PRIMER ☐ Feliciano V. Maragay

Labor relations in the New Society

WITH the influx of progressive labor innovations, labor relations in the Philippines has been undergoing wide-ranging reorientation. As explicitly expressed in the Labor Code, the improvement of labor relations is ultimately geared toward the promotion of a "stable but dynamic and just industrial peace." The government seeks to transform this goal into reality primarily by providing workers an adequate machinery for the expeditious settlement of industrial disputes, promoting trade unionism and guaranteeing their democratic access to free collective bargaining.

Settlement of industrial disputes in the past was largely humstrung by the malfunctioning and inherent weaknesses of the governmental machinery charged with the enforcement of this task. As statistics show, reckless resort to strikes, layoffs, shutdowns and other coercive means of labor-management confrontation oftentimes arose from breakdown in negotiations. Encumbered by legalities, and paradoxically, in not few cases, by powerlessness to effectively intervene in the dispute, the government as the final arbiter of labor justice failed in compelling the protagonists to come to terms.

Backed up by enlightened legislation as manifested in new labor laws and dynamic flexibility in the execution of its police powers, the government today has been efficiently and relentlessly harnessing all efforts toward the peaceful disposition of industrial disputes within the context of accepted modes of settlement such as mediation, conciliation and arbitration.

Whereas past government approaches to dispute settlement heavily relied on judicial channels, today it has shifted to exhaustive use of administrative procedures. Nowhere is this cardinal concept more concretely articulated than in the Labor Code which provides that proceedings in the adjudication of cases "must be summary in nature without regard to legal technicalities obtaining in courts of law."

Thus, by dismantling the discredited system, as exemplified by the ineffectual (now defunct) Court of Industrial Relations, which in many instances militated against the very purpose of its existence, the parties to the disputes, particularly the workers, are now disentangled from lengthy, if not costly, court litigations.

The present framework of dispute settlement followed by the Department of Labor (DOL) has been established by the Labor Code as amended. It has been prescribed and regulated by a series of presidential directives and implementing rules, orders and procedures promulgated by the DOL.

Collective Bargaining. To institutionalize steps to govern labor-management action in determining and settling down the terms and conditions of employment and in handling problems and conflicts, the two parties—labor and management—must enter into a collective bargaining agreement (CBA) contract.

In case there is more than one labor union in a company, only the union officially recognized as the workers' bargaining agent may deal with management. Usually, the recognized union is the one that draws the biggest membership among the employees.

In drafting the CBA, assistance may be sought from the Department of Labor's Bureau of Labor Relations (BLR) or its counterpart Labor Relations Division (LRD) in the regional offices. The agreement becomes effective once it has been approved by both parties and duly certified by the BLR.

As a covenant regulating the relationship between employees and management, the CBA is formal proof of recognition by both sides of their rights, obligations and responsibilities. Any violation therefore of the provisions of the agreement by one party may constitute an infringement on the rights of the other. This is enough cause for the aggrieved party to file a complaint through the steps specified in the grievance procedure.

Through the grievance procedure, which is a mandatory portion of the bargaining agreement, the aggrieved party is assured of a proper venue for the redress of its complaints. The CBA must also contain a separate provision (usually called the agreement clause) categorically enjoining the parties to submit themselves to voluntary arbitration in case of an impasse or breakdown in negotiations.

Arbitration. In voluntary arbitration, both employees and management mutually agree to refer their case to an arbitrator who is empowered to investigate and determine the case on the basis of arguments and evidences presented. The parties agree in advance that the decision of the arbitrator is final, binding and non-appealable.

The CBA may include a supplementary provision naming the voluntary arbitrator or panel of voluntary arbitrators selected by the two sides. Should a panel try the case, it will constitute a tripartite body with equal seats occupied by employees, management and an impartial or neutral party who acts as chairman.

In the absence of a stipulated list of compulsory arbitrators in the CBA, the parties may choose from the registry of voluntary arbitrators authorized by the BLR. They may also designate a voluntary arbitrator or panel of arbitrators other than those in the BLR master list, but the designation must be approved by the Secretary of Labor.

Both in unionized and nonunionized companies, the aggrieved party, after failing to receive a satisfactory action on its complaint, may file its case with the BLR or with the regional office's LRD. Following its evaluation, the case is referred by the DOL regional director to a labor conciliator or med-arbiter who immediately conducts his investigation by summoning the parties involved to a meeting or hearing. Any party which deliberately ignores the proceedings of the case may be subjected by the labor conciliator or med-arbiter to disciplinary measures, including citation for contempt.

Should the conciliation or med-arbitration measures fail to effect a settlement within the period prescribed by law or as agreed by both parties, the DOL regional director will refer the case to a labor arbiter for compulsory arbitration. (The labor arbiter represents the National Labor Relations Commission or NLRC counterpart in the regional branch).

In compulsory arbitration, the labor arbiter of the NLRC, as the designated government agency, has the power to investigate and make an award or decision which is binding to all parties concerned. The decision of the labor arbiter is final and executory unless appealed to the NLRC proper. The losing party may appeal the decision to the NLRC proper within 10 days from receipt of the copy of the decision. NLRC decisions are generally final and executory unless appealed to the Secretary of Labor within 10 days from receipt of the decision.

Strikes. With the partial restoration of the right to strike in non-vital industries, conciliation, med-arbitration and subsequently, compulsory arbitration, have been extensively used in settling industrial disputes.

Under Presidential Decree No. 849, amending P.D. 823, strikes may be declared by a legitimate labor organization only after exhausting all means of resolving economic issues in collective bargaining. Among the common reasons for strikes based on recent strike notices received by the BLR are: nongranting of living allowances, non-granting of the 13th month salary, unfair labor practices, deadlock in collective bargaining or so-called interest disputes and harassment of union officials and members.

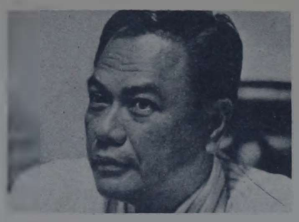
The decree provides that the labor union or employer must file an official notice with the BLR or the regional office's LRD at least 30 days before the intended strike or lockout. Within 30 days, which is considered a cooling-off period, the BLR or the regional office's LRD should effect settlement of the industrial dispute through conciliation and med-arbitration in order to prevent the imminent stoppage of normal company activities.

Should the dispute remain unresolved after the 30-day cooling-off period, the strike or lockout may be staged unless the President of the Philippines certifies the dispute to the National Labor Relations Commission, which, through compulsory arbitration, will try to terminate the dispute within a period of 45 working days following receipt of the certification. Once the dispute is certified by the President to the NLRC, the workers should return to their work and the management should postpone the lockout.

On the other hand, if the dispute is not certified by the President after the 30-day cooling-off period, the strike or lockout may take place. But this does not prevent the BLR or the regional office's LRD from taking conciliatory measures to terminate the dispute. While the strike is going on, the President may certify the dispute to the NLRC, which in effect automatically suspends the strike or lockout.

The President may elevate a dispute to the NLRC for compulsory arbitration in the interest of the national security or public safety, public order, protection of public health or morals and the protection of the rights and freedom of others.

Cases which may be elevated to the NLRC proper are classified into:



Labor Sec. Blas F. Ople

☐ Those where the national security or social and economic stability is threatened;

☐ Those appealed from decisions of the labor arbiters, compulsory or voluntary arbitrators concerning unresolved issues in collective bargaining involving demanded or expected economic benefit of P100,000 or 40 percent of the paid-up capital of the employer;

☐ Contempt cases;

☐ Intricate question of law; and

☐ Appealed cases of such complicated nature.

As provided for in the rules implementing P.D. 489, the Secretary of Labor may assume appelate jurisdiction over a labor dispute and make a summary decision on the case on the following conditions:

☐ Grave abuse of discretion or gross incompetence is evident in the appealed decision;

☐ The dispute has not been resolved by the labor arbiter, the NLRC or the voluntary arbitrator within the reglamentary period; and

☐ The dispute poses an extreme emergency as determined by a committee composed of the Undersecretary of Labor, the NLRC Chairman and the BLR Director.

In few exceptional cases, the decision of the Secretary of Labor may be appealed to the President of the Philippines within 10 days from receipt of the decision.

Enforcement. To ensure maximum effectiveness in the enforcement of labor laws, assistance may be sought from the Department of National Defense (DND). The Department of Labor may deputize the DND to maintain peace and order during strikes and lockouts and to prevent the holding of unauthorized strikes or lockouts. The DOL-DND Memorandum Agreement on the enforcement of labor laws signed on April 5, 1976, however, provides:

"No union organizers/members, in cases of strikes, or management personnel, in cases of lockouts, shall be arrested or detained without the written clearance of the Secretary of Labor or his duly authorized representatives, except on grounds of national security, public peace, commission of crime, or upon warrant or order of a competent court."

Under the same agreement, the Department of Labor may seek the direct assistance of the two DND instrumentalities, namely, the Philippine Constabulary (PC) and the Integrated National Police (INP) in enforcing or executing the DOL'S decisions or awards. It

Harmonizing Force. From the foregoing explanation, it may be discerned easily that the systematic and expeditious disposition of labor justice is the principal objective of the new process of dispute settlement. This is made possible with the emergence of a responsive and adequate machinery which has strengthened government capability to act as a countervailing or harmonizing force in labor-management conflicts.

The existence of this machinery has enabled employees and management to avail of a viable alternative to what Labor Secretary Blas Ople describes as "weapons of naked economic coercion and warfare." The substitution of arbitration for violence-prone instruments is certainly not tantamount to a diminution or impairment of the worker's rights, for the state still recognizes strikes and lockouts as the last-ditch means for pressing their legitimate demands. Moreover, the use of arbitration means the government sees to it that rationality, sobriety and responsiveness should ride over petty considerations in mending labor-management differences.

The masterstroke in the now widely-conceded vibrant system of dispute settlement is the creation of the National Labor Relations Commission (NLRC) which has a tripartite composition. The NLRC is headed by a Chairman and assisted by six Commissioners, with two seats each occupied by labor, management and government. Established on November 1, 1974 by virtue of the Labor Code, the NLRC disposed of 10,840 out of 14,267 cases in its maiden year of operation (January to December, 1975). These figures show that the NLRC resolved labor cases five times faster than its predecessor, the defunct CIR. Together with the terminated cases which represent 76 percent of the total cases filed, the NLRC also awarded P108 million in money claims to more than 40,900 workers in 1975.

Attributing this record performance to the flexible and subtle use of arbitration in dispute settlement, NLRC Chairman Alberto Veloso remarks: "Perhaps there is no better way to describe the new system of solving the recurring stalemate between management and employees than to say, somewhat in contradiction that it is both compulsory and voluntary. Upon closer examination of the system, however, the contradiction becomes more apparent than real for there is, on the contrary, a happy interplay of compulsory and voluntary measures, interminably being called into application, obviously to make sure the dispute does not get out of hand." ☐

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