A Critical Analysis of Leading Cases on the Constitutional Right to Strike in the Philippines

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INTRODUCTION

The law and jurisprudence on the right to strike of workers in this jurisdiction have not been fully understood by both employees and employers, so much so that the kind of legal issues being raised to the Supreme Court even today appear to be borne out of a lack of basic appreciation of both the letter and the spirit of the law. Empirical evidence indicates that both labor and capital have not fully understood the legal philosophy behind the constitutional and statutory provisions on strike.

Just because it has been enshrined as a constitutional right,[1] it should not be understood to mean that the right to strike is absolute. On the contrary, the fundamental law itself is quick to explicitly stress that the exercise of this right is subject to two stringent conditions namely: (1) its exercise should be peaceful and (2) it should be done in accordance with law. Moreover, the Labor Code specifies that the exercise of this right should be consistent with national interest.[2]

To paraphrase the well-written opening line of Justice Artemio V. Panganiban, in *UST Faculty Union v. Bitonio*,[3] there is indeed a right way to do the right thing at the right time, by the right party, for the right reason.[4] Albeit the *UST Faculty Union* case did not involve the right to strike, that apt reminder, coming from the highest court of the land, deserves much more than just symbolic adherence. Illegal strikers and those who are inclined to commit illegal and prohibited acts in the course of the strike should be so forewarned.

Events subsequent thereto, however, indicate that either workers have not fully understood the right and its limitations, or, oftentimes, they were simply reckless and suicidal in the exercise thereof. In any case, the consequences of illegal strikes have proven to be disastrous to the strikers and detrimental to the nation. Hundreds, if not thousands, of employees have lost their employment status. Even their usual defense of good faith is unavailing when strikes are declared illegal due to their commission of

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1. PHIL. CONST. art. XIII, § 3 ¶ 1. ("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.").

2. A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice, Presidential Decree No. 442 [LABOR CODE OF THE PHILIPPINES], art. 264.

3. University of Sto. Tomas Faculty Union v. Bitonio, 318 SCRA 185 (1999).

4. *Id.* at 189.

prohibited acts. This is because under controlling law and jurisprudence, in *mala prohibita* acts, good faith is not admitted as a valid defense.[5]

In the recent cases of *San Juan de Dios Foundation Employees Union-AFW v. San Juan de Dios Education Foundation*[6] and *San Miguel Corporation v. National Labor Relations Commission*,[7] the Court underscored once again the compelling need to stress the far-reaching consequences of taking lightly the strict guidelines for strikes and the full gravity of the penalty for deviating from the limitations imposed by both the Constitution and the law.

The refusal to return to work is an act considered *malum prohibitum*. In *San Juan de Dios*, the Court, speaking through Justice Callejo, declared in no uncertain terms that the strike was prohibited under Art. 264 of the Labor Code, because of the refusal of the workers to return to their respective jobs despite having received an order from the Secretary of Labor and Employment to do so. Hence, the dismissal of the union's officers was held to be in order.[8] The Court found that the employer was justified in terminating the employment of the union officers.

Furthermore, a strike while conciliation is on-going is illegal. In *San Miguel*, the Court, through the ponencia of Justice Adolfo S. Azcuna, held unequivocally, *inter alia*, that:

> We cannot sanction the respondent-union's brazen disregard of legal requirements imposed purposely to carry out the *State policy of promoting voluntary modes of settling disputes*. The State's commitment to enforce mutual compliance therewith to foster industrial peace is affirmed by no less than our Constitution. Trade unionism and strikes are legitimate weapons of labor granted by our statutes. But misuse of these instruments can be the subject of judicial intervention to forestall grave injury to a business enterprise.[9]

Indubitably, illegal strikes have profound effects on the economy. In fact, the rampant misuse of the right to strike has resulted in tremendous damage

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5. Union of Filipro Employees v. Nestle, 192 SCRA 396, 410 (1990).

6. San Juan de Dios Educational Foundation Employees Union-AFW v. San Juan de Dios Education Foundation, 430 SCRA 193(2004).

7. San Miguel Corporation v. National Labor Relations Commission, 403 SCRA 418 (2003).

8. *San Juan de Dios*, G.R. No. 143341 (citing Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel Restaurant and Allied Industrial, 406 SCRA 688, 707 (2003)).

9. *San Miguel*, 403 SCRA at 430 (citing PHIL. CONST. art. XIII, §3 and Bulletin Publishing Corp. v. ASS Sanchez, 144 SCRA 628, 642 (1986)) (emphasis supplied).

to the Philippine economy and put a constant strain on the relationship between labor and capital. Due to the unusual turbulence in labor relations in the mid-eighties and the early nineties, it has been reported that various multinational companies have closed their Philippine operations and transferred to China, Thailand, or Vietnam. While the Department of Labor and Employment (DOLE) has no empirical data to buttress such a conclusion, this is the general perception among investors in the country. Today, there is a relative serenity in the labor front, but the decisions coming from the Supreme Court are rulings on labor strikes that took place during those unstable years.

In *San Miguel*, the Court reminded workers that "[a] strike is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment. *However, to be valid, a strike must be pursued within legal bounds.*"[10] The Court further stated that one of the procedural requisites for a valid strike is the filing of a valid notice of strike with the National Conciliation and Mediation Board (NCMB). The purpose of such requirement is to encourage the voluntary settlement of disputes.[11] This requirement has been held to be mandatory, the lack of which shall render a strike illegal.[12]

The above reminder should serve as a final warning to those who are prone to undermine the clear import of the law. Above all, employees wanting to strike need to revisit the rationale of the constitutional provision, as well as the statutes and jurisprudence on strikes.

Employers and employees have to be reminded that when the 1986 Constitutional Commission decided to elevate the right into a constitutional one, it was premised on a well-grounded fear that another dictator might emerge again in the course of history, and would suspend or otherwise totally obliterate this all-important weapon of labor to undertake peaceful concerted actions in order to seek redress for legitimate grievances which includes the staging of strikes in accordance with law. The Constitution's specific provision on the right to strike[13] was brought about more by the fear of past unfortunate experiences under martial rule than by a strategic vision

10. *Id.* at 426 (citing Association of Independent Unions of the Philippines v. NLRC, 305 SCRA 219, 229 (1999)) (emphasis supplied).

11. *Id.* (citing National Federation of Sugar Workers (NFSW) v. Ovejera, 114 SCRA 354 (1982)).

12. *Id.* (citing National Federation of Labor (NFL) v. NLRC, 114 SCRA 354 (1997); First City Interlink Transportation Co. v. Confesor, 272 SCRA 124 (1997); and Lapanday Workers Union v. NLRC, 248 SCRA 95 (1995)).

13. PHIL. CONST. art. XIII, §3.

of a future for a just and reasonable relation between labor and capital in this country.

Thus, the Constitution succeeded, albeit unwittingly, in creating the wrong impression that, by constitutional fiat, the floodgates were opened for absolute freedom to paralyze company operations and to stage mass actions as a means to create meaningful changes in the relation between labor and capital. That wrong impression brought chaos in Philippine labor relations in 1987 and 1988, during the stewardship of DOLE by then Secretary Augusto S. Sanchez.

The labor jurisprudence that unfolded thereafter, however, proved to be an unfortunate scenario for the workers who had been misled into committing illegal and prohibited acts in the course of exercising the right to strike. Such acts caused them their jobs and allegedly also brought about bankruptcies and inevitable closures of many business firms. It likewise left a negative mark on the country as a preferred investment area in Asia and the Pacific.

This Article therefore aims at clarifying once more the rules of engagement in the exercise of this important right. There is no intention to condemn the right itself for the right to strike, indisputably, is essential as a vital component of the total legal framework to afford full protection to labor. This Article merely serves as a *caveat*, a regulating reminder to all concerned that they should avail of the right to strike in a manner that does not do violence to the rights of others, consistent with the time-honored maxim of *sic utire tuo ut alienum non laedas*.[14] To achieve this objective, this Article will be presented as follows:

Part I will discuss the various tests presented by law and jurisprudence to determine the validity of a strike namely: (1) the propriety of the act itself, (2) the propriety of the purpose, (3) the propriety of methods, (4) the propriety of timing, (5) the test of the strike's peacefulness, (6) the test of contractual compliance, and (7) the test of consistency with national interest. Part II will discuss the consequences of an illegal strike, specifically on the striking employees. Part III will discuss the roles of the State in strikes, which are both a regulator and reconciler. The conclusion will summarize the trends in jurisprudence concerning the constitutional right to strike.

14. This maxim literally means "use your own so as not to injure another."

I. TESTS TO DETERMINE THE LEGALITY OF A STRIKE

A. The Test of Propriety of the Act Itself: Is it the Right Thing to do in the First Place?

The right to strike is intended for specific workers and aimed at achieving specific purposes. Thus, the first crucial test is the test of propriety of the use of the right to strike.

The Constitution provides that the State "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."[15] Notwithstanding this *proviso*, the Court, in the case of *Social Security System Employees Association v. Court of Appeals*,[16] enunciated that the staging of a strike is *not* the right thing to do insofar as government employees are concerned.

The Court further stated that this provision seems to recognize the right of all employees to strike, including those in the public sector, but the Constitution fails to expressly confirm this. The Constitution provides that "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters,"[17] and that "[t]he right to self-organization shall not be denied to government employees."[18] The Bill of Rights also provides that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not abridged."[19] In conclusion, the Court held that "[w]hile there is no question that the Constitution recognizes the right of government employees to organize, it is silent as to whether such recognition also includes the right to strike."[20]

Reference is then made to the legislative intent and the legal philosophy of the provision allowing government employees to exercise the right to self-organization. The question is whether or not such right includes the right to strike. The Court, in the *Social Security System* case, considered the intent of the framers of the organic law and concluded that the Constitutional Commissioners "intended to limit the right to the formation

15. PHIL. CONST. art. XIII, §3.

16. Social Security System Employees Association v. Court of Appeals, 175 SCRA 686 (1989).

17. PHIL. CONST. art. IX(B), §2, ¶1.

18. PHIL. CONST. art. IX(B), §2, ¶5.

19. PHIL. CONST. art. III, §8.

20. *Social Security System Employees Association*, 175 SCRA at 693.

of unions of associations only, without including the right to strike."[21] Quoting Commissioner Lerum's explanation, the Court thus said:

> When we proposed this amendment providing for self-organization of government employees, it does not mean that because they have the right to organize, they also have the right to strike. That is a different matter. We are only talking about organizing, uniting as a union. With regard to the right to strike, everyone will remember that in the Bill of Rights, there is a provision that the right to form associations or societies whose purpose is not contrary to law shall not be abridged. Now then, if the purpose of the state is to prohibit the strikes coming from employees exercising government functions, that could be done because the moment that is prohibited, then the union which will go on strike will be an illegal union. And that provision is carried in Republic Act 875. In Republic Act 875, workers, including those from the government-owned and controlled corporation, are allowed to organize but they are prohibited from striking... It does not mean that because we approve this resolution, it carries with it the right to strike. That is a different matter... We know that this problem exists; that the moment we allow anybody in the government to strike, then what will happen if the members of the Armed Forces will go on strike? What will happen to those people trying to protect us?.... I repeat, the right to form an organization does not carry with it the right to strike.[22]

Hence, under the present laws, government employees cannot legally strike. The Court held the view that employees of the Social Security System are covered by the prohibition against strikes, since under the Constitution, "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government including government-owned or controlled corporations with original charters."[23] Created under Republic Act No. 1161,[24] the Social Security System is one such government-controlled corporation with an original charter. Thus, its employees are part of the civil service and are therefore covered by the Civil

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21. *Id.*

22. *Id.* at 694 (citing I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES 569 (1987)).

23. PHIL. CONST. art. IX(B), §2, ¶1; *see* Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and for Other Purposes, Executive Order No. 180 (1987), §1 (where the employees in the civil service are denominated as "government employees").

24. An Act to Create a Social Security System Providing Sickness, Unemployment, Retirement, Disability and Death Benefits for Employees, Republic Act No. 1161 (1954).

Service Commission's memorandum prohibiting strikes.[25] The Court thus concluded that the strike staged by the Social Security System employees was illegal.

There is a different norm for the private sector, and government employees cannot demand equal treatment *vis-à-vis* a private firm's employees. The Court stated that the general rule in the past and even up to the present is that "[t]he terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law."[26]

> Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secure through compulsion by law. Relations between private employers and their employees rest on essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statues or administrative circulars, rules, and regulations, not through collective bargaining agreements.[27]

The Court therefore decided that the right to strike given to unions in private industry does not apply to public employees as well as civil service employees because of the nature of the public employer and the peculiar character of the public service.[28] The Court's conclusion was thus inevitable: "[t]he Government, in contrast to the private employer, protects the interest of all people in the public service, and that accordingly, such conflicting interests as are present in private labor relations could not exist in the relations between government and those whom they employ."[29]

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25. *Social Security Systems Employees Association*, 175 SCRA at 696; *see* National Service Corporation v. NLRC, 168 SCRA 122 (1988).

26. LABOR CODE OF THE PHILIPPINES, art. 277.

27. *Social Security Systems Employees Association*, 175 SCRA at 697 (citing Alliance of Government Workers v. Minister of Labor and Employment, 124 SCRA 1, 13 (1983)).

28. *Id.* (citing Alliance of Government Workers v. Minister of Labor and Employment, 124 SCRA 1, 16-7 (1983)).

29. *Id.*; *see* National Housing Corporation v. Juco, 134 SCRA 172, 178-9 (1985).

B. The Test of Propriety of Purpose: Is it Undertaken for the Right Reason?

When workers are confronted with the issue whether *to strike or not to strike*, the subsequent determination of the propriety of such a concerted action relative to the nature of the labor dispute to be remedied is necessary. While the staging of a strike is admittedly an effective weapon granted to the workers, it is limited to only two kinds of labor disputes: deadlock in collective bargaining–called *economic strikes*, and unfair labor practices (ULP), or *political strikes*.[30] It is therefore beyond debate that the right to strike is not a panacea for all forms of labor and industrial disputes.

In the recent case of *San Juan de Dios Educational Foundation Employees Union-AFW v. San Juan de Dios Education Foundation*,[31] the Court pointed out that when the Secretary of Labor issued the Assumption and Return-to-Work Order, the remedy of staging a strike should have yielded to compulsory arbitration. Therefore, when the strikers defied such orders, it was not merely the employer that the workers disobeyed; they willfully disobeyed the will of the State, expressed by the lawful exercise of police power, through the Secretary of Labor. From the moment the orders were served upon the striking union, and upon the expiration of the prescribed period, the staging of a strike effectively ceased as an appropriate remedy. This was also the precedent established in *Philippine Airlines Inc. v. Secretary of Labor*.[32]

In the case of strikes, there must be a right means for the right ends. In *San Miguel Corp. v. National Labor Relations Commission*,[33] the Court stated that when a notice of strike is transformed into a preventive mediation case, the proper remedy is changed from strike to mediation. In this case, the NCMB converted the notice of strike to preventive mediation, the real issues being non-strikeable. The Court declared that the order was in pursuance of the NCMB's duty to exert all efforts at mediation and conciliation in order for the parties to settle amicably. This, the Court went on to say, is in line with the State's policy of preferring voluntary modes of settling labor disputes. This conversion had the effect of dismissing the notices of strike filed. For workers to insist on striking would be to pursue what perhaps may be a right end using the wrong means; such is not allowed by law for the end does not justify the means.

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30. LABOR CODE OF THE PHILIPPINES, art. 263, ¶ g.

31. San Juan de Dios Education Foundation Employees' Union-AFW v. San Juan de Dios Education Foundation, G.R. No. 143341, May 28, 2004.

32. Philippine Airlines Inc. v. Secretary of Labor, 193 SCRA 223 (1991).

33. San Miguel Corporation v. National Labor Relations Commission, 403 SCRA 418, 427 (2003).

In the above-cited *Philippine Airlines* case, the Court declared a strike illegal for lack of a valid notice of strike, in view of the NCMB's conversion of the notice therein into a preventive mediation case. Such conversion resulted in the dropping of the case from the docket of notice of strikes as if there was no notice of strike. With this fact, the Court concluded that the petitioner aptly described the strike as "an ambush."[34]

It should also be pointed out that unions may not strike based on other grounds, such as wage distortion. In the case of *Ilaw at Buklod ng Manggagawa (IBM) v. National Labor Relations Commission*,[35] the High Court held that a wage distortion dispute is neither a case of ULP nor of a deadlock in collective bargaining. In fact, it was pointed out that the law explicitly prohibits a strike based on wage distortion.

In *Association of Independent Unions in the Philippines v. National Labor Relations Commission*,[36] the Supreme Court held that the law does not allow a *union-recognition strike*, more so when it is staged prior to the freedom period. Both the end and the means are wrong.

> A union-recognition strike, as the name implies, is calculated to compel the employer to recognize one's union and not the other contending group, as the employees' bargaining representative to work out a Collective Bargaining Agreement (CBA) despite the union's doubtful majority status to merit voluntary recognition and lack of formal certification as the exclusive representative in the bargaining unit.[37]

In this case, it was clarified that strike was not the right thing to do and union-recognition was not the right reason therefore either.

The Court, in earlier cases,[38] also decided along the line of the legal principle enunciated in the Labor Code that no labor union may strike based on grounds as inter-union and intra-union disputes.[39] The Court in *Association of Independent Unions in the Philippines* once again stressed this explicit provision of the law.

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34. *Philippine Airlines Inc.*, 193 SCRA at 230.

35. Ilaw at Buklod ng Manggagawa (IBM) v. NLRC, 198 SCRA 586, 596 (1991).

36. Association of Independent Unions in the Philippines v. NLRC, 305 SCRA 219 (1999).

37. *Id.* at 228.

38. *See* Luzon Marine Department Union v. Arsenio Roldan, 86 Phil. 507, 514 (1950); United Seamen's Union of the Philippines v. Davao Shippers' Association, 20 SCRA 1226, 1231 (1967); United Restaurant Employees v. Torres, 26 SCRA 435, 441 (1968); Caltex Filipino Managers and Supervisors Association v. CIR, 44 SCRA 351, 362 (1972).

39. LABOR CODE OF THE PHILIPPINES, art. 263, ¶ b.

Illusory grounds to strike are likewise prohibited. In *San Miguel Corporation v. National Labor Relations Commission*,[40] the Court held that the disputes of the parties are proper for the grievance machinery and are non-strikeable. The Court further held that "[t]he issues which may lend substance to the notice of strike filed by the private respondent union are collective bargaining deadlock and petitioner's alleged violation of the collective bargaining agreement. These grounds, however, appear more illusory than real."[41] Also, in *National Union of Workers in Hotels, Restaurants and Allied Industries v. National Labor Relations Commission*,[42] the Court, speaking through Justice Regalado, held that a wild cat strike is not the right thing to do to remedy an illegal dismissal case. A mere claim of good faith would not justify the holding of a strike. The circumstances must have warranted such belief. Thus, it is not enough that the union believed that the employer committed acts of ULP when the circumstances clearly negate even a prima facie showing to sustain such belief. An employer may lawfully discharge employees for participating in an unjustified wildcat strike and especially if the said wildcat strike was an attempt to undermine the union's position as the exclusive bargaining representative.

C. The Test of Propriety of Methods: Is it the Right Way to do the Right Thing?

Under the law,[43] the union should first file a *notice of strike*,[44] and it has to observe the *cooling-off period*, which is 15 days for ULP strikes and 30 days for strikes arising from deadlock in collective bargaining. Also, the union must conduct a *strike vote* by secret ballot,[45] and the *strike vote results* have to be submitted to DOLE at least seven days before the intended strike.[46] Any deviation from this procedure shall render the strike illegal.

As discussed in the preceding paragraphs, the NCMB has the power to declare a strike notice proper for preventive mediation. Such declaration has the effect of revoking *ipso facto* the notice of strike. It would thus be illegal to proceed with the strike without such notice. The refusal to heed such a

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40. San Miguel Corporation v. National Labor Relations Commission, 304 SCRA 1 (1999).

41. *Id.* at 8.

42. National Union of Workers in Hotels, Restaurants and Allied Industries v. National Labor Relations Commission, 287 SCRA 192, 203 (1998).

43. LABOR CODE OF THE PHILIPPINES, art. 263.

44. *Id.* ¶ c.

45. *Id.* ¶ f.

46. *Id.*

proscription would be deemed reflective of bad faith and a violation of the duty to bargain collectively in good faith.[47]

The use of illegal means makes the strike illegal. In the case of *Association of Independent Unions in the Philippines v. National Labor Relations Commission*,[48] Justice Purisima made it very clear that "[e]ven if the strike is valid because its objective or purpose is lawful, the strike may still be declared invalid where the means employed are illegal."[49] In this case, the strike was considered illegal as the strikers formed a human cordon and blocked all the approaches to the property of the employer. It was a case of the wrong way to do the right thing. Consequently, everything was declared wrong in the end.

The failure to follow the proper steps taints the strike with invalidity. In the case of *Filipino Fipe and Foundry Corp. v. National Labor Relations Commission*,[50] the Court, also through Justice Purisima, held that the failure of the union to serve the company a copy of the notice of strike is a clear violation of the rules implementing the Labor Code and the constitutional precepts regarding due process. Another rule, which has to be followed strictly, is the mandatory 30 day cooling-off period from the time the notice of strike was filed.

Other failures can also make a strike illegal. In the case of *Reliance Surety and Insurance Co. v. National Labor Relations Commission,*[51] the Supreme Court declared the strike illegal on three counts, to wit:

> 1. The union did not observe the 15-day COOLING-OFF PERIOD for ULP strike,
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> 2. The union did not prove that the strike was supported by a 2/3 vote (now a simple majority), and
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> 3. There was no observance of a 7-day suspension of the right prior to the actual strike.[52]

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47. *National Union of Workers in Hotels, Restaurants and Allied Industries*, 287 SCRA at 203.

48. Association of Independent Unions in the Philippines v. NLRC 305 SCRA 219 (1999).

49. *Id.* at 230.

50. Filipino Pipe and Foundry Corp. v. National Labor Relations Commission, 318 SCRA 68, 75 (1999).

51. Reliance Surety and Insurance Co. v. National Labor Relations Commission, 193 SCRA 365 (1991).

52. *Id.* at 370; *see* Union Filipro Employees v. Nestle, 192 SCRA 396, 411 (1990).

The Court explained the importance of complying with the seven-day waiting period in the case of *National Federation of Sugar Workers v. Ovejera.*[53] Thus:

> The submission of the report gives assurance that a strike vote has been taken and that, if the report concerning it is false, the majority of the members can take appropriate remedy before it is too late. If the purposes of the required strike notice and strike vote report are to be achieved, the periods prescribed for their attainment must be deemed mandatory.[54]

The rationale behind the waiting period was enunciated in the case of *Lapanday Workers Union v. National Labor Relations Commission*[55] where the Court stated that the waiting period provides the DOLE an opportunity to verify whether the projected strike, in truth, carries the imprimatur of majority of the union members. The Court elaborated:

> Strike is usually the last weapon of labor to compel capital to concede to its bargaining demands or to defend itself against unfair labor practices of management. It is a weapon that can either breathe life to or destroy the union and its members in their struggle with management for a more equitable due of their labors. The decision to wield the weapon of strike must, therefore, rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hotheads, and firmly focused on the legitimate interest of the union which should not, however, be antithetical to the public welfare. Thus, our laws require the decision to strike to be the consensus of the majority for while the majority is not infallible, still, it is the best hedge against haste and error. In addition, a majority vote assures the union it will go to war against management with the strength derived from unity and hence, with better chance to succeed.[56]

The Court has been very strict in the observance of the seven-day waiting period. In *Coca-Cola Bottlers Phil. Inc. Postmix Workers' Union v. National Labor Relations Commission,*[57] it was held that substantial compliance does not suffice. In this case, a strike vote was conducted on 14 April 1987 and the strike was held on 20 April 1987. The union thought that the strike should be considered as held exactly on the seventh day from the balloting since the counting of the seven days should be reckoned from 14 April 1987. The Court, however, said that the correct manner of computing the period

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53. National Federation of Sugar Workers v. Ovejera, 114 SCRA 354 (1982).

54. *Id.* at 365.

55. Lapanday Workers Union v. National Labor Relations Commission (NLRC), 248 SCRA 94 (1995).

56. *Id.* at 97.

57. Coca-Cola Bottlers Phil. Inc. Postmix Workers' Union v. National Labor Relations Commission, 299 SCRA 410, 424-25 (1998).

is to follow Article 13 of the Civil Code,[58] which is to exclude the first day and include the last day. This means that the seventh day fell on 21 April 1987 and not when the union struck on 20 April 1987. The Court then concluded that the strike was patently illegal, having been conducted only on the sixth day after the strike vote.

A strike conducted with force, threats, coercion, intimidation, physical violence, sabotage and similar acts is certainly illegal. In the case of *Great Pacific Life Employees Union v. Great Pacific Life*,[59] Justice Bellosillo, spoke for the Court in upholding the illegality of the strike, *viz*:

> The right to strike, while constitutionally recognized, is not without legal constrictions. The Labor Code is emphatic against the use of violence, coercion and intimidation during a strike and to this end prohibits the obstruction of free passage to and from the employer's premises for lawful purposes. The sanction provided in par. (a) of Art. 264 thereof is so severe that '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.[60]

In fact, violence stigmatizes a strike. There is a long string of cases[61] where violence, threats, coercions and intimidation were held to taint the exercise of the right to strike with the stigma of illegality.

No other strike can perhaps surpass the antagonism generated in the case of *Union of Filipro Employees v. Nestle*.[62] It was a drawn-out labor dispute, which began during the stewardship of Sec. Blas F. Ople in DOLE, continued throughout the term of Sec. Augusto S. Sanchez, extended up to the time of Sec. Franklin M. Drilon. The battle was long and highly adversarial, resulting in tremendous loss of properties and allegedly, even lives of both executives and rank-and-file employees. At the end, scores of union leaders and members lost their jobs. Everyone lost – the company, the employees and the country as a whole.

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58. An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386 [CIVIL CODE OF THE PHILIPPINES] art. 13, ¶ 3.

59. Great Pacific Life Employees Union v. Great Pacific Life, 303 SCRA 113 (1999).

60. *Id.* at 121 (citing LABOR CODE OF THE PHILIPPINES, art. 263, ¶3).

61. *See* Alliance of Democratic Free Labor Organization (ADFLO) v. Laguesma, 254 SCRA 565 (1996); Midas Touch Food Corp. v. NLRC, 259 SCRA 652 (1996); Samahang Manggagawa sa Moldex v. NLRC, 324 SCRA 242 (2000).

62. Union of Filipro Employees v. Nestle, 192 SCRA 396 (1990).

Today, erring strikers may need to be reminded that Philippine penal law[63] imposes the penalty of *arresto mayor* and a fine not exceeding 300 pesos upon any person who, for the purpose of organizing, maintaining or preventing coalitions of capital or labor, strike of laborers or lockout of employers, shall employ violence or threat in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work, if the act shall not constitute a more serious offense in accordance with the provisions thereof. The Labor Code itself provides that "[n]o 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."[64]

Again, it bears emphasis that the filing of a strike notice is a condition *sine qua non* to the staging of a legal strike, the absence of which necessarily makes the strike illegal. Thus, it was clarified in the case of *National Federation of Labor v. National Labor Relations Commission*[65] that, although in the case of *Philippine Metal Foundries v. Court of Industrial Relations*[66] it was held that a strike could not be declared illegal for lack of notice. However, it is noteworthy that said case was decided in 1979. With the enactment of Republic Act No. 6715,[67] which took effect on 21 March 1989, the present rule is that requirements such as the filing of a notice of strike, strike vote, and notice given to the DOLE are mandatory. The Court emphasized that even if the union believed that the company was committing an ULP and the union acted in good faith, if no notice of strike and a strike vote were conducted, the said strike is illegal.

The *National Federation of Labor* case has also abrogated the ruling in *People's Industrial and Commercial Employees and Workers Organization v.*

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63. An Act Revising the Penal Code and Other Penal Laws, Act No. 3815 [REVISED PENAL CODE] art. 289

64. LABOR CODE OF THE PHILIPPINES, art. 264, ¶ e.

65. National Federation of Labor v. National Labor Relations Commission, 283 SCRA 275, 290 (1997).

66. Philippine Metal Foundries v. Court of Industrial Relations, 90 SCRA 135, 141 (1979).

67. An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for These Purposes Certain Provisions of Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, Appropriating Funds Therefore and for Other Purposes, Republic Act No. 6715 (1989).

People's Industrial and Commercial Corporation,[68] which ruled that a strike cannot be declared as illegal for lack of notice. Because of the enactment of Republic Act No. 6715 the rule now is that such requirements as the filing of a notice of strike, strike vote, and notice given to DOLE are mandatory in nature. In *First City Interlink Transportation Co. Inc. v. Confesor*,[69] the Court summarized all the requirements as follows:

> Pursuant to Art. 263 (c)(f) of the Labor Code, the requisites for a valid strike are as follows:
>
> (1) A notice of strike filed with the Department of Labor at least 30 days before the intended dated thereof or 15 days in case of unfair labor practice;
>
> (2) Strike vote approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose;
>
> (3) Notice given to the Department of Labor and Employment of the results of the voting at least 7 days before the intended strike.
>
> These requirements are mandatory.[70]

These requirements, however, are not entirely exhaustive. This paper provides the totality of the positive and negative requirements, as outlined by law and further explained by jurisprudence.

D. The Test of Propriety of Timing: Is it the Right Time to Do the Right Thing?

A strike can be staged legally only after the lapse of the cooling-off period as well as the seven-day waiting period subsequent to the submission to DOLE of the strike vote result, and after the parties shall have exhausted the available non-confrontational remedies, including the grievance procedures, the conciliation and mediation process, and the voluntary arbitration mechanism, which are the preferred modes of dispute-settlement in this jurisdiction.

The above periods and conditions proscribed in the case of *First City Interlink*[71] are mandatory. Before the lapse of these periods, the union may

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68. People's Industrial and Commercial Employees and Workers Organization v. People's Industrial and Commercial Corp., 112 SCRA 440 (1982).

69. First City Interlink Transportation Co. Inc. v. Confesor, 272 SCRA 124 (1997).

70. *Id.* at 130-31 (citing Lapanday Workers Union v. NLRC, 248 SCRA 95 (1995) and NFSW v. Ovejera, 114 SCRA 354 (1982)).

71. *Id.*

not strike.[72] The Labor Code has also established definite time limits, which should be strictly followed. Those who deride, do so at their own risk.

A strike vote is a condition precedent for a valid strike. In the same case of *First City Interlink*,[73] it was held that it is illegal to strike without first having conducted a strike vote and without first having observed the required seven-day strike ban from the date the strike vote has been reported to the DOLE. It was not the right time to do the right thing. Also, in *Coca-Cola Bottlers Phil. Inc. Postmix Workers' Union*,[74] it was stressed that strict adherence to the proper procedure and proper timing is required. Substantial compliance is not enough. The same is true in *National Federation of Labor*,[75] and in *Reliance Surety*.[76]

Internal remedies must be exhausted. In the *San Miguel* case,[77] the High Tribunal declared that unions should resort to strikes only after exhausting the internal remedies provided in the CBA. In this case, the employer was willing to negotiate with the union by seeking an order from the NLRC to compel observance of the grievance and arbitration proceedings. The union, however, resorted to force without exhausting all available means within its reach. Such infringement of the aforecited CBA provisions, the Court stated, constitutes further justification for the issuance of an injunction against the strike. Further, it was held that "[s]trikes held in violation of the terms contained in a collective bargaining agreement are illegal especially when they provide for constructive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved."[78] Furthermore, in an earlier *San Miguel* case,[79] the Court held that the union violated the mandatory provisions of the CBA when it filed a notice of strike

72. Coca-Cola Bottlers Phil. Inc. Postmix Workers' Union v. National Labor Relations Commission,, 299 SCRA 410, 423 (1998); *see* Gold City Integrated Port Services, Inc. v. NLRC, 245 SCRA 627, 636-37 (1995); *National Federation of Sugar Workers*, 114 SCRA 354, 365 (1982).

73. *First City Interlink Transportation Co.*, 272 SCRA at 131.

74. *Coca-Cola Bottlers Phil. Inc. Postmix Workers' Union,* 299 SCRA at 422.

75. National Federation of Labor v. National Labor Relations Commission, 283 SCRA 627 (1997).

76. Reliance Surety and Insurance Co. v. National Labor Relations Commission, 193 SCRA 365 (1991).

77. San Miguel Corporation v. National Labor Relations Commission, 403 SCRA 418, 429 (2003).

78. *Id.* (citing Insurefco Paper Pulp & Project Workers' Union v. Insular Sugar Refining Corp., 95 Phil. 761 (1954)).

79. San Miguel Corporation v. National Labor Relations Commission, 304 SCRA 1, 9 (1999).

without availing of the remedies prescribed therein. In the leading case of *Liberal Labor Union v. Philippine Can Co.*,[80] and in a succeeding array of cases,[81] the Court has consistently declared as illegal those strikes which were conducted without first exhausting all the steps in the grievance procedures as contained in the existing CBA.

The Labor Code requires as a condition *sine qua non* in cases of economic strikes that the effort to first bargain collectively be had.[82] The case of *Insurefco Paper Pulp and Project Workers Union v. Insular Sugar Refining Corp.*[83] provides an example since the Court deemed the union's walkout as premature, as it was declared without giving the company reasonable time to consider and act on the demands submitted by the union.

It is *not* the proper time to stage a strike when there are pending conciliation proceedings involving the dispute. In fact, disrupting the conciliation proceedings is considered taboo. "During the proceedings, the parties shall not do any act which may disrupt or impede the early settlement of the dispute. They are obliged as part of the duty to bargain collectively in good faith, to participate fully and promptly in the conciliation meetings…"[84]

E. The Test of Peacefulness of Strikes: Is the Strike Staged in a Peaceful Manner?

The Supreme Court condemned as illegal the strike in the case of *First City Interlink*[85] due to the fact that the strike "was attended by pervasive and widespread violence. The acts of violence committed were not mere isolated incidents which could normally occur during any strike."[86] The buses of the employer were hijacked resulting in injuries to employees, and triggering panic among commuters; the terminal was also barricaded by using the hijacked buses. Tires were punctured, electric wirings, water hoses and fan belts were cut, and even expensive equipment were stolen. Also, the strikers

80. Liberal Labor Union v. Philippine Can Co., 91 Phil. 72 (1952).

See United Seamen's Union v. Davao Shippers Association, 20 SCRA 1226 (1967); Arica v. Minister of Labor, 137 SCRA 267 (1985); Union of Filipro Employees v. Nestle, 192 SCRA 396 (1990); SMC v. NLRC, 304 SCRA 1 (1999).

82. *See* LABOR CODE OF THE PHILIPPINES, art. 264, ¶ a, in relation to arts. 252 and 253.

83. *Insurefco Paper Pulp and Project Workers Union*, 95 Phil. 761, 767 (1954).

84. Pipe and Foundry Corp. v. National Labor Relations Commission, 318 SCRA 68, 74 (1999).

85. First City Interlink Transportation Co. Inc. v. Confesor, 272 SCRA 124 (1997).

86. *Id.* at 134-35.

threw Molotov bombs into the employer's compound. The Court rightfully concluded that these acts were deliberately employed to harass the employer and the public.

In *Association of Independent Unions*,[87] the Court emphasized the statutory limits of the workers' right to strike:

> A strike is a legitimate weapon in the universal struggle for existence. It is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment. But to be valid, a strike must be pursued within legal bounds. The right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employer. The law provides limits for its exercise. Among such limits are the prohibited activities under Article 264 of the Labor Code, particularly paragraph (e), which states that no person engaged in picketing shall: a) commit any act of violence, coercion, or intimidation; or b) obstruct the free ingress to or egress from the employer's premises for lawful purposes; or c) obstruct public thoroughfares.[88]

All strikers, be they union officers or members, must remember that the sanctions provided by the law to erring strikers are "so severe that 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."[89]

However, when the parties are in *pari delicto*, the law will leave them where it finds them. In the case of *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*,[90] the Supreme Court found both parties to have committed violent acts and as such, the violence committed cannot be considered a ground for declaring the strike as illegal.

It can thus be concluded that the law is very strict when it comes to violence, threats and intimidation perpetrated during the strike. It is likewise strict in its treatment of employers who commit acts that exacerbate the labor dispute.

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87. Association of Independent Unions in the Philippines v. National Labor Relations Commission, 305 SCRA 219 (1999).

88. *Id.* at 229.

89. Great Pacific Life Employees Union v. Great Pacific Life, 303 SCRA 113, 121 (1999) (citing 2 CESARIO A. AZUCENA JR., THE LABOR CODE WITH COMMENTS AND CASES 332 (1993 ed.)).

90. Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos, 326 SCRA 428, 473 (2000).

F. The Test of Contractual Compliance: Is it in Compliance with Contractual Stipulations?

One major issue to tackle is the question of a "no strike-no lockout" clause. Is this binding? Can there be a valid total waiver of the constitutional right to strike? The string of jurisprudence in this jurisdiction has provided a clear answer to these questions.

In the *San Miguel* case,[91] the Supreme Court succinctly held that a non-strike provision in the CBA only bars strikes which are economic in nature. Strikes grounded on ULP are not barred by such clauses. The Court in the case of *Master Iron Labor Union v. National Labor Relations Commission*,[92] through Justice Melo, explained that "if the strike is founded on an unfair labor practice of the employer, a strike declared by the union cannot be considered a violation of the no-strike clause." The Court further defined an economic strike as "one which is to force wage or other concessions from the employer which he is not required by law to grant."[93] Here, the grounds for the strike were: violation of the CBA or the corporation's practice of subcontracting workers; discrimination; coercion of employees; unreasonable suspension of union officials and unreasonable refusal to entertain grievance. Clearly, these did not fall within the definition of an economic strike.

Economic strikes are waivable. In economic strikes, there is a possibility of its exercise being declared illegal if it violates the no-strike clause. Thus, in *Philippine Airlines Inc. v. Secretary of Labor*,[94] the strike was deemed illegal for violating the no-strike provision of the CBA as it was prematurely staged. There already was an existing CBA which still had nine months to run. Both parties could not terminate or modify such agreement while still existing. The Court stated that although either party may serve a written notice to terminate or modify the agreement at least 60 days prior to the expiration date, it is 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 freedom period until a new agreement is reached by them."[95]

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91. San Miguel Corporation v. National Labor Relations Commission, 403 SCRA 418, 429-30 (2003) (citing MSMG-UWP v. Ramos, 326 SCRA 429, 468 (2000)).

92. Master Iron Labor Union v. National Labor Relations Commission, 219 SCRA 47 (1993).

93. *Id.* at 55.

94. Philippine Airlines Inc. v. Secretary of Labor, 193 SCRA 223 (1991).

95. *Id.* at 229; *see* Ilaw ng Buklod ng Manggagawa (IBM) v. NLRC, 198 SCRA 586 (1991).

As the question on the validity of the waiver of economic strikes, the Court has concluded that a no-strike clause in a CBA is a valid stipulation, provided it is made applicable only to economic strikes.[96] In ULP strikes, however, no waiver can hold since an act of ULP is deemed an unlawful aggression and the strike is deemed a reasonable means to repel the aggression. In a sense, strike is basically a weapon of self-defense, provided there is lack of sufficient provocation on the part of the union.

G. The Test of Consistency with National Interest: Is it Done in a Manner that is Consistent with National Interest?

Consistency with national interest usually involves disputes in industries indispensable to national interest. In these situations, whenever the Secretary of Labor assumes a dispute, the strike being staged based on said dispute must stop. To continue striking is not consistent with the imperatives of national interest. As a general rule, decisions of the Secretary of Labor in issuing return-to-work orders are not altered or modified by the Courts, for the reason that the Secretary has acquired expertise in such matters.[97]

In *Association of Independent Unions*,[98] one of the causes of the strike's illegality was the violation of the Temporary Restraining Order (TRO) enjoining the union and/or its members from obstructing the company premises and ordering the removal of all the barricades.

In the *San Juan de Dios* case,[99] it was noted by the Court that the strike at its inception was legal and peaceful, but when the strikers defied the return to work order the strike became illegal. However, even though the Labor Code provides that officers and members of the Union who refused to return to work after the order was given are deemed to have lost their employment status,[100] the Court held that the termination of only the

96. *See* MSMG-UWP v. Ramos, 326 SCRA 428 (2000); Panay Electric Company, Inc. v. National Labor Relations Commission, 248 SCRA 688 (1995); People's Industrial and Commercial Employees and Workers Organization v. People's Industrial and Commercial Corporation, 112 SCRA 440 (1982); Consolidated Labor Association of the Philippines v. Marsman and Co., Inc., 11 SCRA 589 (1964); Master Iron Labor Union v. National Labor Relations Commission, 219 SCRA 47 (1993); Philippine Metal Foundries, Inc. v. Court of Industrial Relations, 90 SCRA 135 (1979).

97. Capitol Wireless v. Confesor, 264 SCRA 68, 77 (1996).

98. Association of Independent Unions in the Philippines v. National Labor Relations Commission, 305 SCRA 219, 229 (1999).

99. San Juan de Dios Educational Foundation Employees Union-AFW v. San Juan de Dios Education Foundation, G.R. No. 143341, May 28, 2004.

100. LABOR CODE OF THE PHILIPPINES, art. 264, ¶ a.

ranking officers of the Union was justified considering that the union members did not know the consequences of their refusal to return to work.

The return to work order is a valid part of an assumption order. In *Marcopper v. Brillantes*,[101] it was postulated that:

> The return-to-work order is valid 'statutory part and parcel' of the assumption and certification orders given the predictable prejudice the strike could cause not only to the parties but more especially to the national interest. Stated otherwise, the assumption of jurisdiction or the certification to the National Labor Relations Commission (NLRC) has the effect of automatically enjoining the strike or lockout, whether actual or intended, even if the same has not been categorically stated or does not appear in the assumption or certification order. It is not a matter of option or voluntariness but of obligation. It must be discharged as a duty even against the worker's will. The worker must return to his job together with his co-workers so that the operation of the company can be resumed and it can continue serving the public and promoting its interest. It is executory in character and shall be strictly complied with by the parties even during the pendency of any petition questioning its validity precisely to maintain the status quo while the determination is being made.

In *Marcopper*, and in many other cases,[102] the Supreme Court warned that the staging of a strike after the assumption of jurisdiction or a certification of arbitration means that workers forfeit their right to be readmitted to work. They are considered to have abandoned their employment and can be validly replaced.

The Court likewise underscored the sense of urgency attendant to the issuance of an assumption order. In the case of *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*,[103] the Court held:

> It is clear from the foregoing legal provision that the moment the Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest, such assumption shall have the effect of automatically enjoining the intended or impending strike. It was not even necessary for the Secretary of Labor to issue another order directing them to return to work. The mere issuance of an assumption order by the Secretary of Labor automatically carries with it a return-to-work order,

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101. Marcopper v. Brillantes, 254 SCRA 595, 601-2 (1996).

102. *See* St. Scholastica's College v. Torres, 210 SCRA 565 (1992); Federation of Free Workers v. Inciong, 208 SCRA 157 (1992); Union of Filipro Employees v. Nestle, 192 SCRA 396 (1990); Sarmiento v. Tuico, 162 SCRA 676 (1988).

103. Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, 348 SCRA 565, 581 (2000) (citing Union of Filipro Employees v. Nestle, 192 SCRA 396, 411 (1990)).

> even if the directive to return to work is not expressly stated in the assumption order.

To continue striking when an assumption order has already been issued is contemptuous. It is prohibited under the Labor Code. Article 264 (a) of the Code provides: "[n]o strike or lock out shall be declared after the assumption of jurisdiction by the President or the Secretary 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." The rationale for this was amply elucidated in several cases,[104] wherein the Court explained that strikes should not interfere with the jurisdiction over a labor dispute properly acquired by competent authority. That simply means that strikers should strictly adhere to the provisions of the law.[105]

II. CONSEQUENCES OF AN ILLEGAL STRIKE

The Labor Code provides that:

> [a]ny union officer who knowingly participates in an illegal strike and 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: Provided, that mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if replacement had been hired by the employer during such lawful strike.[106]

An ordinary striking employee cannot be terminated for merely participating in an illegal strike.[107] To justify the imposition of the penalty of dismissal, there must be substantial evidence that proves that the employee committed illegal acts during the strike. It is crucial that the striker who committed the illegal act is identified.

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104. *See* Zamboanga Wood Products, Inc. v. NLRC, 178 SCRA 482, 491 (1998); Allied Banking Corporation v. National Labor Relations Commission, 258 SCRA 724 (1996); Marcopper Mining Corporation v. Brillantes, 254 SCRA 595 (1996); St. Scholastica's College v. Torres, 210 SCRA 565 (1992); Federation of Free Workers v. Inciong, 208 SCRA 157 (1992); Union of Filipro Employees v. Nestle, 192 SCRA 396 (1990); Asian Transmission Corp. v. NLRC, 179 SCRA 582 (1989); Sarmiento v. Tuico, 162 SCRA 676 (1988).

105. LABOR CODE OF THE PHILIPPINES, art. 263.

106. *Id.*

107. Association of Independent Unions in the Philippines v. National Labor Relations Commission (NLRC), 305 SCRA 219, 231 (1999); *see* CCBPI Postmix Workers Union v. NLRC, 299 SCRA 410 (1998).

To reiterate, there is a need to produce evidence specifically linking union members to illegal acts committed during the strike. In the *CCBPI Post Mix Workers Union* case,[108] the Court held that the evidence failed to show the active participation of certain employees in the illegal acts committed during the illegal strike. As such, the said employees did not incur liability and cannot be held responsible even for the illegal strike solely because of their union membership.[109] The terminated employees were entitled to reinstatement with backwages.

However, in another case,[110] the Court held that selective admission of returning strikers may be justified by the facts. So that, once an employee had shown that he acted violently and illegally in the strike, he may not be allowed to return to work. Such is an act of self-preservation on the part of management meant to maintain peace and order in the company.[111]

It is clear that the responsibility of union officers are much greater compared to that of the ordinary union members. Thus, in the aforesaid case, it was held that union officers are obligated to guide their members to respect the law. Union officers who instead, urge their members to violate the law can be rightfully terminated. Such termination is a just penalty. The officers' responsibility is greater than that of the members.[112] Accordingly, to whom much is given, much is expected by law. Anent the ordinary member, the law is more tolerant, on the premise that they might have been misled by their leaders or simply because they acted without much discernment.[113]

While mere members may be reinstated, the law looks with contempt at the union leaders who could have instigated the illegal strike. Thus, a union official may be singled out by denying him reinstatement while all the rest are ordered reinstated. In *Great Pacific Life Employees Union*,[114] the ruling was succinct:

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108. Coca-Cola Bottlers Phil. Inc. Postmix Workers' Union v. National Labor Relations Commission, 299 SCRA 410, 430 (1998).

109. Arica v. Minister of Labor, 137 SCRA 267, 277 (1985).

110. Great Pacific Life Employees Union v. Great Pacific Life, 303 SCRA 113, 126 (1999).

111. Pagkakaisang Itinataguyod ng mga Manggagawa sa Ang Tibay v. Ang Tibay, 20 SCRA 25, 49 (1967).

112. *Id.*

113. Association of Independent Unions in the Philippines v. National Labor Relations Commission, 305 SCRA 219, 231 (1999).

114. *Great Pacific Life Employees Union*, 303 SCRA at 113.

> A union officer has larger and heavier responsibilities than a union member. Union officers are duty bound to respect the law and to exhort and guide their members to do the same; their position mandates them to lead by example. By committing prohibited activities during the strike, de la Rosa as Vice President of petitioner UNION demonstrated a high degree of imprudence and irresponsibility. Verily, this justifies his dismissal from employment. Since the objective of the Labor Code is to ensure a stable but dynamic and just industrial peace, the dismissal of undesirable labor leaders should be upheld.[115]

Also, in a wild cat strike, the legal consequence is loss of employment. In *National Union of Workers in Hotels, Restaurants and Allied Industries v. National Labor Relations Commission*,[116] the Court upheld the dismissal from employment of 15 officers because they knowingly participated in the illegal strike. Here, the wild cat strike was held to undermine the Union's standing as the exclusive bargaining representative and as such was an unprotected activity.

The law, however, does not allow a *wholesale dismissal* of employees, such that a mere finding of the illegality of a strike should not be automatically followed by a mass dismissal of the strikers from their employment.[117]

Responsibility for illegal acts must be on an individual basis, not on a collective basis.[118] In one case,[119] the Court upheld the Secretary's ruling that although the strike was illegal because of the commission of illegal acts, it is only the union officers and strikers who engaged in the violent and criminal acts are considered to have lost their employment. Those who were merely instigated to participate in the illegal strike should be treated more liberally.

In an interesting case,[120] the Court held that the legal implication of slowdowns is ultimately to be considered an illegal strike. Here, every time the employer failed to give in to the demands of the union, production

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115. *Id.* at 125-26.

116. National Union of Workers in Hotels, Restaurants and Allied Industries v. National Labor Relations Commission, 287 SCRA 192, 202 (1998).

117. *See* Bacus v. Ople, 132 SCRA 690, 703 (1984) (citing Almira v. B.F. Goodrich, 58 SCRA 120 (1974); Shell Oil Workers' Union v. Shell Co. of the Phils. Ltd., 39 SCRA 276 (1971); Cebu Portland Cement Co. v. Workers Union, 25 SCRA 504 (1968); and Ferrer v. Court of Industrial Relations, 17 SCRA 352 (1968)).

118. First City Interlink Transportation Co. v. Confesor, 272 SCRA 124, 135 (1997).

119. *Id.*

120. Philthread Workers' Union v. Confesor, 269 SCRA 393 (1997).

declined. The effect was that the production of the company declined significantly. However, when the demand of the union regarding restoration of overtime work was granted, production improved. The Court concluded that these work slowdowns committed by the members of the Union were actually strikes on an installment basis and a method of manipulating production. As a result of the acts of the Union members, the company incurred tremendous financial losses and had to cease its operations indefinitely.

Loss of employment is not the only consequence resulting from an illegal strike. Damages may be slapped upon the erring strikers.[121] In one case, the strike went on for 50 days but there was no proof of actual damage. The Court still decided that some form of injury was inflicted and that the employer is entitled to nominal damages of P300,000.00 which was "adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated and recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered.[122]" The union should thus be held responsible for exceeding the bounds allowed by law and for violating the rights of the employer and/or innocent third parties.

III. THE ROLE OF THE STATE IN STRIKES: REGULATOR AND RECONCILER

The Secretary of Labor and Employment has the plenary power to regulate the relations between labor and capital.[123] This should not be deemed an infringement of the workers' right to strike. The Labor Code specifically provides that: "[w]hen 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 assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration…"[124] The Court, in *Philthread Workers' Union v. Confesor*,[125] stated that the above-quoted provision of law

> …does not interfere with the workers' right to strike but merely regulates it, when in the exercise of such right, national interests will be affected. The rights granted by the Constitution are not absolute. They are still

121. National Federation of Labor v. National Labor Relations Commission, 283 SCRA 275, 290 (1997).

122. *Id.*

123. PHIL. CONST. art. XIII, § 3, ¶ 4. ("The State shall regulate the relations between workers and employers...").

124. LABOR CODE OF THE PHILIPPINES, art. 263 ¶ g.

125. *Philthread Workers' Union*, 269 SCRA at 399.

> subject to control and limitation to ensure that they are not exercised arbitrarily. The interests of both the employers and employees are intended to be protected and not one of them is given undue preference.

This power of the Secretary of Labor partakes of the nature of police power.[126] It includes the determination of which industry is indispensable to national interest. Upon the determination of the Secretary that an industry is indeed indispensable to the national interest, it shall assume jurisdiction over the labor dispute.[127] The purpose of this is "to promote the common good since a prolonged strike or lockout can be inimical to the national economy. The Secretary of Labor acts to maintain industrial peace. Thus, his certification for compulsory arbitration is not intended to impede the worker's right to strike but to obtain a speedy settlement of the dispute."[128] Hence, there is no grave abuse of discretion when the Secretary of Labor assumes jurisdiction over a labor dispute based on clear consideration and a well-founded basis.[129]

The power of assumption is anchored on solid legal basis. It is based on the police power of the state which is the "power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society."[130] As it is inherent it need not be expressly granted by the Constitution.[131]

It is settled in jurisprudence that the Labor Secretary's power of assumption embraces all issues arising from the dispute causing the strike, including incidental controversies such as ULP likely to cause a strike.[132] The Secretary can even take cognizance of causes of action belonging to the exclusive and original jurisdiction of the Labor Arbiter,[133] provided that the parties have raised the issues for resolution and/or the same are intertwined with the principal cause of action. This includes even the issue of legality of strikes. This is to allow the Secretary to effectively and efficiently dispose of the issues.

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126. International Pharmaceutical Inc. v. Secretary of Labor, 205 SCRA 59, 60 (1992).

127. *Philthread Workers' Union*, 269 SCRA at 399.

128. *Id.*

129. *Id.* at 401.

130. People of the Philippines v. Reyes, 67 Phil. 187, 190 (1939).

131. *Philthread Workers' Union*, 269 SCRA at 398.

132. International Pharmaceutical Inc. v. Secretary of Labor, 205 SCRA 59, 65-6 (1992).

133. LABOR CODE OF THE PHILIPPINES, art. 217 (a).

However, if the incidental issues were not submitted by the parties for resolution, the Labor Secretary has no power to rule on them. In *Philippine Airlines Inc. v. Secretary of Labor*,[134] Justice Griño-Aquino put the Labor Secretary to task for ruling on the issues of legality of strike, which was not at all raised. The Labor Secretary's authority to resolve the labor dispute comprises only the issues in the dispute and not the legality or the illegality of any strike that may have sprung up in the meantime.[135]

Nevertheless, the employer cannot be stripped of disciplinary prerogative. In *Philippine Airlines*, the Labor Secretary was held without authority to prohibit an employer from exercising its management prerogative to discipline employees. The Labor Secretary may enjoin the holding of the strike but not the right of the employer to take action against those who participated and committed illegal acts. To deprive the employer of his rights is an unlawful deprivation of property and denial of due process, otherwise, employers may be prevented from seeking redress for losses they suffer from the illegal acts of the union members and officers.

In the same case, the Labor Secretary was put to blame for failing to exercise his powers under Article 263 (g) of the Labor Code, over the disputes causing a strike which caused tremendous damage to the Company and great inconvenience to the riding public.[136] The Court was straightforward in holding that the Secretary did not act promptly, having failed to act for seven days on the petitions brought before him.[137]

Injunctions and restraining orders may be issued against strikers who commit prohibited acts under Article 264 of the Code. In the *San Miguel* case,[138] it was held that Article 254 of the Labor Code provides that

> [n]o 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 except as otherwise provided in Article 218 and 264 of the Labor Code. Under the first exception, Article 218 (e) of the Labor Code expressly confers upon the NLRC the power to 'enjoin or restrain actual and threatened commission of any or all prohibited or unlawful acts, or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.' The second exception, on the other hand, is when the labor

134. Philippine Airlines Inc. v. Secretary of Labor, 193 SCRA 223, 224 (1991).

135. *Id.* (citing Binamira v. Ogan-Oceana, 148 SCRA 677 (1987)).

136. *Id.*

137. *Id.*

138. San Miguel Corporation v. National Labor Relations Commission, 403 SCRA 418 (2003).

> organization or the employer engages in any of the 'prohibited activities' enumerated in Article 264.[139]

When there is a threat of an imminent illegal strike, the employer has the right to ask for an injunction and the NLRC is duty-bound to issue it. This was clarified by the Court in the aforecited *San Miguel* case.[140] Here, the union, a day after informing the NLRC that there was no threat of prohibited activities, circulated flyers to its members stating that the notice of strike still subsisted and that at any time they could start a picket line. This provided a ground to ask for an injunction.

Also, a strike that is about to be staged or is already being staged without a valid notice of strike can be stopped by the issuance of an injunction.[141]

An innocent bystander may ask for an injunction if it is shown that a strike has unduly violated his right. In *MSF Tire v. Court of Appeals*,[142] the Court enunciated the innocent bystander rule as follows: "[t]he 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 Supreme Court hastened to add that this right is not absolute and that while peaceful picketing is an exercise of free speech, the courts are not without power to confine or localize it to a specified area and to insulate persons or establishments with no connection or interest with the parties involved in 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 exercise 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."[143] So that, a union may not block the entrance to a feed mill within the compound where two mills owned by two different companies are located.[144] Also, where other stores owned by third persons were located with the same entrance as that of the company

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139. *Id.* at 425.

140. *Id.*

141. *Id.* at 428-29.

142. MSF Tire v. Court of Appeals, 311 SCRA 785, 792 (1999); *see* Philippine Association of Free Labor Unions v. Cloribel, 27 SCRA 465, 472-3 (1969).

143. *MSF Tire*, 311 SCRA at 792.

144. *Id.*

involved in the strike, the picket of the union could not be held in the entrance.[145]

Not everybody, however can seek refuge under this rule. The Court clarified in *MSF Tire* that: "[a]n 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... to either party to the dispute and, therefore, its interests are totally foreign to the context thereof."[146] In one case,[147] the Court found that the establishment against whom the strike was directed was housed with the landlord and a co-lessee, all three parties having no connection with each other except for the fact that they shared the same building. Similarly, in another case,[148] the Court ruled that the party asking for the enjoining of the strike was in fact an innocent bystander, its only connection with the employer company being the fact that they shared the same premises.

Insofar as strikes in the government sector are concerned, it is well-settled that the regular courts have jurisdiction to issue injunctions. In the *Social Security System* case,[149] it was explicitly declared that since the strike was prohibited by law, an injunction may be issued to restrain it. The Court held that the Labor Code itself provides that government employees shall be governed by the Civil Service Law[150] and that it is the Public Sector Labor-Management Council that has jurisdiction over unresolved labor disputes of government employees.[151] The Court stated:

> [t]his being the case, the Regional Trial Court was not precluded...from assuming jurisdiction over the SSS's complaint for damages and issuing the injunctive writ prayed for therein. Unlike the NLRC, the Public Sector Labor-Management Council has not been granted by law authority to issue writs of injunction in labor disputes within its jurisdiction. Thus, since it is the Council, and not the NLRC, that has jurisdiction over the instant labor

145. *Id.*

146. *Id.*

147. Philippine Association of Free Labor Unions v. Cloribel, 27 SCRA 465, 472 (1969).

148. Liwayway Publications, Inc. v. Permanent Concrete Workers Union, 108 SCRA 161, 170 (1981).

149. Social Security System Employees Association v. Court of Appeals, 175 SCRA 686, 701 (1989).

150. LABOR CODE OF THE PHILIPPINES, art. 276.

151. Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and for Other Purposes, Executive Order No. 180 §16 (1987).

dispute, resort to the general courts of law for the issuance of a writ of injunction to enjoin the strike is appropriate.[152]

Going back to the private sector, in the case of *Bisig ng Manggagawa sa Concrete Aggregates v. NLRC*,[153] it would appear that the Constitution intends to limit the issuance of injunctions against the exercise of the right to strike. Speaking for the Court, Justice Puno, quoting Fr. Joaquin G. Bernas, S.J., a Commissioner in the 1986 Constitutional Commission, declared that: "[t]he constitutional recognition of the right to strike does serve as a reminder that injunctions should be reduced to the barest minimum."

Having stated the foregoing premise, the Court declared in *Bisig ng Manggagawa*, that the NLRC, failed to comply with the letter and spirit of Article 218 (e), (4) and (5) of the Labor Code, which provides both the procedural and substantive requirements that have to be strictly complied with before a temporary or permanent injunction can issue in a labor dispute.[154]

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152. *SSS Employees Association*, 175 SCRA at 701.

153. Bisig ng Manggagawa sa Concrete Aggregates v. National Labor Relations Commission (NLRC), 226 SCRA 499, 513-4 (1993).

154. LABOR CODE OF THE PHILIPPINES, art. 218.

> Powers of the Commission. – The Commission shall have the power and authority…
>
> (e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, that no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issues except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the commission, to the effect:
>
> (1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

The Supreme Court also condemned the issuance of *ex parte* injunctions and stated that although they are not *per se* prohibited, its issuance should be characterized by care and caution. The law requires it to be clearly justified by extreme necessity. An example would be when the commission of illegal acts causes substantial and irreparable injury to the company property and the company has no adequate protection or remedy. "This is as it ought to be, for imprudently issued temporary restraining orders can break the back of employees engaged in a legal strike. Oftentimes, they unduly tilt the balance of a labor dispute in favor of capital."[155] However, *ex parte* applications for restraining orders are frequently based on fabricated facts and concealed truths. As such, these *ex parte* applications should be minutely examined by hearing officers. "It behooves hearing officers receiving evidence in support of *ex parte* injunctions against employees in strike to take a more active stance in seeing to it that their right to social justice is in no way violated despite their absence."[156]

CONCLUSION: THE TREND IN JURISPRUDENCE ON STRIKES IN THE PHILIPPINES

Justice Puno, in the *Bisig ng Manggagawa* case, underscored the critical importance of the right to strike in less developed countries such as the Philippines. Thus, the Court said:

> Strike has been considered the most effective weapon of labor in protecting the rights of employees to improve the terms and conditions of their employment. It may be that in highly developed countries, the significance of strike as a coercive weapon has shrunk in view of the preference for more peaceful modes of settling labor disputes. In underdeveloped countries, however, where the economic crunch continues to enfeeble the already marginalized working class, the importance of the right to strike

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> (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.

155. *Id.* at 520-21.

156. *Id.*

> remains undiminished as indeed it has proved many a time as the only coercive weapon that can correct abuses against labor. It remains as the great equalizer.[157]

It was then pointed out by Justice Puno that it was not a coincidence that after the EDSA Revolution, the new government treated labor "with a favored eye." In fact, among the drafters of the 1987 Constitution chosen by former Pres. Corazon C. Aquino were recognized labor leaders like Eulogio Lerum, Jose D. Calderon, Blas D. Ople and Jaime S.L. Tadeo. These delegates were essential in the inclusion of the article on Social Justice and Human Rights in the Constitution.

The State's protection to labor, as enshrined in the Philippine Constitution, was explained by the High Tribunal, as follows:

> For the first time in our constitutional history, the fundamental law of our land mandated the State to '...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.' This constitutional imprimatur given to the right to strike constitutes signal victory for labor. Our Constitutions of 1935 and 1973 did not accord constitutional level. With a constitutional matrix, enactment of a law implementing the right to strike was an inevitability. RA 6715 came into being on March 21, 1989, an intentional replication of RA 875. In light of the genesis of the right to strike, it ought to be obvious that the right should be read with a libertarian latitude in favor of labor. In the wise words of Father Joaquin G. Bernas, S.J., a distinguished commissioner of the 1987 Constitutional Commission '...the constitutional recognition of the right to strike does serve as a reminder that injunctions, should be reduced to the barest minimum.'[158]

U.S. Pres. John F. Kennedy once postulated that those who make oppositions impossible, do make revolutions inevitable. Because Pres. Ferdinand E. Marcos imposed repression upon the Filipinos by, among others, prohibiting strikes, demonstrations, and small expressions of dissent, from 1972 to 1986, the big uprising in EDSA in 1986 became inevitable. Thus, any proposal to outlaw strikes today will only serve to build up the anger, repulsion and the revolutionary fervor of the people.

In the context of Philippine labor laws, strikes are mere "temporary stoppage(s) of work by the concerted action of employees as a result of an industrial or labor dispute."[159] A strike therefore becomes a corollary right designed to support other rights such as the right to self-organization,

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157. *Id.*

158. *Id.*

159. LABOR CODE OF THE PHILIPPINES, art. 212, ¶ o.

collective bargaining, living wage, human conditions of work, security of tenure and other basic rights.

Without the right to strike, workers will find it very hard to obtain concessions through collective bargaining. Without this right, even the right to self-organization will be easily repressed by employers. The right to strike becomes a shield against unfair labor practices and other abuses. It is likewise a weapon to advance the economic interests of the workers. However, it is a weapon that can also inflict wounds upon the hands of the workers themselves.

Like any right, the right to strike can be abused. It can be misused by those who propagate foreign ideologies in order to gain political mileage. It can even be abetted by business rivals in order to inflict economic sabotage on a competitor in a very competitive market situation.

Although the right to strike has been elevated to a constitutional right, there are requisite conditions that must be complied with in its exercise. First, the strike must be peaceful. Second, it must be done in accordance with law. Third, the Labor Code also requires that the exercise of the right must be consistent with national interest.

The procedural requirements prior to the exercise of the right are mandatory. There is no excuse for non-observance. Any strike staged without any of the requirements being complied with may be declared illegal. Also, the Code enumerates certain prohibited acts, the commission of any of which may result in the declaration of the strike's nullity. The consequences of illegal strikes are far-reaching and in some cases, may even result in loss of employment of the strikers.

Lastly, once the President or the Secretary of Labor has assumed jurisdiction or has certified the dispute for compulsory arbitration, any ongoing strike must cease and the strikers should return to work. The company should accept all strikers under the same terms and conditions prior to the strike, and the parties should proceed to the arbitration process. Any further concerted action shall be deemed illegal for being inconsistent to national interest.

With all the aforementioned elucidations, it is hoped that all parties concerned will be guided accordingly. While employers and the State itself are expected to respect the workers' right to strike, the strikers should likewise be aware of the limits of such a right and be conscious of the serious implications of deviating therefrom.

In a Third World environment such as the Philippines, the right to strike should not be used as an obstacle to the nation's goal to protect its competitiveness in a global economy. However, it should also be made clear and explicit that economic development should not be pursued at the expense of the basic rights of labor and of the dignity of the worker as a

human person. The primary role of the government is to make sure that the socio-economic balance is maintained in order to preserve the fragile equilibrium among labor, capital and the State.