injunction prohibited

2014, 2010, 2001, 1995 and 1992 Bar Examinations

No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity. (***Article 266 [254], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

Exception on the prohibition

Except as otherwise provided in Articles 218 [now 225] and 264 [now 279] of this Code. (***Article 266 [254], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

Factors in determining the appropriate collective bargaining unit

2011, 2007 and 1998 Bar Examinations

In ***International School Alliance of Educators, Inc. v. Quisumbing, G. R. No. 128845, June 1, 2000****,* the Supreme Court discussed the factors in determining the appropriate collective bargaining unit as follows:

> The factors in determining the appropriate collective bargaining unit are (1) the will of the employees (Globe Doctrine); (2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interests Rule); (3) prior collective bargaining history; and (4) similarity of employment status. (***San Miguel Corporation vs. Laguesma, supra***) The basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights. (***Belyca Corporation vs. Ferrer-Calleja, 188 SCRA 184 [1988]***)

(1) will of employees (Glove Doctrine)

Under the Globe doctrine the bargaining units may be formed through separation of new units from existing ones whenever plebescites had shown the worker’s desire to have their own representatives (***Globe Machine Stamping Co. 3 3 NLRB 294, applied in Democratic Labor Union v. Cebu Stevedoring Co., 103 Phili. 1103 [1958]***)

(2) affinity and unity of employee's interest, such as substantial similarity of work and duties or similarity of compensation and working conditions;

In ***Belyca Corporation v. Ferrer-Calleja, G.R. No. 77395 November 29, 1988*** the high Court illustrated the application of the second factor as follows:

> But more importantly, this Court laid down the test of proper grouping, which is community and mutuality of interest.
>
> Thus, in a later case, (Alhambra Cigar and Cigarette Manufacturing Co. et al. v. Alhambra Employees' Association 107 Phil. 28 [1960]) where the employment status was not at issue but the nature of work of the employees concerned; the Court stressed the importance of the second factor otherwise known as the substantial-mutual-interest test and found no reason to disturb the finding of the lower Court that the employees in the administrative, sales and dispensary departments perform work which has nothing to do with production and maintenance, unlike those in the raw leaf, cigar, cigarette and packing and engineering and garage departments and therefore community of interest which justifies the format or existence as a separate appropriate collective bargaining unit.
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> xxx
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> Hence, still later following the substantial-mutual interest test, the Court ruled that there is a substantial difference between the work performed by musicians and that of other persons who participate in the production of a film which suffice to show that they constitute a proper bargaining unit. (LVN Pictures, Inc. v. Philippine Musicians Guild, 1 SCRA 132 [1961]).
>
> Coming back to the case at bar, it is beyond question that the employees of the livestock and agro division of petitioner corporation perform work entirely different from those performed by

employees in the supermarts and cinema. Among others, the noted difference are: their working conditions, hours of work, rates of pay, including the categories of their positions and employment status. As stated by petitioner corporation in its position paper, due to the nature of the business in which its livestock-agro division is engaged very few of its employees in the division are permanent, the overwhelming majority of which are seasonal and casual and not regular employees (Rollo, p. 26). Definitely, they have very little in common with the employees of the supermarts and cinemas. To lump all the employees of petitioner in its integrated business concerns cannot result in an efficacious bargaining unit comprised of constituents enjoying a community or mutuality of interest. Undeniably, the rank and file employees of the livestock-agro division fully constitute a bargaining unit that satisfies both requirements of classification according to employment status and of the substantial similarity of work and duties which will ultimately assure its members the exercise of their collective bargaining rights.

(3) prior collective bargaining history; and

The emphasis of this factor is on the history on how the separate units are being treated. It was held in ***San Miguel Corporation v. Laguesma, G.R. No. 100485 September 21, 1994***: Contrary to petitioner's assertion, this Court has categorically ruled that the existence of a prior collective bargaining history *is neither decisive nor conclusive* in the determination of what constitutes an appropriate bargaining unit. (***Free Trade Unions v. Mainit Lumber Development Company Workers Union, G.R. No. 79526, December 21, 1990, 192 SCRA 598***)

(4) employment status, such as temporary, seasonal and probationary employees" as follows:

In ***Belyca Corporation v. Ferrer-Calleja, G.R. No. 77395 November 29, 1988*** the high Court illustrated the application of the fourth factor as follows:

Under the circumstances of that case, the Court stressed the importance of the fourth factor and sustained the trial court's conclusion that two separate bargaining units should be formed in dealing with respondent company, one consisting of regular and permanent employees and another consisting of casual laborers or stevedores. Otherwise stated, temporary employees should be treated separately from permanent employees.

xxx

Still later in ***PLASLU v. CIR et al. (110 Phil. 180 [1960])*** where the employment status of the employees concerned was again challenged, the Court reiterating the rulings, both in ***Democratic Labor Association v. Cebu Stevedoring Co. Inc. supra and Alhambra Cigar and Cigarette Co. et al. v. Alhambra Employees' Association (supra)*** held that among the factors to be considered are: employment status of the employees to be affected, that is the positions and categories of work to which they belong, xxx.

In any event, whether importance is focused on the employment status or the mutuality of interest of the employees concerned "the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights (***Democratic Labor Association v. Cebu Stevedoring Co. Inc. supra***)

Determination of representation status

2012, 2006 and 1998 Bar Examinations

The following are the modes to determine an exclusive bargaining agent:

1. Request for Sole and Exclusive Bargaining Agent (SEBA) Certification. (***Rule VII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-I-15, Series of 2015***)
2. Certification Election. (***Rule VIII and IX, Book V, Rules to Implement the Labor Code***)
3. Consent Election. (***Rule VIII and IX, Book V, Rules to Implement the Labor Code***)
4. Re-run Election. (***Section 18, Rule IX, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-I-15, Series of 2015***)
5. Run-off Election. (***Rule X, Book V, Rules to Implement the Labor Code***)

Request for Sole and Exclusive Bargaining Agent (SEBA) Certification

Request for Sole and Exclusive Bargaining Agent (SEBA) Certification

Any legitimate labor organization may file a request for SEBA Certification in the regional office which issued its certificate of registration or certificate of creation of chartered local. (***Section 1, Rule VII, Book V, Rules to Implement the Labor Code, as amended by Section 3 of Department Order No. 40-I-15, Series of 2015***)

Requirements for request of SEBA Certification

The request for certification shall indicate:

(a) The name and address of the requesting legitimate labor organization;
(b) The name and address of the company where it operates;
(c) The bargaining unit sought to be represented;
(d) The approximate number of employees in the bargaining unit; and
(e) The statement of the existence/non-existence of other labor organizional/cba.

The certificate of registration as duly certified by the president of the requesting union or certificate of creation of chartered local as duly certified by the president of the federation of the local shall be attached to the request. (***Section 2, Rule VII, Book V, Rules to Implement the Labor Code, as amended by Section 3 of Department Order No. 40-I-15, Series of 2015***)

Request for certification in unorganized establishment with only one (1) legitimate labor organization; validation proceedings

If the regional director finds the establishment unorganized with only one (1) legitimate labor organization, he/she shall call a conference within five (5) days for the submission of the following:

a. The names of employees in the covered bargaining unit who signify their support for the certification, provided that said employees comprise at least majority of the number of employees in the covered bargaining unit; and
b. Certification under oath by the president of the requesting union or local that all documents submitted are true and correct based on his/her personal knowledge.

The submission shall be presumed to be true and correct unless contested under oath by any member of the bargaining unit during the validation conference. for this purpose, the employer or any representative of the employer shall not be deemed a party-in-interest but only as a by-stander to the process of certification.

If the requesting union or local fails to complete the requirements for seba certification during the conference, the request for seba certification shall be referred to the election officer for the conduct of election pursuant to rule ix of this rules. (***Section 4, Rule VII, Book V, Rules to Implement the Labor Code, as amended by Section 3 of Department Order No. 40-I-15, Series of 2015***)

Effect of certification

Upon issuance of the certification as sole and exclusive bargaining agent, the certified union or local shall enjoy all the rights and privileges of an exclusive bargaining agent of all the employees in the covered bargaining unit.

The certification shall bar the filing of a petition for certification election by any labor organization for a period of one (1) year from the date of its issuance. upon expiration of this one-year period, any legitimate labor organization may file a petition for certification election in the same bargaining unit represented by the certified labor organization, unless a collective bargaining agreement between the employer and the certified labor organization was executed and registered with the regional office in accordance with Rule XVII of this rules. (***Section 4.2, Rule VII, Book V, Rules to Implement the Labor Code, as amended by Section 3 of Department Order No. 40-I-15, Series of 2015***)

Request for certification in unorganized establishment with more than one (1) legitimate labor organization

If the regional director finds the establishment unorganized with more than one legitiamte labor organization, he/she shall refer the same to the eelction officer for the conduct of certification election.

The certification election shall be conducted in accordance with Rule IX of this rules. (***Section 5, Rule VII, Book V, Rules to Implement the Labor Code, as amended by Section 3 of Department Order No. 40-I-15, Series of 2015***)

Request for certification in organized establishment

If the regional director finds the establishment organized, he/she shall refer the same to the mediator-arbiter for the determination of the propriety of conducting a certification election in accordance with Rules VIII and IX of this rules. (***Section 6, Rule VII, Book V, Rules to Implement the Labor Code, as amended by Section 3 of Department Order No. 40-I-15, Series of 2015***)

Certification election

Procedures for certification election

1. Who may file

Any legitimate labor organization, including a national union or federation that has issued a charter certificate to its local/chapter or the local/chapter itself, may file a petition for certification election. (***Section 1, Rule VIII, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-F-03, Series of 2008***)

2. Effect when national union/federation files the petition for its local/chapter

A national union or federation filing a petition in behalf of its local/chapter shall not be required to disclose the names of the local/chapter's officers and members, but shall attach to the petition the charter certificate it issued to its local/chapter. (***Section 1, Rule VIII, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-F-03, Series of 2008***)

3. When employer may file a petition for certification election

When requested to bargain collectively in a bargaining unit where no registered collective bargaining agreement exists, an employer may file a petition for certification election with the Regional Office. (***Section 1, Rule VIII, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-F-03, Series of 2008***)

4. Effect of filing the petition by the employer

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition. However, manifestation of facts that would aid the mediator-arbiter in expeditiously resolving the petition such as existence of a contract-bar rule shall apply in any of the following: (1) when there exists an unexpired registered cba; or (2) when there is no challenge on the representation status of the incumbent union during the freedom period. (***Section 1, Rule VIII, Book V, Rules to Implement the Labor Code as amended by Department Order No. 40-F-03, Series of 2008, as amended by Section 4 of Department Order No. 40-1-15, Series of 2015***)

Consent Election; Agreement

The contending unions may agree to the holding of an election, in which case it shall be called a consent election. The mediator-arbiter shall forthwith call for the consent election, reflecting the parties' agreement and the call in the minutes of the conference.

The mediator-arbiter shall, immediately forward the records of the petition to the Regional Director or his/her authorized representative for the determination of the Election Officer who shall be chosen by raffle in the presence of representatives of the contending unions if they so desire.

The first pre-election conference shall be scheduled within ten (10) days from the date of the consent election agreement. Subsequently conferences may be called to expediate and facilitate the holding of the consent election.

To afford an individual employee-voter an informed choice where a local/chapter is the petitioning union, the local/chapter shall secure its certificate of creation at least five working days before the date of the consent election. (***Section 10, Rule VIII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-F-03, Series of 2008***)

Denial of the petition; Grounds

2012 Bar Examination

The Mediator-Arbiter may dismiss the petition on any of the following grounds:

a) the petitioning union or national union/federation is not listed in the department's registry of legitimate labor unions or that its registration certificate has been cancelled with finality in accordance with Rule XIV of these Rules;

b) failure of a local/chapter or national union/ federation to submit a duly issued charter certificate upon filing of the petition for certification election;

c) filing of the petition before or after the freedom period of a duly registered collective bargaining agreement; provided that the sixty-day period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement;

d) filing of a petition within one (1) year from the date of recording of the voluntary recognition, or within the same period from a valid certification, consent or run-off election where no appeal on the results of the certification, consent or run-off election is pending;

e) where a duly certified union has commenced and sustained negotiations with the employer in accordance with Article 250 [now 261] of the Labor Code within the one-year period referred to in Section14.d of this rule, or where there exists a bargaining deadlock which had been submitted to conciliation or arbitration or has become the subject of a valid notice of strike or lockout where an incumbent or certified bargaining agent is a party;

f) in an organized establishment, the failure to submit the twenty-five percent (25%) signature requirement to support the filing of the petition for certification election;

g) non-appearance of the petitioner for two (2) consecutive scheduled conferences before the mediator-arbiter despite due notice; and

h) absence of employer-employee relationship between all the members of the petitioning union and the establishment where the proposed bargaining unit is sought to be represented. (***Section 14, Rule VIII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-F-03, Series of 2008***)

Effects of consent election

Where a petition for certification election had been filed, and upon the intercession of the Med-Arbiter, the parties agree to hold a consent election, the results thereof shall constitute a bar to the holding of a certification election for one (1) year from the holding of such consent election. Where an appeal has been filed from the results of the consent election, the running of the one-year period shall be suspended until the decision on appeal has become final and executory.

Where no petition for certification election was filed but the parties themselves agreed to hold a consent election with the intercession of the Regional Office, the results thereof shall constitute a bar to another petition for certification election. (***Section 24, Rule VIII, Book V, Rules to Implement the Labor Code***)

Effects of early agreements

The representation case shall not be adversely affected by a collective bargaining agreement registered before or during the last sixty (60) days of a subsisting agreement or during the pendency of the representation case. (***Section 25, Rule VIII, Book V, Rules to Implement the Labor Code***)

Bar on filing a petition for certification election

1. Certification Year Bar Rule

When a fact of voluntary recognition has been entered or a valid certification, consent or run-off election has been conducted within the bargaining unit within one (1) year prior to the filing of the petition for certification election. (***Section 3 [a], Rule VIII, Book V, Rules to Implement the Labor Code***)

2. Effect of appeal certifying the results of the election

Where an appeal has been filed from the order of the Med-Arbiter certifying the results of the election, the running of the one year period shall be suspended until the decision on the appeal has become final and executor. (***Section 3 [a], Rule VIII, Book V, Rules to Implement the Labor Code***)

3. Negotiations Bar Rule

When the duly certified union has commenced and sustained negotiations in good faith with the employer in accordance with Article 250 [now 261] of the Labor Code within the one year period referred to in the immediately preceding paragraph. (***Section 3 [b], Rule VIII, Book V, Rules to Implement the Labor Code***)

4. Bargaining Deadlock Rule

When a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout. (***Section 3 [C], Rule VIII, Book V, Rules to Implement the Labor Code***)

5. Contact Bar Rule

1999 Bar Examination

When a collective bargaining agreement between the employer and a duly recognized or certified bargaining agent has been registered in accordance with Article 231 [now 237] of the Labor Code. Where such collective bargaining agreement is registered, the petition may be filed only within sixty (60) days prior to its expiry. (***Section 3 [d], Rule VIII, Book V, Rules to Implement the Labor Code***)

Qualification of voters; inclusion-exclusion

2014 and 1999 Bar Examinations

All employees who are members of the appropriate bargaining unit three (3) months prior to the filing of the petition/request shall be eligible to vote. An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.

In case of disagreement over the voters' list or over the eligibility of voters, all contested voters shall be allowed to vote. But their votes shall be segregated and sealed in individual envelopes in accordance with Sections 10 and 11 of this Rule. (***Section 6, Rule IX, Book V, Rules to Implement the Labor Code, as amended/renumbered by Section 10 of Department Order No. 40-1-15, Series of 2015***)

Re-run Election

Re-run election. – When a certification, consent or run-off election results to a tie between the two (2) choices, the election officer shall immediately notify the parties of a re-run election. the election officer shall cause the posting of the notice of re-run within five (5) days from the certification, consent or run-off election. the re-run election shall be conducted within ten (10) days after the posting of notice.

The choice receiving the highest votes cast during the re-run election shall be declared the winner and shall be certified accordingly. (***Section 18, Rule IX, Book V, Rules to Implement the Labor Code, added by Section 16 of Department Order No. 40-1-15, Series of 2015***)

Effect of failure of election

A failure of election shall not bar the filing of a motion for the immediate holding of another certification or consent election within six (6) months from date of declaration of failure of election. (***Section 19, Rule IX, Book V, Rules to Implement the Labor Code as renumbered by Department Order No. 40-1-15, Series of 2015***)

Action on the motion

Within twenty-four (24) hours from receipt of the motion, the Election Officer shall immediately schedule the conduct of another certification or consent election within fifteen (15) days from receipt of the motion and cause the posting of the notice of certification election at least ten (10) days prior to the scheduled date of election in two (2) most conspicuous places in the establishment. The same guidelines and list of voters shall be used in the election. (***Section 20, Rule IX, Book V, Rules to Implement the Labor Code as renumbered by Department Order No. 40-1-15, Series of 2015***)

The procedure in the Challenge of Votes

2018 Bar Examinations

The ballot of the voter who has been property challenged during the Pre-Election conferences, shall be placed in an envelope which shall be sealed by the Election Officer in the presence of the voter and the representatives of the contending unions. The election Officer shall indicate on the envelope the voter's name, the union challenging the voter, and the ground for the challenged. The sealed envelope shall then be signed by the Election Officer and the representatives of the contending unions. The Election Officer shall note all challenges in the minutes of the election proceedings and shall have custody of all envelops containing the challenged votes. The envelopes shall be opened and the question of eligibility shall be passed upon by the Mediator-Arbiter only if the number of segregated votes will materially alter the results of the election. (**Section 11, Rule IX, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-F-03, Series of 2008 and renumbered by Department Order No. 40-I-15, Series of 2015**)

Proclamation and certification of the result of the election

2006 Bar Examination

Within twenty-four (24) hours from final canvass of votes, there being a valid election, the Election Officer shall transmit the records of the case to the Med-Arbiter who shall, within the same period from receipt of the minutes and results of election, issue an order proclaiming the results of the election and certifying the union which obtained a majority of the valid votes cast as the sole and exclusive bargaining agent in the subject bargaining unit, under any of the following conditions:

(a) no protest was filed or, even if one was filed, the same was not perfected within the five-day period for perfection of the protest;

(b) no challenge or eligibility issue was raised or, even if one was raised, the resolution of the same will not materially change the results of the elections.

The winning union shall have the rights, privileges and obligations of a duly certified collective bargaining agent from the time the certification is issued.

Where majority of the valid votes cast results in "No Union" obtaining the majority, the Med-Arbiter shall declare such fact in the order. (***Section 21, Rule IX, Book V, Rules to Implement the Labor Code as renumbered by Department Order No. 40-1-15, Series of 2015***)

Run-off elections

2006 Bar Examination

Run-off election when proper

When an election which provides for three (3) or more choices results in none of the contending unions receiving a majority of the valid votes cast, and there are no objections or challenges which if sustained can materially alter the results, the Election Officer shall *motu propio* conduct a run-off election within ten (10) days from the close of the election proceedings between the labor unions receiving the two highest number of votes; provided, that the total number of votes for all contending unions is at least fifty (50%) percent of the number of votes cast.

"No Union" shall not be a choice in the run-off election.

Notice of run-off elections shall be posted by the Election Officer at least five (5) days before the actual date of run-off election. (***Section 1, Rule X, Book V, Rules to Implement the Labor Code***)

Employer-employee relationship in the conduct of certification election

1998 Bar Examination

In ***Allied Free Workers' Union (PLUM)*** *v.* ***Compañia Maritima, G.R. Nos. L-22951 and L-22952, January 31, 1967 and Compañia Maritima v. Allied Free Workers' Union (PLUM) G.R. No. L-22971, January 31, 1967***, the High Court stressed the requirement of employer-employee relationship in the conduct of certification election. Thus, it was ruled: The only remaining question now is whether, in the particular context of what We have said, the lower court's ruling ordering a certification election can be sustained. As already stated, the duty to bargain collectively exists only between the "employer" and its "employees". However, the actual negotiations — which may possibly culminate in a concrete collective bargaining contract — are carried on between the "employer" itself and the official *representative* of the "employees" — in most cases, the majority labor union. Since the only function of a certification election is to determine, with judicial sanction, who this official representative or spokesman of the "employees" will be, the order for certification election in question cannot be sustained. There being no employer-employee relationship between the parties disputants, there is neither a "duty to bargain collectively" to speak of. And there being no such duty, to hold certification elections would be pointless. There is no reason to select a representative to negotiate when there can be no negotiations in the first place. We therefore hold that where — as in this case — there is no duty to bargain collectively, it is not proper to hold certification elections in connection therewith.

Representation issue in organized establishments

2013, 2012 and 2001 Bar Examinations

Who may file a petition for certification election in organized establishments

In organized establishments, a verified petition questioning the majority status of the incumbent bargaining agent is filed by any legitimate labor organization including a national union or federation which has already issued a charter certificate to its local chapter participating in the certification election or a local chapter which has been issued a charter certificate by the national union or federation before the Department of Labor and Employment. (***Article 268 [256], Labor Code, as amended by Section 23, Republic Act No. 6715, March 21, 1989 and Section 10, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Requirement to have a valid election and to be certified as bargaining agent

2018, 2014 and 2009 Bar Examinations

To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. (***Article 268 [256], Labor Code, as amended by Section 23, Republic Act No. 6715, March 21, 1989 and Section 10, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Effect of expiration of freedom period where no petition for certification election is filed

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed. (***Article 268 [256], Labor Code, as amended by Section 23, Republic Act No. 6715, March 21, 1989 and Section 10, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Effect of filing a petition for certification election in unorganized establishments

2003 Bar Examination

In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition. (***Article 269 [257], Labor***

Code, As amended by Section 24, Republic Act No. 6715, March 21, 1989 and Section 11, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007)

Who may file a petition for certification election in unorganized establishments

2012 Bar Examination

Any legitimate labor organization, including a national union or federation which has already issued a charter certificate to its local/chapter participating in the certification election or a local/chapter which has been issued a charter certificate by the national union or federation. (***Article 269 [257], Labor Code, As amended by Section 24, Republic Act No. 6715, March 21, 1989 and Section 11, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Effect if national union/federation filed the petition

2011 Bar Examination

In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter's officers and members. (***Article 269 [257], Labor Code, As amended by Section 24, Republic Act No. 6715, March 21, 1989 and Section 11, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

When an employer may file petition

2005 Bar Examination

When requested to bargain collectively, an employer may petition the Bureau for an election. (***Article 270 [258], Labor Code***)

Employer as Bystander

2014, 2013 and 1996 Bar Examinations

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. (***Article 271 [258-A], Labor Code, as amended by Section 12, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Limits of employer's participation in certification election

The employer's participation in such proceedings shall be limited to:

(1) being notified or informed of petitions of such nature; and
(2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition. (***Article 271 [258-A], Labor Code, as amended by Section 12, Republic Act No. 9481 which lapsed into law on May 25, 2007 and became effective on June 14, 2007***)

Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators

2008, 2001, 1997 and 1995 Bar Examinations

The voluntary arbitrator or panel of voluntary arbitrators shall have exclusive and original jurisdiction to hear and decide all unresolved grievances arising from:

1. The implementation or interpretation of the collective bargaining agreements; (***Article 274 [261], Labor Code, Section 4, Rule XIX, Book V, Rules to Implement the Labor Code***)

2. The interpretation or enforcement of company personnel policies which remain unresolved after exhaustion of the grievance procedure; (***Article 274 [261], Labor Code, Section 4, Rule XIX, Book V, Rules to Implement the Labor Code***)

3. Wage distortion issues arising from the application of any wage orders in organized establishments; (***par. 4, Article 124, Labor Code, Section 4, Rule XIX, Book V, Rules to Implement the Labor Code***)

4. The interpretation and implementation of the productivity incentive programs under RA 6971.

5. Upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks. (***Article. 275. [262], Labor Code***, ***Section 4, Rule XIX, Book V, Rules to Implement the Labor Code***)

6. Violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement; (***Article. 274. [261], Labor Code***)

Grievance machinery provision in CBA is not an economic provision

2015 Bar Examination

San Miguel Corporation, Inc. v. San Miguel Corporation Employees Union-PTWGO, G. R. No. 168569, October 5, 2007 raises the issue of whether respondents complaint, involving violation of the grievance machinery provision of the CBA, is one for unfair labor practice (ULP) over which a Labor Arbiter has jurisdiction. In resolving said issue, the High Court ruled:

> *Silva v. NLRC* instructs that for a ULP case to be cognizable by the Labor Arbiter, and the NLRC to exercise its appellate jurisdiction, the allegations in the complaint should show *prima facie* the concurrence of two things, namely: **(1) gross violation of the CBA; AND (2) the violation pertains to the economic provisions of the CBA. (*G.R. No. 110226, June 19, 1997, 274 SCRA 159, 173*)** (Emphasis and underscoring supplied)
>
> As reflected in the above-quoted allegations of the Union in its Position Paper, the Union charges SMFI to have violated the grievance machinery provision in the CBA. The grievance machinery provision in the CBA is not an economic provision, however, hence, the second requirement for a Labor Arbiter to exercise jurisdiction of a ULP is not present.

Jurisdiction over other labor disputes

2015, 2013, 2011 and 2008 Bar Examinations

The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide:

1. All other labor disputes;
2. Including unfair labor practices and bargaining deadlocks. (***Article 275 [262], Labor Code***)

Interpretation of the phrase "all other labor disputes"

In ***Guagua National Colleges v. Guagua National Colleges Faculty Labor Union & uGuagua National Colleges Non-Teaching & Maintenance Labor Union, GR No. 204693, Jul 13, 2016*** the Supreme Court interpreted the "catch-all" definition of grievance because of the phrase "[a]ny other matter or dispute". Thus, the High Court explained that while the phrase "all other labor dispute" or its variant "any other matter or dispute" may include unfair labor practices, it is imperative, however, that the agreement between the union and the company states in unequivocal language that the parties conform to the submission of unfair labor practices to voluntary arbitration. (Vivero v. Court of Appeals, 398 Phil. 158,169 (2000), citing San Miguel Corp. v. National Labor Relations Commission, 325 Phil 401 [1996]) It is not sufficient to merely say that parties to the CBA agree on principle that "all disputes" or as in this case, "any other matter or dispute", should be submitted to the grievance machinery and eventually to the voluntary arbitrator. There is a need for an express stipulation in the CBA that unfair labor practices should be resolved in the ultimate by the voluntary arbitrator or panel of voluntary arbitrators since the same fall within a special class of disputes that are generally within the exclusive original jurisdiction of the Labor Arbiter by express provision of the law. "Absent such express stipulation, the phrase 'all disputes' [or "any other matter or dispute" for that matter] should be construed as limited to the areas of conflict traditionally within the jurisdiction of Voluntary Arbitrators, i.e., disputes relating to contract-interpretation, contract-implementation, or interpretation or enforcement of company personnel policies. [Unfair labor practices cases] - not falling within any of these categories - should then be considered as a special area of interest governed by a specific provision of law."

Grounds for strike or lockout

Bargaining deadlocks and unfair labor practice

A stike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. (***Section 5, Rule XXII, Book V, Rules to Implement the Labor Code in relation to Article. 278 (c) [263 (c)], Labor Code***)

Instances when no strike or lockout may be declared

2015 and 2012 Bar Examinations

The following are the instances when no strike or lockout may be declared:

1. Violations of collective bargaining agreements, except flagrant and malicious refusal to comply with its economic provisions. (***Section 5, Rule XXII, Book V, Rules to Implement the Labor Code/ in relation to Article 274 [261)], Labor Code***)

2. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes or without first having filed a notice to strike or lockout or without the necessary strike or lockout vote having been onbtained and reported to the Board. (***Section 5, Rule XXII, Book V, Rules to Implement the Labor Code/ in relation to Articles 278 (b) [263 (b)] and 279 (a) [264 (a)], Labor Code***)

Who may declare a strike or lockout in case of bargaining deadlocks

2011 Bar Examination

Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practice. The employer may declare a lockout in the same cases. (***Section 6, Rule XXII, Book V, Rules to Implement the Labor Code/ in relation to Article 278 (c) [263(c)], Labor Code***)

When any legitimate labor organization may declare a strike

2013 Bar Examination

In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practices. (***Section 6, Rule XXII, Book V, Rules to Implement the Labor Code/ in relation to Article 278 (c) [263(c)], Labor Code***)

National interest cases

When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may:

1. Assume jurisdiction over the dispute and decide it; or
2. Certify the same to the Commission for compulsory arbitration. (***Article 278(g) [263(g)], Labor Code***)

Assumption by the Secretary of Labor and Employment as interpreted by the Omnibus Rules Implementing the Labor Code

2015, 2010 and 2008 Bar Examinations

Pursuant to Articles 5, 263, 264 and 265 of the Labor Code, as amended, Department Order No. 40-G-03, Series of 2010, providing amendments to Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 40, Series of 2003, as further amended, was re-issued and amended by Department Order No. 40-H-13 Series of 2013 as follows:

When a labor dispute causes or is likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the

dispute and decide it or certify the same to the National Labor Relations Commission for compulsory arbitration, provided, that any of the following conditions is present:

1. Both parties have requested the Secretary of Labor and Employment to assume jurisdiction over the labor dispute; or

2. After a conference called by the Office of the Secretary of Labor and Employment on the propriety of its issuance, motu proprio or upon a request or petition by either parties to the labor dispute. (***Section 15, Rule XXII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-H-13, Series of 2013***)

Effects of assumption

Such assumption or certification shall have the effect of:

1. Automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order;

2. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return-to-work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout;

3. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (***Article 278(g) [263(g)], Labor Code***)

Effects of assumption as interpreted by the Rules to Implement the Labor Code

2003 and 1997 Bar Examinations

The effects of assumption are as follows:

1. Such assumption shall have the effect of automatically enjoining an impending strike or lockout;

2. If a strike/lockout has already taken place at the time of assumption, all striking or locked out employees and other employees subject of the notice of strike shall immediately return to work and the employer shall immediately resume operations and readmit all employees under the same terms and conditions prevailing before the strike or lockout.

3. Notwithstanding the foregoing, parties to the case may agree at any time to submit the dispute to the Secretary of Labor or his/her duly authorized representative as Voluntary Arbitrator or to a duly accredited Voluntary Arbitrator or to a panel of Voluntary Arbitrators. (***Section 15, Rule XXII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-H-13, Series of 2013***)

Jurisdiction of the President of the Philippines

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same. (***Article 278(g) [263(g)], Labor Code***)

Industries indispensable to the national interest as interpreted by the Omnibus Rules Implementing the Labor Code

For the guidance of the workers and employers in the filing of petition for assumption of jurisdiction, the following industries/services are hereby recognized as deemed indispensable to the national interest:

a. Hospital sector;
b. Electric power industry;
c. Water supply services, to exclude small water supply services
c. Such as bottling and refilling stations;
d. Air traffic control; and

e. Such other industries as maybe recommended by the national tripartite industrial peace council (TIPC)." (***Section 16, Rule XXII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-H-13, Series of 2013***)

Academic institutions are indispensable to national interest

2012, 2004 and 1996 Bar Examination

In ***St. Scholastica's College v. Torres, G.R. No. 100158 June 2, 1992***, it was ruled:

Moreover, the assumption of jurisdiction by the Secretary of Labor and Employment over labor disputes involving academic institutions was already upheld in ***Philippine School of Business Administration v. Noriel G.R. No. 80648, 15 August 1988, 164 SCRA 402*** where We ruled thus:

> There is no doubt that the on-going labor dispute at the school adversely affects the national interest. The school is a duly registered educational institution of higher learning with more or less 9,000 students. The on-going work stoppage at the school unduly prejudices the students and will entail great loss in terms of time, effort and money to all concerned. More important, it is not amiss to mention that the school is engaged in the promotion of the physical, intellectual and emotional well-being of the country's youth.

In **SAN FERNANDO COCA-COLA RANK-AND-FILE UNION (SACORU) vs. COCA-COLA BOTTLERS PHILIPPINES, INC. (CCBPI), G.R. No. 200499, August 4, 2017** xxx. Industries that are indispensable to the national interest are those essential industries such as the generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries.(See GTE Directories Corp. v. Sanchez, 274 Phil 738, 757-758 [199].)

Scope of the "assume jurisdiction"

2013 and 1999 Bar Examinations

In ***Tabangao Shell Refinery Employees Association v. Pilipinas Petroleum Corporation, G. R. No. 170007, April 7, 2014*** the scope of the "assume jurisdiction" was explained as follows:

> Article 263(g) is both an extraordinary and a preemptive power to address an extraordinary situation - a strike or lockout in an industry indispensable to the national interest. This grant is not limited to the grounds cited in the notice of strike or lockout that may have preceded the strike or lockout; nor is it limited to the incidents of the strike or lockout that in the meanwhile may have taken place. As the term "assume jurisdiction" connotes, the intent of the law is to give the Labor Secretary full authority to resolve all matters within the dispute that gave rise to or which arose out of the strike or lockout; it includes and extends to all questions and controversies arising from or related to the dispute, including cases over which the labor arbiter has exclusive jurisdiction. (Citation omitted.)

Assumption order is executory even during the pendency of any petition questioning its validity

2012 and 1998 Bar Examinations

In ***Baguio Colleges Foundation v. NLRC, G.R. No. 98043 May 26, 1993***, the executor character of assumption order was explained in this wise**:**

The precedent case of ***Union of Filipino Employees v. Nestle Philippines, Inc. 192 SCRA 396 (1991)*** leaves no doubt as to the character of the Secretary of Labor's Assumption Order (i.e. return-to-work order) and the compliance required of the parties, as follows:

> UFE completely misses the underlying principle embodied in Art. 264 (g) on the settlement of labor disputes and this is, that assumption and certification orders are *executory in character* and are to be *strictly complied* with by the parties even during the pendency of any petition questioning their validity. This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests.
>
> Regardless therefore of their motives, or the validity of their claims, the striking workers must cease and/or desist from any or all acts that tend to, or undermine this authority of

the secretary of Labor, once an assumption and/or certification order is issued. They cannot, for instance, ignore return-to-work orders, *citing* unfair labor practices on the part of the company, to justify their actions. . . . (***At pp. 409-410***) (Emphasis in the original)

Being executory in character, there was nothing for the parties to do but implement the same.

Requirements for a valid picketing

2000 Bar Examination

The Supreme Court in ***Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA), G. R. No. 170830, August 11, 2010***, discussed the protected picketing as follows:

> While the right of employees to publicize their dispute falls within the protection of freedom of expression (***CONSTITUTION, Art. III, Sec. 4; Gonzales v. Commission on Elections, 137 Phil. 471 (1969); The Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd., 147 Phil. 194 (1971); Zaldivar v. Sandiganbayan, 243 Phil. 988 (1988); ABS-CBN Broadcasting Corporation v. Commission on Elections, 380 Phil. 780 (2000); Chavez v. Secretary Gonzalez, G.R. No. 168337, February 15, 2008, 545 SCRA 441; Schenck v. United States, 249 U.S. 47 (1919); Near v. Minnesota, 283 U.S. 697 (1931); New York Times v. United States, 403 U.S. 713 [1971]) and the right to peaceably assemble to air grievances, (CONSTITUTION, Art. III, Sec. 4; Philippine Blooming Mills Employees Association v. Philippine Blooming Mills, 151-A Phil. 656 (1973); J.B.L. Reyes v. Mayor Bagatsing, 210 Phil. 457 (1983); De la Cruz v. Court of Appeals, 364 Phil. 786 (1999); Acosta v. Court of Appeals, 389 Phil. 829 (2000); Bayan v. Ermita, G.R. No. 169838, April 25, 2006, 488 SCRA 1)*** these rights are by no means absolute. Protected picketing does not extend to blocking ingress to and egress from the company premises. (***48 Am. Jur. 2d, Sec. 3562, p. 623, citing I.T.O. Corp. of Baltimore (1981) 255 NLRB 1050, 107 BNA LRRM 1035, 1980-81 CCH NLRB, par. 18055. See also 48 Am. Jur. 2d, Sec. 739, p. 456, citing Ark C 5-71-214***) That the picket was moving, was peaceful and was not attended by actual violence may not free it from taints of illegality if the picket effectively blocked entry to and exit from the company premises.

Prohibited activities

2004 Bar Examination

The following are prohibited activities in relation to strike or lockout:

1. No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry. (***Article. 279 (a) [264 (a)], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

2. No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout. (***Second paragraph, Article 279 (a) [264 (a)], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

3. No person shall obstruct, impede, or interfere with, by force, violence, coercion, threats or intimidation, any peaceful picketing by employees during any labor controversy or in the exercise of the right to self-organization or collective bargaining, or shall aid or abet such obstruction or interference. (***Article. 279 (b) [264 (b)], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

4. No employer shall use or employ any strike-breaker, nor shall any person be employed as a strike-breaker. (***Article. 279 (c) [264 (c)], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

5. No public official or employee, including officers and personnel of the New Armed Forces of the Philippines or the Integrated National Police, or armed person, shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: Provided, That nothing herein shall be interpreted to prevent any public officer from taking any measure necessary to maintain peace and order, protect life and property, and/or

enforce the law and legal order. (***Article. 279 (d) [264 (d)], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

6. No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares. (***Article. 279 (e) [264 (e)], Labor Code, as amended by Batas Pambansa Bilang 227, June 1, 1982***)

Effect of termination due to unlawful lockout

1995 Bar Examination

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. (***Third paragraph, Article 279 (a) [264 (a)], Labor Code***)

Effects of participation in illegal strike and commission of illegal acts during strike

2015, 2014, 2012, 2010, 2008, 2007, 2006, 1997, 1995 and 1994 Bar Examinations

The following are the effects of participation in an illegal strike and commission of illegal acts during strike:

1. Any union officer who knowingly participates in an illegal strike; and
2. Any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status; (***Third paragraph, Article 279 (a) [264 (a)], Labor Code***)

Effect of participation in a lawful strike

2014, 2012, 2006 and 1995 Bar Examinations

The mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. (***Third paragraph, Article 279 (a) [264 (a)], Labor Code***)

Due process is required in the termination for commission of prohibited acts

2011 and 1994 Bar Examination

In ***Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA), G. R. No. 170830, August 11, 2010****,* Article 277(b) [now 292 (b)] was applied in case of termination for cause provided under Article 264 as follows:

> Under Article 277(b) of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself.
>
> We explained in ***Suico v. National Labor Relations Commission G.R. No. 146762, January 30, 2007, 513 SCRA 325, 342. See also Stamford Marketing Corp. v. Julian, 468 Phil. 34, 52-53 (2004)*** that Article 277(b), in relation to Article 264(a) and (e) of the Labor Code recognizes the right to due process of all workers, without distinction as to the cause of their termination, even if the cause was their supposed involvement in strike-related violence prohibited under Article 264(a) and (e) of the Labor Code.
>
> To meet the requirements of due process in the dismissal of an employee, an employer must furnish him or her with two (2) written notices: (1) a written notice specifying the grounds for termination and *giving the employee a reasonable opportunity to explain his side* and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee. (Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Sec. 2(a) and (c))

Requirements for valid strike

2014, 2007, 2004, 2001 and 1994 Bar Examinations

In ***Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA), G. R. No. 160058, June 22, 2007, and Pilipino Telephone Employees Association (PILTEA) v. Pilipino Telephone Corporation , G. R. No. 160094, June 22, 2007***, the Supreme Court laid down the procedural requirements for a valid strike, it mandatory character and the effect of failure to comply thereon as follows:

> Article 263 of the Labor Code, as amended by Republic Act (R.A.) No. 6715, (***Took effect on March 21, 1989***) and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code outline the following procedural requirements for a valid strike:
>
> 1) A notice of strike, with the required contents, should be filed with the DOLE, specifically the Regional Branch of the NCMB, copy furnished the employer of the union;
> 2) A cooling-off period must be observed between the filing of notice and the actual execution of the strike thirty (30) days in case of bargaining deadlock and fifteen (15) days in case of unfair labor practice. However, in the case of union busting where the unions existence is threatened, the cooling-off period need not be observed.
> xxx xxx xxx
> 4) Before a strike is actually commenced, a strike vote should be taken by secret balloting, with a 24-hour prior notice to NCMB. The decision to declare a strike requires the secret-ballot approval of majority of the total union membership in the bargaining unit concerned.
> 5) The result of the strike vote should be reported to the NCMB at least seven (7) days before the intended strike or lockout, subject to the cooling-off period. (***National Federation of Labor (NFL) v. NLRC, G.R. No. 113466, December 15, 1997, 283 SCRA 275, 286***)
>
> It is settled that these requirements are mandatory in nature and failure to comply therewith renders the strike illegal. (***CCBPI Postmix Workers Union v. NLRC, G.R. No. 114521, November 27, 1998, 299 SCRA 410, 424***)

Concept of innocent bystander

In ***MFS Tire and Rubber, inc. v. Court of Appeals, G. R. No. 128632***, the concept of innocent bystander was discussed as follows:

> In ***Philippine Association of Free Labor Unions (PAFLU) v. Cloribel, 27 SCRA 465 (1969)*** this Court, through Justice J.B.L. Reyes, stated the "innocent bystander" rule as follows:
>
> The right to picket as a means of communicating the facts of a labor dispute is a phase of the freedom of speech guaranteed by the constitution. If peacefully carried out, it can not be curtailed even in the absence of employer-employee relationship.
> The right is, however, not an absolute one. While peaceful picketing is entitled to protection as an exercise of free speech, we believe the courts are not without power to confine or localize the sphere of communication or the demonstration to the parties to the labor dispute, including those with related interest, and to insulate establishments or persons with no industrial connection or having interest totally foreign to the context of the dispute. Thus the right may be regulated at the instance of third parties or "innocent bystanders" if it appears that the inevitable result of its is to create an impression that a labor dispute with which they have no connection or interest exists between them and the picketing union or constitute an invasion of their rights. In one case decided by this Court, we upheld a trial court's injunction prohibiting the union from blocking the entrance to a feed mill located within the compound of a flour mill with which the union had a dispute. Although sustained on a different ground, no connection was found between the two mills owned by two different corporations other than their being situated in the same premises. It is to be noted that in the instances cited, peaceful picketing has not been totally banned but merely regulated. And in one American case, a picket by a labor union in front of a motion picture theater with which the union had a labor dispute was enjoined by the court from being extended in front of the main entrance of the building housing the theater

wherein other stores operated by third persons were located. (*Id*., 472-473) (Emphasis added)

Thus, an "innocent bystander," who seeks to enjoin a labor strike, must satisfy the court that aside from the grounds specified in Rule 58 of the Rules of Court, it is entirely different from, without any connection whatsoever to, either party to the dispute and, therefore, its interests are totally foreign to the context thereof. For instance, in ***PAFLU v. Cloribel, supra***, this Court held that Wellington and Galang were entirely separate entities, different from, and without any connection whatsoever to, the Metropolitan Bank and Trust Company, against whom the strike was directed, other than the incidental fact that they are the bank's landlord and co-lessee housed in the same building, respectively. Similarly, in ***Liwayway Publications, Inc. v. Permanent Concrete Workers Union, 108 SCRA 161 (1981)*** this Court ruled that *Liwayway* was an "innocent bystander" and thus entitled to enjoin the union's strike because Liwayway's only connection with the employer company was the fact that both were situated in the same premises.

Visitorial power to inquire into financial activities of legitimate labor organizations

2001 and 1999 Bar Examination

The Secretary of Labor and Employment or his duly authorized representative is hereby empowered:

1. to inquire into the financial activities of legitimate labor organizations upon the filing of a complaint under oath and duly supported by the written consent of at least twenty percent (20%) of the total membership of the labor organization concerned; and
2. to examine their books of accounts and other records;
3. to determine compliance or non-compliance with the law; and
4. to prosecute any violations of the law and the union constitution and by-laws. (***Article289 [274], Labor Code, as amended by Section 31, Republic Act No. 6715, March 21, 1989***)

Suspension of effects of termination

2010, 1998 and 1994 Bar Examinations

The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off. (***Article. 292 [277], Labor Code, as amended by Section 33, Republic Act No. 6715, March 21, 1989***)

Due process in employment termination

2012, 2009, 2006, 2004, 1999, 1998 and 1994 Bar Examinations

The due process referred in employment termination is statutory due process. (***Agabon v. NLRC G.R. No. 158693, November 17,2004***)

Two aspects of due process according to Agabon doctrine

The two aspects of due process are the following:

1. Substantive, *i.e.*, the valid and authorized causes of employment termination under the Labor Code; and procedural, *i.e.*, the manner of dismissal;

2. Procedural due process requirements for dismissal are found in the Implementing Rules of P.D. 442, as amended, otherwise known as the Labor Code of the Philippines in Book VI, Rule I, Sec. 2, as amended by Department Order Nos. 9 and 10. (***Department Order No. 9 took effect on 21 June 1997. Department Order No. 10 took effect on 22 June 1997***) Breaches of these due process requirements violate the Labor Code. Therefore statutory due process should be differentiated from failure to comply with constitutional due process. (***Agabon v. NLRC G.R. No. 158693, November 17,2004***)

Effects of the following possible situations in termination disputes

2012 and 2011 Bar Examinations

According to ***Agabon v. NLRC, G. R. No. 158693, November 17, 2004***, the procedure for terminating an employee has the effects on the following situation. Thus, the High Court explained:

From the foregoing rules four possible situations may be derived:

(1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed;
(2) the dismissal is without just or authorized cause but due process was observed;
(3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed.

In the **first situation**, the dismissal is undoubtedly **valid** and the employer will **not suffer any liability**.

In the **second and third situations** where the dismissals are **illegal**, Article 279 mandates that the **employee is entitled to reinstatement** without loss of seniority rights and other privileges and **full backwages**, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

In the **fourth situation**, the **dismissal should be upheld**. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held ***liable for non-compliance with the procedural requirements of due process***. (Emphasis supplied)

Effect of non-existence cause for termination

2009 Bar Examination

In ***Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU, G. R. No. G. R. No. 166111, August 25, 2005*** the petitioner maintains that the mere filing of the Information for the crime of rape against respondent Javier rendered its Rules and Regulations operational, particularly Serious Offense No. 7. It avers that substantial proof, not clear and convincing evidence or proof beyond reasonable doubt, is sufficient basis for the imposition of any disciplinary action over an erring employee. Respondent Javier was dismissed by the petitioner effective February 5, 1996 for (a) being AWOL from July 31, 1995 up to January 30, 1996; and (b) committing rape. However, on demurrer to evidence, respondent Javier was acquitted of the charge. With respondent Javiers acquittal, the cause of his dismissal from his employment turned out to be non-existent. In deciding the case, the Supreme Court discussed the effect of the cause of dismissal from employment that turned out to be non-existent as follows:

In the *Magtoto* case, Alejandro Jonas Magtoto was arrested by virtue of an Arrest, Search and Seizure Order dated September 1, 1980. He was charged with violation of Article 136 (Conspiracy and Proposal to Commit Rebellion) and Article 138 (Inciting to Rebellion or Insurrection) of the Revised Penal Code (RPC). Although Magtoto informed his employer and pleaded that he be considered as on leave until released, his employer denied the request. On April 10, 1981, or about seven (7) months after his arrest, Magtoto was released after the City Fiscal dismissed the criminal charges for lack of evidence. On the same date, he informed his employer of his intent to start working again, but the employer rejected the offer. In ruling that his termination was illegal, the Supreme Court ruled as follows:

> The employer tries to distance itself from the detention by stressing that the petitioner was dismissed due to prolonged absence. However, Mr. Magtoto could not report for work because he was in a prison cell. The detention cannot be divorced from prolonged absence. One caused the other. Since the causes for the detention, which in turn gave the employer a ground to dismiss the petitioner, proved to be non-existent, we rule that the termination was illegal and reinstatement is warranted. A non-existent cause for dismissal was explained in ***Pepito v. Secretary of Labor (96 SCRA 454)***.

> ... A distinction, however, should be made between a dismissal without cause and a dismissal for a false or non-existent cause. In the former, it is the intention of the employer to dismiss his employee for no cause whatsoever, in which case the Termination Pay Law would apply. In the latter case, the employer does not intend to dismiss the employee but for a specific cause which turns out to be false or non-existent. Hence, absent the reason which gave rise to his separation from employment, there is no intention on the part of the employer to dismiss the employee concerned. Consequently, reinstatement is in order. And this is the situation here. Petitioner was separated because of his alleged involvement in the pilferage in question. However, he was absolved from any responsibility therefor by the court. The cause for his dismissal having been proved non-existent or false, his reinstatement is warranted. It would be unjust and unreasonable for the Company to dismiss petitioner after the latter had proven himself innocent of the cause for which he was dismissed. (***Magtoto v. NLRC, supra, pp. 64-65***)

The facts in ***Pedroso v. Castro, No. L-70361, 30 January 1986, 141 SCRA 252*** are similar to the set of facts in the present case. The petitioners therein were arrested and detained by the military authorities by virtue of a Presidential Commitment Order allegedly for the commission of Conspiracy to Commit Rebellion under Article 136 of the RPC. As a result, their employer hired substitute workers to avoid disruption of work and business operations. They were released when the charges against them were not proven. After incarceration, they reported back to work, but were refused admission by their employer. The Labor Arbiter and the NLRC sustained the validity of their dismissal. Nevertheless, this Court again held that the dismissed employees should be reinstated to their former positions, since their separation from employment was founded on a *false* or *non-existent* cause; hence, illegal.

Respondent Javiers absence from August 9, 1995 cannot be deemed as an abandonment of his work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. To constitute as such, two requisites must concur: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts, with the second element being the more determinative factor. Abandonment as a just ground for dismissal requires clear, willful, deliberate, and unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment. (***R.P. Dinglasan Construction, Inc. v. Atienza, G.R. No. 156104, 29 June 2004, 433 SCRA 263; Hantex Trading Co., Inc. v. Court of Appeals, G.R. No. 148241, 27 September 2002, 390 SCRA 181; Del Monte Philippines v. NLRC, G.R. No. 126688, 5 March 1998, 287 SCRA 71; and Labor v. NLRC, G.R. No. 110388, 14 September 1995, 248 SCRA 183***)

Moreover, respondent Javiers acquittal for rape makes it more compelling to view the illegality of his dismissal. The trial court dismissed the case for insufficiency of evidence, and such ruling is tantamount to an acquittal of the crime charged, and proof that respondent Javiers arrest and detention were without factual and legal basis in the first place.

The petitioner acted with precipitate haste in terminating respondent Javiers employment on January 30, 1996, on the ground that he had raped the complainant therein. Respondent Javier had yet to be tried for the said charge. In fine, the petitioner prejudged him, and preempted the ruling of the RTC. The petitioner had, in effect, adjudged respondent Javier guilty without due process of law. While it may be true that after the preliminary investigation of the complaint, probable cause for rape was found and respondent Javier had to be detained, these cannot be made as legal bases for the immediate termination of his employment.

Constitutional provision on security of tenure

No less than the Constitution under Article XIII, Section 3 recognizes and guarantees the labor's right to security of tenure as follows:

> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> xxx." (Underscore supplied)

Labor Code's concept of security of tenure

Under the Labor Code of the Philippines, as amended, specifically, Article 279 of the said Code, the security of tenure has been construed to mean as that **"the employer shall not terminate the services of an employee except for a just cause or when authorized"** by the Code. (***Philippine Geothermal, Inc. v. NLRC, et. al., G.R. No. 82643-67, August 30, 1990***)

Employees entitled to the right of security of tenure

2012 Bar Examination

In ***Rivera v. Genesis Transport Service , Inc., G.R. No. 215568, August 03, 2015*** it was ruled:

Article XIII, Section 3 of the 1987 Constitution guarantees the right of workers to security of tenure. "One's employment, profession, trade or calling is a 'property right,'"(***Callanta v. Carnation Phil., Inc., 229 Phil. 279, 288-189 (1986) [Per J. Fernan, Second Division]***) of which a worker may be deprived only upon compliance with due process requirements:

> It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code. Dismissal is not justified for being arbitrary where the workers were denied due process and a clear denial of due process, or constitutional right must be safeguarded against at all times. (***Rance v. National Labor Relations Commission, 246 Phil. 287, 292-293 (1988) [Per J. Paras, Second Division]***) (Citations omitted)

From the foregoing doctrinal rule, it is clear that the Constitution did not limit the right to security of tenure to regular employees. It applies to all workers whether, rank and file, managerial, regular, casual, probationary, seasonal, project, fixed period and other forms of employment. They enjoy the protection of the right to security during their term of employment.

Reliefs of illegal dismissal

2002 Bar Examination

The two reliefs to illegally dismissed employee: backwages and reinstatement

In ***Reyes v. RP Guardians Security Agency, Inc.***, ***G. R. No. 193756, April 10, 2013***, the Supreme Court on the basis of ***Aliling v. Feliciano, G. R. No. 185829, April 25, 2012, 671 SCRA 186*** citing ***Golden Ace Builders v. Talde, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290, citing Macasero v. Southern Industrial Gases Philippines, G. R. No. 178524, January 30, 2009, 577 SCRA 500***, explained the reliefs granted to illegally dismissed employee as follows:

> Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.
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> **The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.** [Emphasis Supplied]
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> ***Triad Security & Allied Services, Inc., v. Ortega, Jr., G. R. No. 160871, February 8, 2006***
>
> Backwages and separation pay are, therefore, distinct reliefs granted to one who was illegally dismissed from employment. The award of one does not preclude that of the other as this court

had, in proper cases, ordered the payment of both. (***Air Services Cooperative v. Court of Appeals, supra***)

In this case, the labor arbiter ordered the reinstatement of respondents and the payment of their backwages until their actual reinstatement *and* in case reinstatement is no longer viable, the payment of separation pay. Under Article 223 of the Labor Code, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal. The same provision of the law gives the employer the option of either admitting the employee back to work under the same terms and conditions prevailing before his dismissal or separation from employment or the employer may choose to merely reinstate the employee to the payroll. It bears emphasizing that the law mandates the prompt reinstatement of the dismissed or separated employee. This, the petitioners failed to heed. They are now before this Court insisting that they have fully disposed of their legal obligation to respondents when they paid the latters separation pay. We do not agree.

It should be pointed out that an order of reinstatement by the labor arbiter is not the same as actual reinstatement of a dismissed or separated employee. Thus, until the employer continuously fails to actually implement the reinstatement aspect of the decision of the labor arbiter, their obligation to respondents, insofar as accrued backwages and other benefits are concerned, continues to accumulate. It is only when the illegally dismissed employee receives the separation pay that it could be claimed with certainty that the employer-employee relationship has formally ceased thereby precluding the possibility of reinstatement. In the meantime, the illegally dismissed employees entitlement to backwages, 13th month pay, and other benefits subsists. Until the payment of separation pay is carried out, the employer should not be allowed to remain unpunished for the delay, if not outright refusal, to immediately execute the reinstatement aspect of the labor arbiters decision.

Reasons for denying reinstatement

2007 and 1995 Bar Examination

In ***Globe-Mackay Cable and Radio Corporation v. NLRC G.R. No. 82511 March 3, 1992***: Over time, the following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation; (***Balaquezon EWTU v. Zamora, Nos. L-46766-7, April 1, 1980, 97 SCRA 5***) or that it would be "inimical to the employer's interest; " (***San Miguel Corporation v. Deputy Minister of Labor and Employmet, No. 58927, October 27, 1986, 145 SCRA 204***) or that reinstatement may no longer be feasible; (***Hydro Resources Contractors Corporation v. Pagalibuan, G.R. 62909, April 18, 1989, 172 SCRA 404***) or, that it will not serve the best interests of the parties involved; (***Century Textile Mills, Inc. v. NLRC, No. 77859, May 25, 1988, 161 SCRA 528***) or that the company would be prejudiced by the workers' continued employment; (***Gubac v. NLRC, G.R. No. 81946, July 13, 1990, 187 SCRA 412***) or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable (***Sealand Service, Inc. v. NLRC, G.R. No. 90500, Occtober 5, 1990, 190 SCRA 347***) or, to an increasing extent, due to the resultant atmosphere of "antipathy and antagonism" or "strained relations" or "irretrievable estrangement" between the employer and the employee. (***Commercial Motors Corporation v. Commissioners, G.R. No. 74762, December 10, 1990, 192 SCRA 191; DeVera v. NLRC, G.R. No. 93212, November 22, 1990, 191 SCRA 632; Orcino v. Civil Service Commission, G.R. No. 92864, October 18, 1990, 190 SCRA 815; Maglutac v. NLRC/ Conmart v. NLRC,G.R. No. 78637, September 21, 1990,189 SCRA 767; Carandang v. Dulay, G.R. No. 90942, August 20, 1990, 188 SC RA 792; Esmalin v. NLRC, G.R. No. 67880, September 15,1989, 177 SCRA 537; Fernandez v. NLRC, G.R. No. 84302, August 10, 1989, 176 SCRA 269; Quezon Electric Cooperative v. NLRC, G.R. Nos. 79718-22, April 12,1989, 172 SCRA 88, Bautista v. Inciong, No. 52824, March 16, 1988, 158 SCRA 665; Citytrust Finance Corp. v. NLRC, No.75740, January 15, 1988, 157 SCRA 87; Asiaworld Publishing House, Inc. v. Ople No. 56398, July 23, 1987, 152 SCRA 219; and Divine Word High School v. NLRC, No. 72207, August 6, 1986, 143 SCRA 346***)

Instances of separation pay

On account of an authorized causes

The payment of separation pay would be due when a dismissal is on account of an authorized causes under Articles 298 [283] and 299 [284) of the Labor Code.

Separation pay in lieu of reinstatement

2009 Bar Examination

Indeed, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, such as: (1) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (2) reinstatement is inimical to the employer's interest; (3) reinstatement is no longer feasible; (4) reinstatement does not serve the best interests of the parties involved; (5) the employer is prejudiced by the workers' continued employment; (6) facts that make execution unjust or inequitable have supervened; or (7) strained relations between the employer and the employee. (***Abaria v. NLRC, G.R. No. 154113, December 7, 2011, 661 SCRA 686, 715; citing Escario v. NLRC (Third Division), G.R. No. 160302, September 27, 2010, 631 SCRA 261, 275***)

Separation pay as an act "social justice" or based on "equity"

Exceptionally, separation pay is granted to a legally dismissed employee as an act "social justice," (***San Miguel Corporation v. Lao, 433 Phil. 890, 898 (2002); Philippine Long Distance Telephone Company v. National Labor Relations Commission, G.R. No. L-80609, August 23, 1988, 164 SCRA 671, 682***) or based on "equity." (***Aparente, Sr. v. National Labor Relations Commission, 387 Phil. 96, 107 [2000]***) In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) does not reflect on the moral character of the employee. (***San Miguel Corporation v. Lao, supra at 898; Aparente, Sr. v. National Labor Relations Commission, id.; Philippine Long Distance Telephone Company v. National Labor Relations Commission, supra at 682***)

Separation pay is not allowed if terminated under Article 297 [282]

2011 Bar Examination

In ***International School Manila v. International School Alliance of Educators (ISAE), G.R. No. 167286, February 5, 2014***, the Supreme Court explained that in Toyota Motors Phils Corp. case it modified the PLDT ruling (which refers to award of separation pay as a measure of social justice only in those instances where the employee is validly dismissed for causes ***other than serious misconduct or those reflecting on his moral character***) by stating that in addition to serious misconduct in dismissals based on other grounds under Art. 282 (now 297), separation pay should not be conceded to the dismissed employee. Thus, the High Court said:

> In view of the finding that Santos was validly dismissed from employment, she would not ordinarily be entitled to separation pay. An exception to this rule is when the court finds justification in applying the principle of social justice according to the equities of the case. The Court explained in ***Philippine Long Distance Telephone Co. (PLDT) v. National Labor Relations Commission 247 Phil. 641, 649-650 (1988)*** that:
>
> > We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.
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> x x x x
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> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

In ***Toyota Motor Phils. Corp. Workers Association v. National Labor Relations Commission, 562 Phil. 759, 812 (2007)*** we modified our ruling in PLDT in this wise:

> In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. We therefore find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee. (Underscore supplied)
>
> **In analogous causes for termination like inefficiency, drug use, and others, the NLRC or the courts may opt to grant separation pay anchored on social justice in consideration of the length of service of the employee, the amount involved, whether the act is the first offense, the performance of the employee and the like, using the guideposts enunciated in PLDT on the propriety of the award of separation pay**. (Emphasis ours.)

When employment shall be deemed regular

2013 and 2006 Bar Examinations

The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer. (***Article 295 [280], Labor Code***)

Three types of employees under Article 295 [280] of the Labor Code

In ***Paz v. Northern Tobacco Redrying Co., Inc., G. R. No. 199554, February 18, 2015***, the Supreme Court discussed that jurisprudence identified three types of employees as follows:

> Article 280 of the Labor Code and jurisprudence identified three types of employees, namely: "(1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season; and (3) casual employees or those who are neither regular nor project employees." (***Benares v. Pancho, 497 Phil. 181, 189–190 (2005) [Per J. Tinga, Second Division],citing Perpetual Help Credit Cooperative, Inc. v. Faburada, 419 Phil. 147, 155 (2001) [Per J. Sandoval-Gutierrez, Third Division]. See also Gapayao v. Fulo, G.R. No. 193493, June 13, 2013, 698 SCRA 485, 498–499 [Per C.J. Sereno, First Division]***)

Classifications of regular employees

2013 and 2008 Bar Examinations

Regular employees are further classified into: (1) regular employees by nature of work; and (2) regular employees by years of service. (***E. Ganzon, Inc. vs. National Labor Relations Commission, G.R. No. 123769, 22 December 1999, 321 SCRA 434, 440***) The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year. (***Pangilinan vs. General Milling Corporation, G.R. No. 149329, 12 July 2004***)

Interpretation of restrictive clause under Article 295 [280]

In ***Universal Robina Sugar Milling Corporation v. Acibo, G.R. No. 186439, January 15, 2014*** the Supreme Court discussed the interpretation of the restrictive clause ("The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties") under Article 280 (now 295) as ruled in Brent School, Inc. v. Zamora as follows:

In ***Brent School, Inc. v. Zamora, 260 Phil. 747 (1990)*** the Court, for the first time, recognized and resolved the anomaly created by a narrow and literal interpretation of Article 280 of the Labor Code that appears to restrict the employee's right to freely stipulate with his employer on the duration of his engagement. In this case, the Court upheld the validity of the fixed–term employment agreed upon by the employer, Brent School, Inc., and the employee, Dorotio Alegre, declaring that the restrictive clause in Article 280 "should be construed to refer to the substantive evil that the Code itself x x x singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where [the] fixed period of employment was agreed upon knowingly and voluntarily by the parties x x x absent any x x x circumstances vitiating [the employee's] consent, or where [the facts satisfactorily show] that the employer and [the] employee dealt with each other on more or less equal terms[.]" (***Id. at 763***) The indispensability or desirability of the activity performed by the employee will not preclude the parties from entering into an otherwise valid fixed term employment agreement; a definite period of employment does not essentially contradict the nature of the employees duties (***See St. Theresa's School of Novaliches Foundation v. NLRC, 351 Phil. 1038, 1043 (1998); Pure Foods Corp. v. NLRC, 347 Phil. 434, 443 (1997); and Philips Semiconductors (Phils.), Inc. v. Fadriquela, G.R. No. 141717, April 14, 2004, 427 SCRA 408, 421–422***) as necessary and desirable to the usual business or trade of the employer.

Criteria of a valid fixed-term employment

In ***Convoy Marketing Corporation v. Albia, G. R. No. 194969, October 7, 2015***, the criteria for a valid fixed period employment was explained as follows:

Considered to be legitimate under the Labor Code, (***AMA Computer College Paraniaque and/or Amable C. Aguiluz IX v. Austria, 563 Phil. 745, 757 (2007); Brent School, Inc. v. Zamora,260 Phil.747 [1990]***) fixed-term employment contracts terminate by their own terms at the end of a definite period. (***Brent School, Inc. v. Zamora,supra, at 755***) The fact that the service rendered by the employees is usually necessary and desirable in the business operations of the employer will not impair the validity of such contracts.(***Palomares v. NLRC, 343,Phil.213,223 [1997]***) For, the decisive determinant in the term employment is not the activities that the employee is called to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship. (***Brent School, Inc. v. Zamora, supra note 25, at 757***) Aware of the possible abuse of fixed-term employment contracts, the Court stressed in Brent School, Inc. v. Zamora that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals. (***GMA Network, Inc. v. Pabriga, G.R. No. 176419, November 27, 2013,710 SCRA 690, 700***)

The Court thus laid down indications or criteria under which the term "employment" cannot be said to be in circumvention of the law on security of tenure, namely:

1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employeeand absent any other circumstances vitiating his consent; or

2) It Satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter. (***Id., citing Romares v. National Labor Relations Commission, 355 Phil. 835, 847 (1998) and Philips Semiconductors (Phils.).Inc. v. Fadriquela, 471 Phil. 355, 372-373 [2004]***)

In ***GMA Network, Inc. v. Pabriga, (supra)*** the Court stated that "these indications, which must be read together, make the Brent doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the paiiies' freedom of contract are thus required for the protection of the employee." (***GMA Network,Inc. v.Pabriga,supra at710***)

Probationary employment

Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. (***Article 296***

[281], Labor Code) There is probationary employ ent where the employee, upon his engagement, is made to undergo a trial period during which the employer determiones his fitness to qualify for regular employment based on the reasonable standards made known to him at the time of engagement. (***Section 6, Rule 1, Book VI, Omnibus Rules Implementing the Labor Code***)

Grounds to terminate probationary employment

The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. (***Article 296 [281], Labor Code***)

Termination for just and authorized cause

Department Order No. 147-15 Series of 2015 (Rules governing application of Articles 297 [282]-299 [284] of the Labor Code)

Pursuant to Article 5 of the Labor Code of the Philippines, as amended, on the rule-making power of the Secretary of Labor and Employment, Department Order No. 147-15 Series of 2015 was issued on September 7, 2015, amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines. Thus, the following are the Rules governing the application of the just and authorized causes of termination of employment under **Articles 297-299** of the Labor Code:

RULE I-A
APPLICATION OF JUST AND AUTHORIZED CAUSES OF TERMINATION

1. Guiding Principles

The workers' right to security of tenure is guaranteed under the Philippine Constitution and other laws and regulations. No employee shall be terminated from work except for just or authorized cause and upon observance of due process. (***Section 1, Rule I-A, Omnibus Rules Implementing the Labor Code***)

2. Coverage

This Rules shall apply to all parties of work arrangements where employer-employee relationship exists. It shall also apply to all parties of legitimate contracting lsubcontracting arrangements with existing employer- employee relationships. (***Section 2, Rule I-A, Omnibus Rules Implementing the Labor Code***)

3. Employer-Employee Relationship

To ascertain the existence of an employer-employee relationship, the four-fold test shall apply, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means used to achieve that end. (***Section 3, Rule I-A, Omnibus Rules Implementing the Labor Code***)

4. Definition of Terms

The following terms as used in this Rules, shall mean:

(a) "Authorized Causes" refer to those instances enumerated under Articles 298 [Closure of Establishment and Reduction of Personnel] and 299 [Disease as a Ground for Termination] of the Labor Code, as amended. These are causes brought 1 David vs. Macasio, G.R. No. 1954661, July 2, 2014. These are causes brought by the necessity and exigencies of business, changing economic conditions and illness of the employee. (Exigency of the business of the employer (Lopez v. Irvin Construction Corp, GR. No. 207253, August 20, 2014), changing economic conditions (Cajucom v. TPI Philippines Cement Corp, GR. No. 149090, February 11, 2005) and illness of the employee (Reyes v. RP Guardians Security Agency Inc., GR. No. 193756, April 10, 2013)

(b) “Just Causes” refer to those instances enumerated under Article 297 [Termination by Employer] of the Labor Code, as amended. These are causes directly attributable to the fault or negligence of the employee. (www.laborlaw.usc—law.org)

(c) “Closure or Cessation of Business.” refers to the complete or partial cessation of the Operations and/or shut—down of the establishment of the employer. (“Espina v. Court of Appeals, GR. No. 164582, March 28, 2007)

(d) “Commission of a Crime or Offense” refers to an offense by the employee against the person of his/her employer or any member of his/her family or his/her duly authorized representative.(JISSCOR Independent Union v. Hon. Torres, 221 SCRA 699)

(e) "Contractor” refers to any person or entity, including cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement. (Section 3(d) DOLE Department Order 18-A, Series of 2011)

(f) "Contractor’s Employee" refers to one employed by a contractor to perform or complete a job, work, or service pursuant to a Service Agreement with a principal. It shall also refer to regular employees of the contractor whose functions are not dependent on the performance or completion of a specific job, work or service within a definite period of time, i.e. administrative staff.

(g) "Employee" refers to any person in the employ of an employer. 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. (Article 219 [212] (f) of the Labor Code of the Philippines, as amended)

(h) “Employer” refers to any person acting in the interest of an employer, directly or indirectly. (Article 219 [212] (e) of the Labor Code ofthe Philippines, as amended). It shall include corporation, partnership, sole proprietorship and cooperative.

(i) “Fraud” refers to any act, omission, or concealment which involves a breach of legal duty, trust or confidence justly reposed, and is injurious to another. (Phil. Education Co. v. Union of the Phil. Education Employees, GR. No. L-13778, 29 April 1960; Lepanto Consolidated Mining v. CA, GR. No. L—15171,April29, 1961)

j) “Gross Neglect” refers to the absence of that diligence that an ordinary prudent man would use in his/her own affairs. (Reyes vs. Maxim’s Tea House, G.R. 140853, February 27, 2003)

(k) “Habitual Neglect“ refers to repeated failure to perform one’s duties over a period of time, depending upon the circumstances. (JGB Associates, inc. v. NLRC, G.R. No. 10939, March 7,1996)

(I) “Insubordination” refers to the refusal to obey some order, which a superior is entitled to give and have obeyed. It is a willful or intentional disregard of the lawful and reasonable instructions of the employer. (Civil Service Commission v. Arandia, G.R. No. 199549, April 7, 2014)

(m) “Installation of Labor-saving Devices” refers to the reduction of the number of workers in any workplace made necessary by the introduction of labor-saving machinery or devices. (Philippine Sheet Metal Workers’ Union v, cm, 83 Phil 433)

(n) “Loss of Confidence” refers to a condition arising from fraud or willful breach of trust by employee of the trust reposed in him/her by his/her employer or his/her duly authorized representative. There are two (2) classes of positions of trust. The first class consists of managerial employees, or those vested with the power to lay down management policies; and the second class consists of cashiers, auditors, property custodians or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. (Esguerra v. Valle Verde Country Club, Inc. and Ernesto Villaluna, G.R. No. 173012, June 13, 2012)

(o) "Misconduct” refers to the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment. (Department of Labor Manual, Section 4343.01)

(p) “Principal” refers to any employer, whether a person or entity including government agencies and government owned and controlled corporation, who/which puts out or farms out a job, service or work to a contractor.

(q) “Redundancy” refers to the condition when the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise or superfluous. (Wiltshire File Co., Inc. v. NLRC, G.R. No. 82249, February 7,1991)

(r) “Retrenchment” refers to the economic ground for dismissing employees and is resorted to primarily to avoid or minimize business losses. (Atlantic Gulf and Pacific Company of Manila, Inc. [AG & P], v. NLRC, G.R. No. 127516, May 23, 1999) (***Section 4, Rule I-A, Rules to Implement the Labor Code***)

5. Due Process of Termination of Employment

In all cases of termination of employment, the standards of due process laid down in Article 299 (b) of the Labor Code, as amended, and settled jurisprudence on the matter, must be observed as follows:

5.1 Termination of Employment Based on Just Causes

As defined in Article 297 of the Labor Code, as amended, the requirement of two written notices served on the employee shall observe the following:
(a) The first written notice should contain:

1. The specific causes or grounds for termination as provided for under Article 297 Of the Labor Code, as amended, and company policies, if any;

2. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice; and

3. A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

“Reasonable period” should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the
defenses against the complaint. (Unilever v. Rivera G.R. No. 201701, June 3, 2013; Section 12, DOLE Department Order 18-A)

(b) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 299 (b) Of the Labor Code, as amended.

“Ample opportunity to be heard” means any meaningful opportunity (verbal or written) given to the employee tO answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it. (Perez v. PTI'C, GR. No. 152048, April 7, 2009,- Section 12, DOLE Department Order 18-A)

(c) After determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that: (1) all circumstances involving the charge against the employee have been considered; and (2) the grounds have been established to justify the severance of their employment.

The foregoing notices shall be served personally to the employee or to the employee’s last known address. (***Section 5, 5.1, Rule I-A, Rules to Implement the Labor Code***)

5.2 Standards on Just Causes

An employer may terminate an employee for any of the following grounds:

(a) Serious Misconduct
To be a valid ground for termination, the following must be present: (Fighting within company premises (Technol Eight Philippines Corporation v. NLRC and Denis Amular, G.R. No. 187605, April 13, 2010), uttering obscene, insulting or offensive words against a superior (Autobus Workers Union, et al. v. NLRC, et. al., G.R. No. 117453, July 1, 1998), fabrication of time records (Manuel C. Felix v. Enertech Systems Industries, Inc. G.R. No. 142007, March 28, 2001), and using employer’s property equipment

and personnel in the personal business of the employee (Zenco Sales, int. y. NLRC, G.R. NO. 111110, August 2, 1994)

1.There must be misconduct;
2.The misconduct must be of such grave and aggravated character;
3. It must relate to the performance of the employee's duties; and
4. There must be showing that the employee becomes unfit to continue working for the employer.

(b) Willful Disobedience or Insubordination

To be a valid ground for termination, the following must be present: (Refusal to transfer {Sentinel Security Agency, Inc. v. NLRC, G.R. No. 1222468, September 3, 1998) and refusal to report to new work assignment [Westin Philippine Plaza Hotel v. NLRC, G.R. No. 121621, May 3, 1999])

1. There must be disobedience or insubordination;
2. The disobedience or insubordination must be willful or intentional characterized by a wrongful and perverse attitude;
3. The order violated must be reasonable, lawful, and made known to the employee; and
4. The order must pertain to the duties which he has been engaged to discharge.

(c) Gross and Habitual Neglect of Duties

To be a valid ground for termination, the following must be present: (Habitual tardiness, absenteeism and abandonment [Labor et. a]. v. NLRC, G.R. No. 110388, September 14,1995])

1. There must be neglect of duty; and
2. The negligence must be both gross and habitual in character.

(d) Fraud or Wiiiful Breach of Trust

To be a valid ground for termination, the following must be present: (Head supervisor initiating and leading a boycott (Top Form Mfg. Co., lnc. v. NLRC, G.R. 65706, December 11, 1992), habitual absence of managerial employee (GT Printers v. NLRC, G.R. No. 100749, April 24, 1992), failure of cashier to account for the shortage of company funds (San Miguel Corp. v. NLRC, G.R. No. 88268), June 2, 1992), complicity in the attempt to cover up pilferage of the company's toll collections (CDCP Tollways Operation Employees and Workers Union v. NLRC, G.R. Nos. 7618—19, July 3, 1992), stealing company property [Zamboanga Water District v. Bartolome, 140 SCRA 432), and using double or fictitious requisition slips in order to withdraw company materials (PLDT v. NLRC, 129 SCRA 163])

1. There must be an act, omission, or concealment;
2. The act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed;
3. It must be committed against the employer or his/her representative; and
4. it must be in connection with the employees' work.

(e) Loss of Confidence

To be a valid ground for termination, the following must be present: (China City Restaurant Corp. v. NLRC, 217 SCRA 443; Midas Touch v. NLRC, G. R. No. 111639, July 29, 1996)

1. There must be an act, omission or concealment;
2. The act, omission or concealment justifies the loss of trust and confidence of the employer to the employee;
3. The employee concerned must be holding a position of trust and confidence;
4. The loss oftrust and confidence should not be simulated;
5. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified; and
6. It must be genuine and not a mere afterthought to justify an earlier action taken in bad faith.

(f) Commission of a Crime or Offense

To be a valid ground for termination, the following must be present: (Illegally diverting employer's products, violation of company rules and regulations, drunkenness, gross inefficiency (MP. Violago Oiler Tank Trucks v. NLRC, 117 SCRA 544 [1982])

1. There must be an act or omission punishable/prohibited by law; and

2. The act or omission was committed by the employee against the person of employer, any immediate member of his/her family, or his/her duly authorized representative.

(g) Analogous Causes

To be valid ground for termination, the following must be present:

1. There must be act or omission similar to those specified just causes; and
2. The act or omission must be voluntary and/or willful on the part of the employees.

No act or omission shall be considered as analogous cause unless expressly specified in the company rules and regulations or policies. (***Section 5, 5.2, Rule I-A, Rules to Implement the Labor Code***)

5.3 Termination of Employment Based on Authorized Causes

As defined in Articles 298 and 299 of the Labor Code, as amended, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days (30) before effectivity of the termination, specifying the ground or grounds for termination. (***Section 5.3, Rule I-A, Rules to Implement the Labor Code***)

5.4 Standards on Authorized Causes

An employer may terminate an employee for any of the following grounds:

(a) Installation of Labor-saving Devices

To be a valid ground for termination, the following must be present: (Automation (Philippine Sheet Metal Workers' Union v. CIR, 33 Phil 433)

1. There must be introduction of machinery, equipment or other devices;
2. The introduction must be done in good faith;
3. The purpose for such introduction must be valid such as to save on cost, enhance efficiency and other justifiable economic reasons;
4. There is no other option available to the employer than the introduction of machinery, equipment or device and the consequent termination of employment of those affected thereby; and
5. There must be fair and reasonable criteria in selecting employees to be terminated.

(b) Redundancy

To be a valid ground for termination, the following must be present: (Reorganization (Dole Philippines Inc. et al. v. NLRC et. al.) and duplication of work [Wiltshire File Co., Inc. v. NLRC, supra])

1.There must be superfluous positions or services of employees;
2. The positions or services are in excess of what is reasonably demanded by the actual requirements of the enterprise to operate in an economical and efficient manner;
3. There must be good faith in abolishing redundant positions;
4. There must be fair and reasonable criteria in selecting the employees to be terminated; (Asian Alcohol Corporation v. NLRC, G.R. No. 131108, March 25, 1999) and
5. There must be an adequate proof of redundancy such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring. (General Milling Corporation v. Violeta L. Viajar, G.R. No. 181738)

(c) Retrenchment or Downsizing

To be a valid ground for termination, the following must be present: (Abolition of departments or positions in a company [San Miguel Corporation v. NLRC, G.R. No. 99266, March 2, 1999])

1. The retrenchment must be reasonably necessary and likely to prevent business losses;
2. The losses, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent;
3. The expected or actual losses must be proved by sufficient and convincing evidence; (Balasabas v. NLRC, G.R. No. 85286, August 24, 1992; Central Azucarerra dela Carlota v. NLRC, G.R. No. 100092, December 29, 1995)

4. The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

5. There must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

(d) Closure or Cessation of Operation

To be a valid ground for termination, the following must be present: (Relocation of business [Cheniver Deco Print Technics Corporation v. NLRC, [G.R. No. 122876, February 17, 2000], sale in good faith (Lucena Oil factory lnc. v. NLRC, G.R. No. 7840, November 17, 1986; Second Division, Minute Resolution]

1. There must be a decision to close or cease operation of the enterprise by the management;
2. The decision was made in good faith; and
3 There is no other option available to the employer except to close or cease operations.

(e) Disease

To be a valid ground for termination, the following must be present:

1. The employee must be suffering from any disease;
2. The continued employment of the employee is prohibited by law or prejudicial to his/her health as well as to the health of his/her co-employees; and
3. There must be certification by a competent public health authority that the disease is incurable within a period of six (6) months even with proper medical treatment.

In cases of installation of labor-saving devices, redundancy and retrenchment, the “Last-In, Firs-Out Ftule” ((When there are two employees occupying the same position in the company affected by the retrenchment program, the last one employed will necessarily be the first to go [Maya Farms Employees Organization v. NLRC, G.R. No. 106256, December 28, 1994])) shall apply except when an employee voiunteers to be separated from employment. (***Section 5.4, Rule I-A, Rules to Implement the Labor Code***)

5.5 Payment of Separation Pay

Separation pay shall be paid by the employer to an employee terminated due to installation of labor—saving devices, redundancy, retrenchment, closure or cessation of operations not due to serious business losses or financial reverses, and disease.

An employee terminated due to installation of labor-saving devices or redundancy shall be paid by the employer a separation pay equivalent to at least one (1) month pay or at least one (1) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee terminated due to retrenchment shall be paid by the employer a separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee terminated due to closure or cessation of business operation not due to serious business losses shall be paid by the employer a separation pay equivalent to one (1) month pay or at least one—half (112) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year. Where closure is due to serious business losses or financial reverses, no separation pay is required.

An employee terminated due to disease shall be paid by the employer a separation pay equivalent to at least one (1) month salary or one—half (112) month salary for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee whose employment is terminated by reason of '|ust causes is not entitled to separation pay except as expressly provided for in the company policy or Collective Bargaining Agreement (CBA). (***Section 5.5, Rule I-A, Rules to Implement the Labor Code***)

6. Other Causes of Termination

In addition to Section 4, the employer may also terminate an employee based on reasonable and lawful grounds specified under its company policies.

An employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination. (DOLE Department Order No. 53, Series of 2003 in relation to the IRR of RA. 9165)

An employee shall not be terminated from work based on actual, perceived or suspected HIV status. (DOLE Department Order No. 102, Series of 2010)

An employee shall not be terminated on basis of actual, perceived or suspected Hepatitis B status. (DOLE Department Advisory No. 5, Series of 2010 Part III C1. par. c)

An employee who has or had Tuberculosis shall not be discriminated against. He/she shall be entitled to work for as long as they are certified by the company's accredited health provider as medically fit and shall be restored to work as soon as his/her illness is controlled. (DOLE Department Order No. 75, Series of 2005)

Sexual harassment ([Fondling the hands, massaging the shoulder and caressing the nape] [Libres v. NLRC, National Steel Corp., et. a., G. R. No. 123737, May 28, 1999 is considered a serious misconduct. It is reprehensible enough but more so when inflicted by those with moral ascendancy over their victim. (***Section 6, Rule I-A, Rules to Implement the Labor Code***)

7. Causes of Termination Under the Collective Bargaining Agreement (CBA)

An employee may also be terminated based on the grounds provided for under the CBA. (***Section 7, Rule I-A, Rules to Implement the Labor Code***)

8. Mandatory Conciliation-Mediation on Termination Disputes

All disputes arising out of termination of employment shall be subject to mandatory conciliation-mediation pursuant to Republic Act No. 10396 and its Implementing Rules and Regulations.

Request for assistance involving issues arising out of termination of employment based on just or authorized cause shall be lodged before the Single Entry Assistance Desk Officers (SEADOs) at the Regional/Provincial/Filed Offices of DOLE or its attached agencies in the region pursuant to the Implementing Rules and Regulations of Republic Act No. 10396. in case of settlement, the Desk Officer shall reduce the agreement into writing, have the parties understand the contents therefor, sign the same in his/her presence, and attest the document to be the true and voluntary act of the parties.

For organized establishment, all disputes shall undergo grievance machinery under the CBA. In case of failure to reach an agreement, the parties may refer the same to conciliation-mediation under the Single Entry Approach (SEnA) or agree to submit it for voluntary arbitration in accordance with Articles 274 and 275 of the Labor Code, as amended. (***Section 8, Rule I-A, Rules to Implement the Labor Code***)

9. Settlement Agreement

Any settlement agreement reached by the parties before the Desk Officer shall be final and binding.

In case of failure to reach an agreement during the conciliation-mediation period, the request shall be referred to compulsory arbitration, or if both parties so agree, to voluntary arbitration. (***Section 9, Rule I-A, Rules to Implement the Labor Code***)

10. Condition Precedent to Compulsory Arbitration

No Labor Arbiter shall take cognizance of the complaint for illegal dismissal unless there is a referral from the Desk Officer pursuant to the Implementing Rules and Regulations of Republic Act No. 10396. (***Section 10, Rule I-A, Rules to Implement the Labor Code***)

11. Non-compliance with Settlement Agreement; Execution

In case of non-compliance by the employer or employee, the terms of the settlement agreement may be enforced by requesting the Desk Officer to refer the same to the proper Regional Arbitration Branch (RAB) of the National Labor Relations Commission (NLRC) for enforcement of the agreement

pursuant to Rule V, Section 1 (i) of the 2005 Revised NLRC Rules, as amended. The same shall be docketed by the RAB as arbitration case for enforcement of the settlement agreement. The employee or employer may also disregard the settlement agreement and file an appropriate case before the appropriate forum. (***Section 11, Rule I-A, Rules to Implement the Labor Code***)

12. Repealing clause

Section 2(4), Section 7, Section 8, Section 9, Section 10 and Section 11 of Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code of the Philippines, as amended, are hereby repealed. All other rules and regulations issued by the Secretary of Labor and Employment inconsisten with the provision of this Rules are hereby superseded.

13. Separability Clause

If any provision or portion of this Rules is declared void or unconstitutional, the remaining portions or provisions hereof shall continue to be valid and effective.

14. Effectivity

This Order shall be effective fifteen (15) days after completion of its publication in at least two (2) newspapers of general circulation.