The Revised Rules on the Right to Self-Organization: A Critique of Department Order No. 40 Series of 2003

Marlon J. Manuel[*]

INTRODUCTION

On 17 February 2003, five years after the issuance of Department Order No. 9, Series of 1997 (D.O. 9), the Department of Labor and Employment (DOLE) revised the Rules implementing Book V of the Labor Code by issuing Department Order No. 40, Series of 2003. The Department Order, "Amending the Implementing Rules of Book V of the Labor Code of the Philippines," more popularly known as D.O. 40, introduced a number of significant modifications to the rules implementing the provisions of the Labor Code on labor relations.

---

[*] B.S. '90, J.D. '94, *with honors,* Ateneo de Manila University. Evelio Javier Leadership Awardee. President, Ateneo Law Student Council (1993-1994). Professor of Labor Law, Ateneo School of Law (1996-present). Jose B.L. Reyes Chair in Law and Humanities (1998-1999, 1999-2000); Raymundo Dizon Professorial Chair in Political Law (2000-2001, 2001-02); Incumbent Executive Director, *Sentro ng Alternatibong Lingap Panligal* (SALIGAN). SALIGAN is a legal resource non-governmental organization doing developmental legal work with farmers, workers, the urban poor, women, and local communities. This paper was prepared with the assistance of the Jose R. Paras Professorial Chair. The author's previous works published in the *Journal* include *Restraining Free Trade Unionism: A Critique of Supreme Court Decisions That Unduly Restrict Labor's Exercise of the Right to Self-Organization*, 46 ATENEO L.J. 447 (2001).

Cite as 49 ATENEO L.J. 758 (2004).

The finalization and issuance of D.O. 40 can be considered as a major accomplishment in itself since in the formulation of the new rules, a series of consultations with labor and management groups were undertaken. After conducting a series of regional consultation sessions in Luzon, Visayas and Mindanao, discussions of the proposed rules were conducted at the Tripartite Executive Committee (TEC) level of the Tripartite Industrial Peace Council (TIPC).

During the presentation of the proposed new rules before the TIPC, DOLE Undersecretary Josephus Jimenez stated that the formulation of a new set of rules was meant to improve the rules and procedures in dispute settlement systems. Undersecretary Jimenez added that the delay in the disposition of labor disputes can be attributed to the very rules that govern their resolution.

D.O. 40 introduced significant modifications in the following areas:

- Registration of Labor Organizations
- Representation
- Inter/Intra-Union Disputes
- Collective Bargaining

This article discusses the major modifications in the first two areas mentioned. Part I focuses on Registration of Labor Organizations and covers the following areas: (a) classification of labor organizations; (b) requirements for registration of labor organizations; (c) rules on acquisition of legal personality; and (d) effect of registration. Part II discusses the revised rules on Representation Issues and covers the following areas: (a) voluntary recognition; and (b) certification election.

This article is not a primer on the new rules. It is not an exhaustive discussion of all modifications introduced by D.O. 40. Only selected revisions in the new rules are analyzed. It omits discussion of basic concepts and instead analyzes the new rules in comparison with the rules provided under D.O. 9, in order to bring into clearer perspective the impact D.O. 40 has on labor relations. Whenever appropriate, the discussion refers to relevant Supreme Court decisions.

I. REGISTRATION OF LABOR ORGANIZATIONS

A. Categories of Labor Organizations

The modifications effected by D.O. 40 start with one of the most basic aspects of labor relations: the categories of legitimate labor organizations. D.O. 40's changes combined the renaming and the deletion of certain classes of labor organizations.

D.O. 9 recognized two classes of enterprise level labor organizations – the Independent Union and the Local Union/Chapter. D.O. 9 defined these two terms as follows:

> (k) 'Independent Union' means any labor organization operating at the enterprise level whose legal personality is derived through an independent action for registration prescribed under Article 234 of the Code and Rule III, Section 2 of these Rules. An independent union may be affiliated with a federation, national or industry union, in which case it may also be referred to as an affiliate.
>
> (l) 'Local Union/Chapter' means any labor organization operating at the enterprise level whose legal personality is derived through the issuance of a charter by a duly registered federation or national union, subject to the reporting requirements prescribed in Rule VI, Section 1 of these Rules.[1]

D.O. 9's definition of terms distinguished the two types of enterprise level labor organizations in the manner of acquisition of legal personality. Independent unions acquire legal personality through registration while local unions or chapters acquire legal personality through the issuance by a duly registered federation of a charter.

Prior to D.O. 9, the Implementing Rules lumped together all labor organizations operating at the enterprise level under the term "Local Union."[2] Corollary to D.O. 9's definitions were the separate sets of rules on registration for independent unions,[3] and on chartering for local unions/chapters.[4]

Beyond the enterprise level, D.O. 9 recognized three levels of labor organizations and defined them as follows:

> (m) 'National Union/Federation' means any labor organization with at least ten (10) locals/chapters or affiliates each of which must be a duly certified or recognized collective bargaining agent….
>
> (o) 'Industry Union' means any group of legitimate labor organizations operating within an identified industry, organized for collective bargaining or for dealing with employers concerning terms and conditions of employment within an industry, or for participating in the formulation of social and employment policies, standards and programs in such industry,

---

1. Amending the Implementing Rules of Book V of the Labor Code of the Philippines, Department Order No. 9, Rule I, § 1, ¶ k-l (1997) [hereinafter D.O. 9].
2. Implementing Rules of Book V, as amended by the Rules and Regulations Implementing Republic Act No. 6715 (1989).
3. D.O. 9, Rules III & V.
4. *Id.* Rule VI.

> which is duly registered with the Department in accordance with Rule IIII, Section 2 of these Rules.
>
> (p) 'Trade Union Center' means any group of registered national unions or federations organized for the mutual aid and protection of its members, for assisting such members in collective bargaining, or for participating in the formulation of social and employment policies, standards and programs, which is duly registered with the Department in accordance with Rule III, Section 2 of these Rules.[5]

Aside from recognizing the three-tiered organization of workers beyond the enterprise level, D.O. 9's classification of labor organizations was significant because of the policy pronouncements that were incorporated in the definitions.

First, in defining "Industry Union," D.O. 9 implicitly introduced the concept of industry-wide bargaining, a form of multi-employer bargaining. While D.O. 9 did not provide for the mechanism for industry-level bargaining, the definition stating that the organization of the Industry Union was "for collective bargaining or for dealing with employers concerning terms and conditions of employment within an industry"[6] can be considered as an important formal recognition of multi-employer bargaining.

Second, the definitions of "Industry Union" and "Trade Union Center" expressly recognized that a labor organization's representation of workers not only covered collective bargaining with employers and mutual aid and protection of the members, but also the formulation of social and employment policies, standards and programs. These were consistent with the provisions of both the Constitution[7] and the Labor Code[8] that provide the right of workers to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

With the issuance of D.O. 40, the three-tiered organization of workers beyond the enterprise level was removed. D.O. 40 deleted the definitions of "Industry Union" and "Trade Union Center." What was left of D.O. 9's classification was the category of "National Union/Federation," defined as follows:

---

5. *Id.* Rule I, § 1.
6. *Id.* Rule I, § 1(o).
7. PHIL. CONST. art XIII, § 3.
8. 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, as amended, Presidential Decree No. 442, [LABOR CODE] art 211 (1974) [hereinafter LABOR CODE OF THE PHILIPPINES].

> (kk) 'National Union' or 'Federation' refers to a group of legitimate labor unions in a private establishment organized for collective bargaining or for dealing with employers concerning terms and conditions of employment for their member unions or for participating in the formulation of social and employment policies, standards and programs, registered with the Bureau in accordance with Rule III, Section 2-B of these Rules.[9]

However, despite the deletion of the categories of "Industry Union" and "Trade Union Center", D.O. 40 maintained and improved the policy pronouncements contained in D.O. 9's definitions. Filling the gap left by its predecessor, D.O. 40 now provides the mechanism for multi-employer bargaining. Likewise, D.O. 40 reproduced D.O. 9's statement concerning federations' participation in the formulation of social and employment policies, standards and programs.

As regards enterprise-level labor organizations, D.O. 40 maintained the distinction made by D.O. 9 between labor organizations that acquired legal personality through registration and labor organizations that acquired legal personality through the federation's issuance of a charter. However, D.O. 40 changed the name of the latter category from the previous "Local Union/Chapter" of D.O. 9, to "Chartered Local." D.O. 40 provides:

> (i) 'Chartered Local' refers to a labor organization in the private sector operating at the enterprise level that acquired legal personality through the issuance of a charter certificate by a duly registered federation or national union, and reported to the Regional Office in accordance with Rule III, Section 2-E of these Rules....
>
> (w) 'Independent Union' refers to a labor organization operating at the enterprise level that acquired legal personality through independent registration under Article 234 of the Labor Code and Rule III, Section 2-A of these Rules.[10]

On 16 February 2004, a year after the issuance of D.O. 40, DOLE issued Department Order No. 40-B-03, series of 2003 (D.O. 40-B). Amending D.O. 40's definition of the "Chartered Local," D.O. 40-B blurred the distinction between "Independent Unions" and "Chartered Locals" by stating that a "Chartered Local" acquires legal personality also through registration. The definition, as amended by D.O. 40-B reads:

> (i) 'Chartered Local' refers to a labor organization in the private sector operating at the enterprise level that acquired legal personality through

---

9. Amending the Implementing Rules of Book V of the Labor Code of the Philippines, Department Order No. 40, Rule I, § 1 (2003) [hereinafter D.O. 40].

10. *Id.*

> registration with the Regional Office in accordance with Rule III, Section 2-E of these Rules.[11]

The new definition deleted the previous reference, in both the definitions found in D.O. 9[12] and D.O. 40,[13] to the issuance of a charter by a duly registered federation.

Together with the change in the definition of a Chartered Local came D.O. 40-B's modifications in the requirements for a Chartered Local's acquisition of legal personality. This brings the discussion to the requirements for registration and acquisition of legal personality.

B. Requirements for Registration

D.O. 9 and D.O. 40 contain similar provisions regarding the requirements for registration of Independent Unions.[14] D.O. 40 introduced a major

---

11. Amending the Implementing Rules of Book V of the Labor Code of the Philippines, Department Order No. 40-B-03 (2003) [hereinafter D.O. 40-B].

12. D.O. 9, Rule I, § 1(l).

13. D.O. 40, Rule I, § 1(i).

14. D.O. 9, Rule III, § 2 provides:

> Requirements for registration of labor organizations.- (I) The application for registration of an independent union shall be supported by the following:
>
> (a) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of workers who participated in such meetings;
>
> (b) The number of employees and names of all its members comprising at least twenty percent (20%) of the employees in the bargaining unit where it seeks to operate;
>
> (c) If the applicant union has been in existence for one or more years, two copies of its annual financial reports, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application; and
>
> (d) Four copies of its constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. However, the list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting referred to in paragraph (a) above. In such case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting.

On the other hand, D.O. 40, Rule III, § 2 provides as follows:

modification, however, on the requirements for the creation of Chartered Locals.

As above-stated, D.O. 9 contained a separate set of provisions for the process required for the issuance of a certificate referred to as "Chartering."[15]

Compared to the requirements for the registration of an Independent Union,[16] the requirements for the creation of a Local/Chapter under D.O. 9

> Requirements for application. - A. The application for registration of an independent labor union shall be accompanied by the following documents:
>
> 1) the name of the applicant labor union, its principal address, the name of its officers and their respective addresses, approximate number of employees in the bargaining unit where it seeks to operate, with a statement that it is not reported as a chartered local of any federation or national union;
>
> 2) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
>
> 3) the name of all its members comprising at least 20% of the employees in the bargaining unit;
>
> 4) the annual financial reports if the applicant has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
>
> 5) the applicant's constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting. In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s).

15. D.O. 9, Rule VI, § 1 provides:

> *Chartering and creation of a local/chapter.* - A duly registered federation or national union may directly create a local/chapter by submitting to the Regional Office or to the Bureau two (2) copies of the following:
>
> (a) A charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter;
>
> (b) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and
>
> (c) The local/chapter's constitution and by-laws; provided that where the local/chapter's constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.
>
> All the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested to by its President.

did not necessitate an application for registration but merely a "submission" of the following documents – the charter certificate, the list of officers and their addresses, the Local's address, and the constitution and by-laws. The other documents which should accompany an application for registration of an Independent Union were not required to be submitted.

The apparent policy was to make it easier for workers to organize as Locals/Chapters of duly registered federations rather than as Independent Unions. This policy of encouraging membership in federations was explained by the Supreme Court in the case of *Progressive Development Corporation v. Secretary, Department of Labor and Employment*:[17]

> Undoubtedly, the intent of the law in imposing lesser (sic) requirements in the case of a branch or local of a registered federation or national union is to encourage the affiliation of a local union with a federation or national union in order to increase the local union's bargaining powers respecting terms and conditions of labor.[18]

D.O. 40 further simplified the creation of Locals/Chapters, which was renamed as "Chartered Locals". Replacing the provision of D.O. 9 on Chartering, D.O. 40 contained the following short provision: "(t)he report of creation of a chartered local shall be accompanied by a charter certificate issued by the federation or national union indicating the creation or establishment of the chartered local.[19]

While D.O. 40 maintained the reporting requirement and the submission of the charter certificate, it dispensed with the requirements for the submission of the names and addresses of the union officers, the address of the Chartered Local, and the organization's constitution and by-laws. With this, D.O. 40 addressed the concern expressed by some federations and union organizers on unnecessarily and prematurely revealing the identities of the Chartered Local's officers. The idea was to simplify the creation of an organization, which was merely an extension (hence, the name, "Chapter," "Local," and "Chartered Local") of an existing, and duly registered organization.

The simplified process of creating a Chartered Local was short-lived, however, as it was quickly abandoned with the issuance of D.O. 40-B. As amended by D.O. 40-B, the quoted original wording of Rule III, Section 2, E, now reads:

---

16. *Id.* Rule III, § 2.

17. Progressive Development Corporation v. Secretary, Department of Labor and Employment, 205 SCRA 802 (1992).

18. *Id.* at 811.

19. D.O. 40, Rule III, § 2.

> A duly-registered federation or national union may directly create a chartered local by submitting to the Regional Office two (2) copies of the following:
>
> (a) A charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter;
>
> (b) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and
>
> (c) The local/chapter's constitution and by-laws, provided that where the local/chapter's constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.
>
> All the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested by its President.[20]

With the amendment, D.O. 40-B returned to the formula for Chartering in D.O. 9. In fact, except for its opening paragraph, the amended Rule III, Section 2, E is a *verbatim* reproduction of D.O. 9's Rule VI, Section 1. It even uses the old term, "Local/Chapter," which was replaced with "Chartered Local."

C. Acquisition of Legal Personality

Aside from changing the requirements for the creation of a Chartered Local, D.O. 40 has also modified the rule on acquisition of legal personality.

Under D.O. 9, the reckoning point for a labor organization's acquisition of legal personality would differ depending on whether such organization was an Independent Union or a Local/Chapter. D.O. 9 provided that an Independent Union would acquire legal personality upon the issuance of its certificate of registration and a Local/Chapter would acquire its legal personality upon the submission of the required documents.[21]

---

20. D.O. 40-B, Rule III, § 2, E.

21. D.O. 9, Rule V, § 5 provides:

> *Effect of registration.* - The labor organization or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules.

In addition, D.O. 9, Rule VI, § 3 also provides:

> Acquisition of legal personality by local/chapter. - A local/chapter constituted in accordance with Section 1 of this Rule shall acquire

This rule, in reckoning the point of acquisition of legal personality, was consistent with D.O. 9's formula that an Independent Union should apply for registration (and undergo the process of registration) [22] and a Local/Chapter should only submit certain documents (to go through the process of chartering).[23]

Unlike its predecessor, D.O. 40 adopts a uniform rule for reckoning the acquisition of legal personality for both Independent Unions and Chartered Locals. It provides that the "labor union or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration or certificate of creation of chartered local."[24]

Hence, D.O. 40 applies D.O. 9's rule for reckoning the acquisition of legal personality by Independent Unions even to Chartered Locals. The slight difference between the two types lies in the nature of the certificate, the issuance of which will vest legal personality upon the organization—a certificate of registration is issued to an Independent Union while a certificate of creation is issued to a Chartered Local. In both cases, the date of issuance of the certificate becomes the date of acquisition of legal personality.

At the outset, D.O. 40's new rule can be seen as regressive insofar as Chartered Locals are concerned since there is a delay in reckoning the acquisition of legal personality as compared to the previous rule. However, whatever delay the new rule may have caused is balanced by the simplification of the requirements for reporting the creation of a Chartered Local. As discussed earlier, D.O. 40 merely requires the submission of the charter certificate.[25] The submission of the charter certificate should therefore be immediately followed by the issuance of a certificate of creation since no other document needs to be scrutinized by DOLE. With D.O. 40-B's amendment however, additional documents are now required to be submitted together with the report of the creation of a Chartered Local.[26] In sum, the creation of Chartered Locals follow the old requirements under

---

> legal personality from the date of filing of the complete documents enumerated therein. Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the local/chapter a certificate indicating that it is included in the roster of legitimate labor organizations.

22. *Id.* Rule III, § 2.

23. *Id.* Rule VI, § 1.

24. D.O. 40, Rule IV, § 8 (emphasis supplied).

25. *Id.* Rule III, § 2, E.

26. *Id.* as amended by D.O. 40-B.

D.O. 9 (which was resurrected by D.O. 40-B), and the new rule in reckoning the acquisition of legal personality (which was introduced by D.O. 40, and left untouched by D.O. 40-B).

D.O. 40-B's amendment of the provision on the requirements for the creation of a Chartered Local should be taken together with the amendment of the definition of a Chartered Local. As discussed earlier, D.O. 40-B's definition of the "Chartered Local" blurred the distinction between "Independent Unions" and "Chartered Locals" by stating that a "Chartered Local" acquires legal personality also through registration. The definition of "Chartered Local," as amended by D.O. 40-B reads "a labor organization in the private sector operating at the enterprise level that acquired legal personality through registration with the Regional Office in accordance with Rule III, Section 2-E of these Rules."[27]

More significant than D.O. 40-B's deletion of the reference to the federation's issuance of a charter[28] is its use of the term "registration." D.O. 9's definition merely referred to "the reporting requirements"[29] while D.O. 40 stated that the Chartered Local is "reported to the Regional Office."[30] By explicitly stating that a Chartered Local acquires legal personality through registration, the new definition in D.O. 40-B reinforced D.O. 40's rule that the acquisition of a Chartered Local's legal personality shall be reckoned from the issuance of the certificate of creation.

The current formulation of the definition of "Chartered Local" and the rule in the reckoning of acquisition of legal personality is apparently more consistent with the Labor Code which provides that any applicant labor organization shall acquire legal personality upon issuance of the certificate of registration.31 There is basis to argue, however, that there was no legal infirmity in D.O. 9's previous formulation of the definition and the rule on acquisition of legal personality.

In the *Progressive Development* case, the Supreme Court differentiated the sets of requirements for registration and for the formation of a local or chapter of a registered federation. The Court explained that when an unregistered union becomes a branch, local or chapter of a federation, some of the requirements for registration of independent unions that are enumerated in Article 234 of the Labor Code are no longer required. Explaining the different sets of requirements, the Court said:

27. *Id.* Rule I, § 1(i), as amended by D.O. 40-B.

28. This appeared in the definitions of both D.O. 9 and D.O. 40.

29. D.O. 9, Rule I, § 1.

30. D.O. 40, Rule I, § 1(i).

31. LABOR CODE, art. 234.

> Implicit in the differentiation is the fact that a local or chapter need not be independently registered. By force of law (in this case, Article 212 [h]), such local or chapter becomes a legitimate labor organization upon compliance with the aforementioned provisions of Section 3.[32]

Article 212 (h), which the Court referred to as the law in this case, is no other than the Labor Code's definition of the term "Legitimate Labor Organization." A legitimate labor organization is defined as any labor organization duly registered with the Department of Labor and Employment, and includes any branch or local thereof.[33] Section 3, on the other hand, was the provision of the then existing Implementing Rules[34] on the creation by a federation of a local or chapter.

While the decision in the *Progressive Development* case was not favorable to the union concerned,[35] the Court's pronouncement as to the nature of a

---

32. Progressive Development Corporation v. Secretary, Department of Labor and Employment, 205 SCRA 802, 810 (1992).

33. LABOR CODE, art. 212 (h).

34. Rules Implementing the Labor Code, Book V, Rule II, § 3(e) (1989).

35. Despite the differentiation in the requirements for independent registration and for the formation of a federation's local or chapter that the Court adequately explained in the decision, the Court, surprisingly, took an unexpected turn. It applied the requirements for certification and attestation in Article 235, which pertains to applications for *registration*, to the concerned chapter of KILUSAN. Explaining its decision, the Court cited Rule II, Section 3 (e), Book V of the Labor Code's Implementing Rules, which reads:

> (e) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed.

Applying this provision in the Implementing Rules to the dispute, the Court stated:

> Since the 'procedure governing the reporting of independently registered unions' refers to the certification and attestation requirements contained in Article 265, paragraph 2, it follows that the constitution and by-laws, set of officers and books of accounts submitted by the local and chapter must likewise comply with these requirements. The same rationale for requiring the submission of duly subscribed documents upon union registration exists in the case of union affiliation. Moreover, there is a greater reason to exact compliance with the certification and attestation requirements because, as previously mentioned, several requirements applicable to

federation's local or chapter in relation to Article 212 (h) of the Labor Code is a correct interpretation. As correctly stated by the Court, there is no need for the locals or chapters to be registered on their own.

In the 1969 case of *Philippine Association of Free Labor Unions v. Secretary of Labor,*[36] the Supreme Court *en banc* upheld the validity of the registration requirement for labor unions and explained its purpose:

> The theory to the effect that Section 23 of Republic Act No. 875 unduly curtails the freedom of assembly and association guaranteed in the Bill of Rights is devoid of factual basis. The registration prescribed in paragraph (b) of the said section is *not* a limitation to the right of assembly or association, which *may* be exercised with or *without* said registration. The latter is merely a condition *sine qua non* for the *acquisition of legal personality* by labor organizations, associations or unions and the possession of the 'rights and privileges granted by law to legitimate labor organizations.' The Constitution does not guarantee these rights and privileges, much less said personality, which are mere *statutory* creations, for the possession and exercise of which registration is required for both labor and the public against abuses, fraud, or impostors who pose as organizers, although not truly accredited agents of the union they purport to represent. Such requirement is a valid exercise of the police power, because the activities in which labor organizations, associations and union of workers are engaged affect public interest, which should be protected. Furthermore, the obligation to submit financial statements, as a condition for the non-cancellation of a certificate of registration, is a reasonable regulation for the benefit of the members of the organization, considering that the same generally solicits funds or membership, as well as oftentimes collects, on behalf of its members, huge amounts of money due to them or to the organization.[37]

Since a local or chapter derives its legal personality as a legitimate labor organization from the personality of the federation, the registration of the federation and its compliance with the requisites for such registration should suffice as preventive measures against the commission of fraud and as a measure of protection to unsuspecting employees. The federation's registration should be deemed compliance with the Labor Code which

---

> independent union registration are no longer required in the case of the formation of a local or chapter. The policy of the law in conferring greater bargaining power upon labor unions must be balanced with the policy of providing preventive measures against the commission of fraud. (Progressive Development Corporation v. Secretary, Department of Labor and Employment, 205 SCRA 802, 812 (1992)).

36. Philippine Association of Free Labor Unions v. Secretary of Labor, 27 SCRA 40 (1969).

37. *Id.* at 44-45.

provides that any applicant labor organization shall acquire legal personality upon issuance of the certificate of registration.[38] Such registration by the federation should redound to the benefit of its locals or chapters, pursuant to Article 212 (h), which considers locals or chapters of duly registered federations as legitimate labor organizations.

D.O. 9's requirement of "reporting" the creation of a Local/Chapter, and the rule that such organization shall acquire legal personality upon submission of the complete documents did not run counter to the provisions of Article 234 of the Labor Code. With the uniform rule on acquisition of legal personality for Independent Unions and Chartered Locals under D.O. 40, and with the revised definition of the term "Chartered Local" under D.O. 40-B, there is an abandonment of D.O. 9's formulation of the chartering of a federation's locals or chapters, at least for now. The new formulation, however, may have serious consequences.

Related to the issue of creation of a Chartered Local is the effect of the cancellation of the National Union/Federation's registration on the legal personality of its Chartered Locals. D.O. 9 contained a clear rule concerning this in Rule VIII:

> *Effect of cancellation of registration of federation or national union on locals/chapters.* - The cancellation of registration of a federation or national union shall operate to divest its locals/chapters of their status as legitimate labor organizations, unless the locals/chapters are covered by a duly registered collective bargaining agreement. In the latter case, the locals/chapters shall be allowed to register as independent unions, failing which they shall lose their legitimate status upon the expiration of the collective bargaining agreement.[39]

This quoted provision of D.O. 9 has not been included in D.O. 40. The omission of this important provision may create confusion in future cases. The following question will certainly arise and may have to be clarified ultimately by the Supreme Court: *With the deletion of the old provision on cancellation of the Federation's registration, will such cancellation divest the Chartered Locals of their legal personality?*

The question may seem simple at first glance and may be answered by saying that since the Chartered Local is a creation of the Federation, and is dependent upon the registration of the Federation; the cancellation of the creator's registration should operate to divest the creature of its legal personality. This was the clear rule under D.O. 9.

---

38. LABOR CODE, art. 234.

39. D.O. 9, Rule VIII, § 6.

It is true that the Supreme Court held in a number of cases that the relationship between a federation and its local or chapter is generally understood to be that of agency, where the local is the principal and the federation, the agent.[40] Such relationship of agency is properly applicable, however, if seen in the context of collective bargaining with the employer, but not in the context of registration and acquisition of legal personality. As far as registration and acquisition of legal personality are concerned, the Federation occupies a primary position, with the Chartered Local as the subordinate.

Indeed, if the principal-agency relationship applied in the area of collective bargaining will be applied to the twin issues of registration and acquisition of legal personality, it will lead to the highly absurd situation of the agent (the Federation) registering first and then, creating its principal (the Chartered Local). D.O. 9 correctly stated the rule, therefore, by saying that the cancellation of the Federation's registration, which results in its loss of legal personality, shall divest the Locals/Chapters of their legal personality.

D.O. 40-B's amendment of the definition of "Chartered Local" complicates the seemingly simple question. As stated in the amended definition, a Chartered Local derives its legal personality "through registration with the Regional Office." While the definition adds the clause, "in accordance with Rule III, Section 2-E of these Rules," which refers to the Federation's issuance of a charter certificate, what the definition highlights as the source of legal personality is not the Federation's act of issuance of the charter, which was not mentioned, but the fact of registration. Taking this together with the rule that a Chartered Local acquires legal personality upon the issuance of the certificate of creation, a Chartered Local may argue that it has registered on its own, and should not be adversely affected by the cancellation of the Federation's registration.

Another potential manifestation of the confusion created by D.O. 40-B in the Federation-Chartered Local relationship is in the area of revocation of a Chartered Local's charter. In the same Rule VIII, D.O. 9 also contained a provision on the revocation by the Federation of the charter issued to a Local/Chapter:

> *Revocation of legal personality of local/chapter.* - In addition to the grounds for cancellation enumerated in the immediately preceding section, a federation, national union or workers' association may revoke the charter issued to a local/chapter or branch by serving on the latter a verified notice of revocation, copy furnished the Bureau, on the ground of disloyalty or such

40. Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc., 66 SCRA 512 (1975); Progressive Development Corporation v. Secretary, 205 SCRA 802 (1992); Filipino Pipe and Foundry Corp. v. NLRC, 318 SCRA 68 (1999).

> other grounds as may be specified in the constitution and by-laws of the federation, national union or workers' association. The revocation shall divest the local/chapter of its legal personality upon receipt of the notice by the Bureau, unless in the meantime the local/chapter has acquired independent registration in accordance with these Rules.[41]

Consistent with the formula that the Chartered Local is a creation of the Federation, and is dependent upon the registration of the Federation, D.O. 9 expressly recognized the authority of the Federation to revoke the charter that it has issued to the Chartered Local. D.O. 9 was also unequivocal about the effect of such revocation—that the revocation should operate to divest the Chartered Local of its legal personality.

With the deletion of D.O. 9's provision on revocation of the charter in the current rules, there appears to be no clear legal basis for the Federation's revocation of a previously issued charter. Again, it can be argued that a Chartered Local has registered on its own, has acquired legal personality through such registration, and should not therefore, be adversely affected by the cancellation of the Federation's registration. More important, it can be argued that in the absence of any applicable provision in the present rules, such revocation, if done by the Federation, cannot divest the local/chapter of its legal personality.

However, the more reasonable interpretation of the present rules should be an interpretation that maintains the core principles adopted by D.O. 9: (a) the loss of the Federation's legal personality shall mean the loss of the chartered local's legal personality; (b) the Federation shall have the power to revoke the charter that it has earlier issued to a Chartered Local; and (c) the Federation's revocation of the charter shall divest the Chartered Local of legal personality.

In the absence of a specific provision on the effect of the cancellation of the Federation's registration on the Chartered Local, the amended definition of a "Chartered Local" together with the rule on the registration of labor organizations should be considered enough basis to say that the Federation's act of issuing a charter is indispensably connected to both the Federation's registration and the Chartered Local's registration. The issuance of a charter is derived from the authority that the Federation gets as a consequence of its own registration as a legitimate labor organization. The issuance of a charter is likewise an essential component of the required "registration" of the Chartered Local that was created through such charter.

Following this line of reasoning, the cancellation of the Federation's registration must be considered fatal to the continuing validity of the charter

---

41. D.O. 9, Rule VIII, § 5.

of its Chartered Local and consequently, to the effectivity of the Chartered Local's registration. Consistent with this principle, the Federation's power to revoke a charter should be considered inherent in its power to issue the charter. Following the same rule that applies to cancellation of the Federation's registration, the Federation's revocation of the charter shall divest the Chartered Local of a valid charter and consequently, a valid registration.

This proposed interpretation is necessary to avoid two possible absurd situations: (a) where a Chartered Local will continue to exist (as a Chartered Local) without a parent Federation, in the case of cancellation of the Federation's registration; and (b) where a Chartered Local will continue to exist (again, as a Chartered Local) without a valid charter, in the case of the Federation's revocation of its charter. Whether or not this will be accepted as the reasonable interpretation of the new rules, only the Supreme Court can say.

Assuming that the Federation's loss of legal personality shall mean the loss of the legal personality of its Chartered Locals, the question of whether Chartered Locals which are administering duly registered collective bargaining agreements will be given special treatment must be answered in the negative. The deletion of the D.O. 9 provision that gives special treatment to these Chartered Locals can only be interpreted as a removal of the legal basis for such special treatment.

D. Effect of Registration

In contrast to the reversionary rules adopted by D.O. 40 and D.O. 40-B on the process of creating Chartered Locals, D.O. 40 adopts a more progressive formulation of the effect of registration on a labor organization. Rule IV, Section 8 of D.O. 40 provides:

> *Effect of registration.* - The labor union or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration or certificate of creation of chartered local.
>
> Such legal personality may be questioned only through an independent petition for cancellation of union registration in accordance with Rule XIV of these Rules, and not by way of collateral attack in petition for certification election proceedings under Rule VIII.[42]

42. D.O. 40, Rule IV, § 8.

While this provision is similar to D.O. 9's Rule V, Section 5,[43] its reference to the rules on certification election proceedings is very significant. Rule VIII, Section 15 of D.O. 40 reads:

> *Prohibited grounds for the denial/suspension of the petition.* - All issues pertaining to the existence of employer-employee relationship, eligibility or mixture in union membership raised before the Med-Arbiter during the hearing(s) and in the pleadings shall be resolved in the same order or decision granting or denying the petition for certification election. Any question pertaining to the validity of petitioning union's certificate of registration or its legal personality as a labor organization, validity of registration and execution of collective bargaining agreements shall be heard and resolved by the Regional Director in an independent petition for cancellation of its registration and not by the Med-Arbiter in the petition for certification election, unless the petitioning union is not found in the Department's roster of legitimate labor organizations or an existing collective bargaining agreement is unregistered with the Department.[44]

The above-quoted provision complements the emphatic declaration in Rule IV, Section 8, that the legal personality of a labor organization can be questioned only through an independent petition for cancellation. More important, the provision expressly places within the jurisdiction of the Med-Arbiter issues pertaining to eligibility or mixture in union membership.

A related provision further reinforces the prohibition on collateral attacks against the legal personality of labor organizations, to wit:

> *Effects of the filing/pendency of inter/intra-union and other related labor relations disputes.* - The rights, relationships and obligations of the parties litigants against each other and other parties-in-interest prior to the institution of the petition shall continue to remain during the pendency of the petition and until the date of finality of the decision rendered therein. Thereafter, the rights, relationships and obligations of the parties-litigants against each other and other parties-in-interest shall be governed by the decision so ordered.
>
> The filing or pendency of any inter/intra-union dispute and other related labor relations dispute is not a prejudicial question to any petition for certification election and shall not be a ground for the dismissal of a

---

43. D.O. 9, Rule V, § 5 provides:

> *Effect of Registration.* – The labor organization or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules.

44. D.O. 40, Rule VIII, § 15.

> petition for certification election or suspension of proceedings for certification election.[45]

Thus, while Rule IV, Section 8, and Rule VIII, Section 15, prohibit collateral attacks against the legal personality of a labor organization in petition for certification election proceedings, Rule XI, Section 3, in turn, provides that the pendency of a separate petition for cancellation of registration shall not adversely affect the petition for certification election proceedings, either through suspension or dismissal.[46]

The provisions of D.O. 40 on the effect of registration of a labor organization and on the effect of an attack upon the legal personality of a labor organization address policy gaps that had been identified and, previously addressed, by jurisprudence. The relevance of the new rules can only be properly appreciated if taken in relation to some significant cases.

The first case is *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*,[47] where the Supreme Court resolved the issue of whether the co-mingling of rank-and-file and supervisory employees in the roster of membership of a union affects the legitimacy of the union. In this case, the employer sought the denial of the union's petition for certification election on the ground that the union was composed of both rank-and-file and supervisory employees. The Med-Arbiter dismissed the petition after finding that the union's membership was composed of supervisory and rank-and-file employees in violation of Article 245 of the Labor Code. On appeal, the Secretary of Labor set aside the Med-Arbiter's order and directed the holding of a certification election.

When the case reached the Supreme Court, the Court reinstated the order of the Med-Arbiter dismissing the petition for certification election. Explaining its ruling, the Court stated:

> [T]he Labor Code has made it a clear statutory policy to prevent supervisory employees from joining labor organizations consisting of rank-and-file employees as the concerns which involve members of either group are normally disparate and contradictory. Art. 245 provides:

---

45. *Id.* Rule XI, § 3.

46. Rule XI, Section 1 includes cancellation of registration of a labor organization filed by its members or by another labor organization in the list of inter/intra-union disputes. Section 2, of the same rule, on the other hand, classifies any conflict between a labor union and the employer or any individual, entity or group that is not a labor organization or workers' association, including cancellation of registration, as 'other related labor relations disputes.'

47. Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union, 268 SCRA 573 (1997).

> ART. 245. *Ineligibility of managerial employees to join any labor organization; Right of supervisory employees.* – Managerial employees are not eligible to join, assist or form any labor organizations. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.
>
> Clearly, based on this provision, a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, an organization which carries a mixture of rank-and-file and supervisory employees cannot possess any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining. It becomes necessary, therefore, *anterior* to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code.[48]

Based on the findings that the union's membership list included at least 27 supervisory employees, the Court stated that the union cannot attain the status of a legitimate labor organization before it could purge itself of its supervisory employee members.[49]

In the same year, in *Progressive Development Corporation-Pizza Hut v. Laguesma*,[50] the Supreme Court once again resolved an issue relating to the registration requirements for labor unions. The decision was not limited to the issue of the legitimacy of the union concerned but went into the effect of a challenge on the union's legitimacy on the pending certification election proceedings.

In this case, the employer opposed the petition for certification election questioning the legitimacy of the petitioner union. The employer alleged instances of misrepresentation and fraud relating to the union's registration. Instead of merely opposing the petition for certification election, the employer also filed a separate action seeking the cancellation of the union's registration. After filing the petition for the cancellation of the union's registration, the employer filed a motion requesting the Med-Arbiter to suspend the proceedings in the certification election case until after the prejudicial question of the union's legal personality could be determined in the proceedings for cancellation of registration.

---

48. *Id.* at 581-82.

49. *Id.* at 584.

50. Progressive Development Corporation-Pizza Hut v. Laguesma, 271 SCRA 593 (1997).

Both the Med-Arbiter and the Secretary of Labor denied the employer's motion for the suspension of the certification election proceedings and directed the holding of a certification election. When the case was elevated to the Supreme Court, the Court granted the employer's petition for certiorari and set aside the order calling for the conduct of a certification election. The Court's pronouncements, made through Justice Kapunan, are worth quoting:

> The grounds ventilated in cancellation proceedings in accordance with Article 239 of the Labor Code constitute a grave challenge to the right of respondent Union to ask for certification election. The Med-Arbiter should have looked into the merits of the petition for cancellation before issuing an order calling for certification election. Registration based on false and fraudulent statements and documents confer no legitimacy upon a labor organization irregularly recognized, which, at best, holds on to a mere scrap of paper. Under such circumstances, the labor organization, not being a legitimate labor organization, acquires no rights, particularly the right to ask for certification election in a bargaining unit.
>
> As we laid emphasis in *Progressive Development Corporation v. Secretary of Labor and Employment,* "(t)he employer needs the assurance that the union it is dealing with is a bona fide organization, one which has not submitted false statements or misrepresentations to the Bureau." Clearly, fraud, falsification and misrepresentation in obtaining recognition as a legitimate labor organization are contrary to the Med-Arbiter's conclusion not merely collateral issues. The invalidity of respondent Union's registration would negate its legal personality to participate in certification election.
>
> Once a labor organization attains the status of a legitimate labor organization it begins to possess all of the rights and privileges granted by law to such organizations. As such rights and privileges ultimately affect areas which are constitutionally protected, the activities in which labor organizations, associations and unions are engaged directly affect the public interest and should be zealously protected. A strict enforcement of the Labor Code's requirements for the acquisition of the status of a legitimate labor organization.
>
> Inasmuch as the legal personality of the respondent Union had been seriously challenged, it would have been more prudent for the Med-Arbiter and public respondent to have granted petitioner's request for the suspension of proceedings in the certification election case, until the issue of the legality of the Union's registration shall have been resolved. Failure of the Med-Arbiter and public respondent to heed the request constituted a grave abuse of discretion.[51]

51. *Id.* at 603-04.

In a previous dissertation,[52] this author had the opportunity to examine the Court's decision in *Progressive Development.* The author pointed out that the ruling in that case is contrary to the consistent ruling of the Court in previous cases that an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the petitioner union.[53] The rationale for this ruling is that at the time the union filed its petition for certification election and during the certification election proceedings, it had the legal personality to avail of such right absent any final order directing a cancellation. This ruling was reiterated in *Samahan ng Manggagawa sa Pacific Plastic v. Laguesma,*[54] which was decided only three months prior to *Progressive Development.*

Discussing the implications of *Progressive Development,* this author explained:

> The application of the decision in *Progressive Development* will defeat the provisions of the Labor Code. Article 242 of the Labor Code provides:
>
> > ART. 242. *Rights of legitimate labor organizations.* - A legitimate labor organization shall have the right:
> >
> > (a) To act as the representative of its members for purposes of collective bargaining;
> >
> > (b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining…
>
> Thus, a legitimate labor organization has the right to be certified as the exclusive bargaining agent of employees in a bargaining unit. Without a final order directing the cancellation of registration of a union, the union remains a legitimate labor organization that is entitled to all the rights stated in Article 242 of the Labor Code. Allegations in a Petition for Cancellation of Union Registration should not negate the Labor Code's grant of the right to be certified as the exclusive bargaining agent. Until a final order directing the cancellation of a union's registration is issued, therefore, allegations in the Petition for Cancellation of Union Registration remain mere allegations and do not affect the legitimate status of a labor union.

---

52. Marlon J. Manuel, *Restraining Free Trade Unionism: A Critique of Supreme Court Decisions that Unduly Restrict Labor's Exercise of the Right to Self-Organization*, 46 ATENEO L.J. 447 (2001).

53. National Union of Bank Employees v. Minister of Labor, 110 SCRA 274 (1981); Association of Court of Appeals Employees v. Ferrer-Calleja, 203 SCRA 596 (1991); Pepsi-Cola Products Phils. v. Secretary of Labor, 312 SCRA 779 (1995).

54. Samahan ng Manggagawa sa Pacific Plastic v. Laguesma, 267 SCRA 303 (1997).

> Under Article 234 of the Labor Code, a labor union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to a legitimate labor organization upon the issuance of the certificate of registration. The mere filing of a petition for the cancellation of a union's registration does not suspend the legitimate status of the union nor the union's rights under the law. The union's registration, until canceled, serves as a strong and convincing proof of the union's legitimate status. When a party files a petition for the cancellation of a union's registration, such party has the burden of proving its claim that the union is not a legitimate labor organization. It should not be the reverse. Until the claim of the party seeking the cancellation of a union's registration has been adequately proved, therefore, the legitimate status of the union should be recognized.
>
> There is no basis for the suspension of the certification election proceedings simply because a petition for cancellation of the union's registration is pending. It is true that the legitimacy of the union is a jurisdictional requirement in a certification election case. As the Court declared in the *Pacific Plastic* case, however, at the time the union filed its petition for certification, it still had the legal personality to perform such act absent an order directing its cancellation. Hence, the jurisdictional requirement is met and is not lost simply because of the filing of a petition for the cancellation of the union's registration. Suspending the certification election proceedings simply because of the pendency of a petition for cancellation of the petitioner union's registration is tantamount to depriving a legitimate labor organization its rights under the Labor Code.
>
> While the *Toyota Motor* and *Progressive Development* cases resolved different issues, the former case relating to union membership and the latter case relating to the suspension of certification election proceedings, a deadly combination of the two rulings is possible. *Toyota Motor* ruled that the membership of both supervisory and rank-and-file employees in a labor union adversely affects the legitimacy of the union. *Progressive Development*, on the other hand, decreed the suspension of the certification election proceedings upon the filing of a petition for cancellation of petitioner union's registration. Hence, the allegation of mixed membership of supervisors and rank-and-file employees in a union may be a ground for a petition for cancellation of a union registration and, consequently, a ground to ask for the suspension of the certification election proceedings.[55]

The Supreme Court had the opportunity to clarify its rulings in *Toyota Motor* and in *Progressive Development,* in the case of *SPI Technologies, Inc. v. DOLE.*[56] The case presented an issue identical to the issue raised in *Toyota Motor*, *i.e.*, whether the union's violation of the prohibition in Article 245 of

55. Manuel, *supra* note 52, at 462-64.

56. SPI Technologies, Inc. v. DOLE, G.R. No. 137422, Mar. 8, 1999 (unreported case).

the Labor Code bars it from filing a petition for certification election. The Court held:

> The record shows that private respondent is a legitimate labor organization having been issued a certificate of registration. Under prevailing rules, once a union acquires legitimate status as a labor organization, it continues as such until its certificate of registration is cancelled or revoked in an independent action for cancellation.
>
> It is worth noting too that Article 245 of the Labor Code relied upon by petitioner merely prescribes the requirements for eligibility in joining a union and does not prescribe the grounds for the cancellation of union registration.[57]

The ruling in *SPI Technologies* went against the combined rulings of *Toyota Motor* and *Progressive Development*. Unfortunately, however, *SPI Technologies* was decided through a minute resolution, instead of an extended decision. The much awaited correction of the *Toyota Motor-Progressive Development* formula in an extended decision came in *Tagaytay Highlands v. Tagaytay Highlands Employees Union-PTGWO*.[58]

In *Tagaytay Highlands*, the Court directly addressed the issue of whether the legitimacy of a labor organization which has been duly issued a certificate of registration can be questioned in the certification election proceedings on the ground that the membership of such labor organization is a mixture of rank-and-file and supervisory employees. Upholding the legitimacy of the labor organization, the Court held:

> After a certificate of registration is issued to a union, its legal personality cannot be subject to collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book IV of the 'Rules to Implement the Labor Code.'...
>
> The grounds for cancellation of union registration are provided for under Article 239 of the Labor Code x x x while the procedure for cancellation of registration is provided for in Rule VIII, Book V of the Implementing Rules.
>
> The inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239 of above-quoted Article 239 of the Labor Code.

---

57. *Id.* at 1.

58. Tagaytay Highlands v. Tagaytay Highlands Employees Union-PTGWO, 395 SCRA 699 (2003).

> The Union, having been validly issued a certificate of registration, should be considered to have already acquired juridical personality which may not be assailed collaterally.[59]

Clearly abandoning the *Toyota Motor* ruling, the *Tagaytay Highlands* case not only prohibited the collateral attack against the legitimacy of a duly registered labor organization on the ground of mixture of membership, it also clarified that mere co-mingling of rank-and-file and supervisory employees in a labor organization is not in itself a ground for cancellation. Such mixture of members will only be a ground for cancellation if it amounts to fraud, false statement or misrepresentation.[60]

With the foregoing jurisprudential pronouncements as its background, D.O. 40 sought to clarify the rules concerning issues on the legitimacy of a labor organization.

First, it categorically prohibits any collateral attack against the legitimacy of a duly registered labor organization in petition for certification election proceedings.[61] Second, it provides that the legal personality of a registered labor organization may be questioned only in a separate petition for cancellation of union registration.[62] Third, it places within the jurisdiction of the Med-Arbiter issues pertaining to eligibility or mixture in union membership.[63] Fourth, it declares that any question pertaining to the validity of the petitioning union's certificate of registration or its legal personality as a labor organization shall be heard and resolved by the Regional Director in an independent petition for cancellation of its registration and not by the Med-Arbiter in the petition for certification election. [64] Finally, it provides

---

59. *Id.* at 707-09.

60. Paragraph (a) and (c) of Article 239, which were referred to in the decision, provides:

> (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
>
> (c) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly-elected/appointed officers and their postal addresses within thirty (30) days from election.

61. D.O. 40, Rule IV, § 8.

62. *Id.*

63. *Id.* Rule VIII, § 15.

64. *Id.*

that the filing or pendency of a petition for the cancellation of union registration is not a prejudicial question to any petition for certification election and shall not be a ground for the dismissal of a petition for certification election or suspension of proceedings for certification election. Until the final resolution of the petition for cancellation, the concerned labor organization shall retain all the rights of a legitimate labor organization.[65]

II. REPRESENTATION

A. Voluntary Recognition

One of the innovations introduced by D.O. 9 was the system of voluntary recognition, which gave a labor organization the status of an exclusive bargaining representative without going through a certification election.[66]

D.O. 9 provides the requirements for voluntary recognition:

> *Requirements for voluntary recognition.* - In unorganized establishments, the employer may voluntarily recognize the representation status of a union. Within thirty (30) days from recognition, the employer representative and union president shall submit to the Regional Office a joint statement attesting to the fact of voluntary recognition, which shall also include the following:
>
> (a) Proof of posting of the joint statement of voluntary recognition for fifteen (15) consecutive days in two (2) conspicuous places of the establishment or bargaining unit where the union seeks to operate;
>
> (b) The approximate number of employees in the bargaining unit, accompanied by the names and signatures of at least a majority of the members of the bargaining unit supporting the voluntary recognition; and
>
> (c) A statement that there is no other legitimate labor organization operating within the bargaining unit.
>
> The joint statement shall be under oath.[67]

Simply put, the operative act that gives the labor organization the status of an exclusive bargaining representative is the recognition that the employer gives voluntarily, *i.e.*, without the compulsion accompanying a government certification after the conduct of a certification election. D.O. 9 merely

65. *Id.* Rule XI, § 3.

66. D.O. 9, Rule X.

67. *Id.* § 1.

required the parties to submit the necessary documents and the Regional Office of DOLE to enter the fact of voluntary recognition into the records of the union. From the time of recording, the union shall enjoy the rights, privileges and obligations of an exclusive bargaining representative.[68]

Voluntary recognition, under D.O. 9, was essentially an agreement between the employer and the only existing legitimate labor organization in a bargaining unit that the labor organization shall be recognized as the exclusive bargaining representative of the employees in that bargaining unit. It dispensed with the need for a certification election where the employees would have the chance to cast their votes in a secret balloting process. In lieu of the certification election, D.O. 9 merely required the parties to submit the names and signatures of at least a majority of the members of the bargaining unit supporting the voluntary recognition. As to the process of collecting the signatures, D.O. 9 was silent.

D.O. 40's Rule VII retains D.O. 9's provisions on voluntary recognition. Section 2 of Rule VII provides the requirements for voluntary recognition:

> *Requirements for voluntary recognition.* - The notice of voluntary recognition shall be accompanied by the original copy and two (2) duplicate copies of the following documents:
>
> (a) a joint statement under oath of voluntary recognition attesting to the fact of voluntary recognition;
>
> (b) certificate of posting of the joint statement of voluntary recognition for fifteen (15) consecutive days in at least two (2) conspicuous places in the establishment or bargaining unit where the union seeks to operate;
>
> (c) the approximate number of employees in the bargaining unit, accompanied by the names of those who support the voluntary recognition comprising at least a majority of the members of the bargaining unit; and
>
> (d) a statement that the labor union is the only legitimate labor organization operating within the bargaining unit.
>
> All accompanying documents of the notice for voluntary recognition shall be certified under oath by the employer representative and president of the recognized labor union.[69]

D.O. 40's Rule VII, Section 2 is almost an exact repetition of the requirements under D.O. 9. There is one previous requirement, however, that is no longer part of the present rules—the signatures of the employees who support the voluntary recognition comprising at least a majority of the members of the bargaining unit. Whether the deletion of the signature

68. *Id.* § 2.

69. D.O. 40, Rule VII, §2.

requirement in the current rules is deliberate or not is uncertain. What is certain, however, is that voluntary recognition under the current rules is no different from direct employer certification.

B. Certification Election

D.O. 40 introduced quite a number of significant changes, both substantive and procedural, in the area of certification election proceedings. The changes will be discussed *in seriatim* below.

1. Bars to Certification Election

A confusion that D.O. 9 created was the introduction of a new bar to a certification election. D.O. 9 provides:

> *When to file.* - In the absence of a collective bargaining agreement duly registered in accordance with Article 231 of the Code, a petition for certification election may be filed at any time. However, no certification election may be filed within one year from the date of a valid certification, consent or run-off election or from the date of voluntary recognition in accordance with Rule X of these Rules; provided, that where an appeal has been filed on the order of the Med-Arbiter certifying the results of the election, the running of the one year period shall be suspended until the decision on the appeal shall have become final and executory.
>
> Neither may a representation question be entertained if, before the filing of a petition for a certification election, the duly recognized or certified union has commenced negotiations with the employer in accordance with Article 250 of the Code within the one-year period referred to in the immediately preceding paragraph, or a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of valid notice of strike or lockout. If a collective bargaining agreement has been duly registered in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention can only be entertained within sixty (60) days prior to the expiry date of such agreement.[70]

Under the second paragraph of the quoted provision, a certification election is barred by the commencement of negotiations between the employer and the bargaining agent within one year from the conduct of a valid certification, consent, or run-off election. Following the rule, and in the absence of any qualification, the bar would exist regardless of what happened with the negotiations from the time they started. Hence, even if the negotiations were suspended, there will still be a bar to a certification election and no petition for certification election will be entertained. In fact,

70. D.O. 9, Rule XI, § 3.

as long as the bargaining unit and the employer have "commenced" negotiations within one year from the conduct of the election, the bar created by such commencement of negotiations can become perpetual if the negotiations will be suspended indefinitely. Such an absurd situation is of course unreasonable but is nevertheless the consequence of D.O. 9.

The formulation in the quoted Section 3 of D.O. 9's Rule XI was repeated as one of the grounds for the dismissal of a petition for certification election:

> (d) A duly recognized or certified union has commenced negotiations with the employer in accordance with Article 250 of the Code within the one-year period referred to in Section 3, Rule XI of these Rules, or there exists a bargaining deadlock which had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout to which an incumbent or certified bargaining agent is a party.[71]

D.O. 40 corrects the inappropriate formulation of D.O. 9 regarding the bar created by the negotiations between the bargaining agent and the employer. D.O. 40, Rule VIII, Section 3 provides:

> *When to file.* - A petition for certification election may be filed anytime, except:
>
> (a) when a fact of voluntary recognition has been entered or a valid certification, consent or run-off election has been conducted within the bargaining unit within one (1) year prior to the filing of the petition for certification election. Where an appeal has been filed from the order of the Med-Arbiter certifying the results of the election, the running of the one year period shall be suspended until the decision on the appeal has become final and executory;
>
> (b) when the duly certified union has commenced and sustained negotiations in good faith with the employer in accordance with Article 250 of the Labor Code within the one year period referred to in the immediately preceding paragraph;
>
> (c) when a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout;
>
> (d) when a collective bargaining agreement between the employer and a duly recognized or certified bargaining agent has been registered in accordance with Article 231 of the Labor Code. Where such collective bargaining agreement is registered, the petition may be filed only within sixty (60) days prior to its expiry.[72]

---

71. *Id* . Rule XI § 11, (d).

72. D.O. 40, Rule VIII, § 3.

Section 14 of the same Rule, in turn, reads:

> *Denial of the petition; Grounds.* - The Med-Arbiter may dismiss the petition on any of the following grounds:
>
> (d) a duly certified union has commenced and sustained negotiations with the employer in accordance with Article 250 of the Labor Code within the one-year period referred to in Section 14 (c) of this Rule, or there exists a bargaining deadlock which had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout to which an incumbent or certified bargaining agent is a party.[73]

With the new formulation under D.O. 40, mere commencement of negotiations within one year from the conduct of a valid certification, consent, or run-off election will not in itself bar a subsequent election. The negotiations must be "sustained" in order to be an effective bar.

2. Consent Election

D.O. 40's provisions on consent election differ, in concept and in procedure, from the provisions of D.O. 9. The respective definitions of the term "consent election" in D.O. 9 and D.O. 40 are considerably distinct from each other.

D.O. 9 defines "consent election" as "the election voluntarily agreed upon by the parties, with or without the intervention of the Department, to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit."[74]

On the other hand, D.O. 40 has a single definition for "certification election" and "consent election," as follows:

> (h) 'Certification Election' or 'Consent Election' refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is ordered by the Department, while a consent election is voluntarily agreed upon by the parties, with or without the intervention by the Department.[75]

With the new definition under D.O. 40, there appears to be an abandonment of the distinction made by the Supreme Court in the case of *Algire v. De Mesa*[76] between certification election and consent election. In the said case, consent election was explained to be limited to the purpose of

73. *Id.* Rule VIII, § 14.

74. D.O. 9, Rule I, § 1.

75. D.O. 40, Rule I, § 1.

76. Algire v. De Mesa, 237 SCRA 647 (1994).

determining the issue of majority representation of the employees in a bargaining unit. Under the current rules, consent election has the same purpose as a certification election, *i.e.*, the determination of the sole and exclusive bargaining representative. The difference lies in the procedure.

Compared to D.O. 9, D.O. 40 contains more elaborate provisions concerning consent elections, such as:

> *Consent Election; Agreement.* - In case the contending unions agree to a consent election, the Med-Arbiter shall not issue a formal order calling for the conduct of certification election, but shall enter the fact of the agreement in the minutes of the hearing. The minutes of the hearing shall be signed by the parties and attested to by the Med-Arbiter. The Med-Arbiter shall, immediately thereafter, forward the records of the petition to the Regional Director or his/her authorized representative for the determination of the Election Officer by the contending unions through raffle. The first pre-election conference shall be scheduled within ten (10) days from the date of entry of agreement to conduct consent election.[77]

As seen from the quoted provision, the only difference between a certification election and a consent election is the absence of a formal order calling for the conduct of an election. In lieu of a formal order, the agreement of the contending unions will be entered by the Med-arbiter in the minutes of the hearing. The next step will be a pre-election conference as in an ordinary certification election. D.O. 9 did not provide for this procedure.

D.O. 40 contains another new provision concerning the effects of consent election. In the previous rules, the conduct of a consent election will constitute a bar to the holding of a certification election when a petition for certification election has been filed and upon the intercession of the Med-Arbiter, the parties agreed to hold a consent election. Where no petition for certification election has been filed but the parties themselves agree to hold a consent election, the results of the consent election will not constitute a bar to a certification election.[78]

Under D.O. 40, even without a petition for certification election, a consent election can be a bar to a subsequent election if such consent election is conducted with the intercession of the Regional Office. This can be seen in the foregoing provision:

> *Effects of consent election.* - Where a petition for certification election had been filed, and upon the intercession of the Med-Arbiter, the parties agree to hold a consent election, the results thereof shall constitute a bar to the

77. D.O. 40, Rule VIII, § 10.

78. D.O. 9, Rule XI, § 16.

> holding of a certification election for one (1) year from the holding of such consent election. Where an appeal has been filed from the results of the consent election, the running of the one-year period shall be suspended until the decision on appeal has become final and executory.
>
> Where no petition for certification election was filed but the parties themselves agreed to hold a consent election with the intercession of the Regional Office, the results thereof shall constitute a bar to another petition for certification election.[79]

D.O. 40 does not say, however, how the "intercession" of the Regional Office of DOLE can be done in the absence of a petition for certification election.

3. Resolution of Petition for Certification Election

D.O. 40's provisions on the resolution of a Petition for Certification Election are essentially similar to D.O. 9's provisions. However, what is noticeable in D.O. 40 is the inclusion of prescribed periods for the Med-Arbiter's step-by-step actions on the petition, to wit:

a.) The Med-Arbiter shall conduct a preliminary conference and hearing within ten (10) days from receipt of the petition.[80]
b.) In case there is an agreement to conduct a consent election, the first pre-election conference shall be scheduled within ten (10) days from the date of entry of agreement to conduct consent election.[81]
c.) If there is no agreement to a consent election, the Med-Arbiter may conduct as many hearings as he/she may deem necessary, but in no case shall the conduct of such hearings exceed fifteen (15) days from the date of the scheduled preliminary conference/hearing. After such period, the petition shall be considered submitted for decision.[82]
d.) Within ten (10) days from the date of the last hearing, the Med-Arbiter shall issue a formal order granting the petition or a decision denying the same.[83]

The period given to the Med-Arbiter for the resolution of the Petition for Certification Election has been shortened from the previous 20 working

79. D.O. 40, Rule VIII, § 23.
80. *Id.* § 9.
81. *Id.* § 10.
82. *Id.* § 11.
83. *Id.* § 13.

days[84] to the present ten days. In addition to the prescribed periods for the Med-Arbiter's action on the petition, the Med-Arbiter is required to release his/her order or decision granting or denying the petition personally to the parties on an agreed date and time.[85] The apparent reason behind all these regulations is to prevent delay in the resolution of the petition. Whether the Med-Arbiters will comply with the prescribed periods or not remains to be seen.

4. Appeals

One of the most revolutionary revisions made by D.O. 40 is in the area of appeals in certification election proceedings. D.O. 40 adopts a controversial new formula for appeals from the Med-Arbiter's decision.

Under D.O. 9, there was a uniform rule for appeals from the Med-Arbiter's decision on the Petition for Certification Election, to wit:

> *Appeal; finality of decision.* - The decision of the Med-Arbiter may be appealed to the Secretary for any violation of these Rules. Interlocutory orders issued by the Med-Arbiter prior to the grant or denial of the petition, including orders granting motions for intervention issued after an order calling for a certification election, shall not be appealable. However, any issue arising therefrom may be raised in the appeal on the decision granting or denying the petition.
>
> The appeal shall be under oath and shall consist of a memorandum of appeal specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence. The appeal shall be deemed not filed unless accompanied by proof of service thereof to appellee.[86]

As seen from the quoted provision, all decisions of the Med-Arbiter on the petition can be appealed to the Office of the Secretary of Labor for review. Only interlocutory orders issued by the Med-Arbiter prior to the grant or denial of the petition were not subject to appeal.

Under D.O. 40, not all decisions of the Med-Arbiter on the petition for certification election can be appealed. D.O. 40 provides:

> *Appeal.* - The order granting the conduct of a certification election in an unorganized establishment shall not be subject to appeal. Any issue arising therefrom may be raised by means of protest on the conduct and results of the certification election.

84. D.O. 9, Rule XI, § 11.

85. D.O. 40, Rule VIII, § 16.

86. D.O. 9, Rule XI, § 12.

> The order granting the conduct of a certification election in an organized establishment and the decision dismissing or denying the petition, whether in an organized or unorganized establishment, may be appealed to the Office of the Secretary within ten (10) days from receipt thereof.
>
> The appeal shall be verified under oath and shall consist of a memorandum of appeal, specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence.[87]

As far as decisions denying petitions for certification election are concerned, the rule is simple. All such decisions of the Med-Arbiter are appealable to the Office of the Secretary of Labor. On the other hand, for decisions granting the petition, D.O. 40 makes a distinction between organized establishments and unorganized establishments. Decisions granting the petition in an organized establishment shall be appealable but decisions granting the petition in an unorganized establishment shall not be appealable.

The new rules manifest a policy that prefers the conduct of certification election for unorganized establishments or for bargaining units without bargaining agents. This is in line with the policy of promoting collective bargaining, which can only be started by the selection of a sole and exclusive bargaining agent for the employees. For organized establishments, the evident policy is to give a certain degree of protection to the incumbent bargaining agent. Thus, if there is a decision ordering the conduct of a certification election, the incumbent bargaining agent can resort to an appeal since the conduct of the certification election is an opportunity for another labor organization to challenge the incumbent's status as sole and exclusive bargaining agent.

The question raised by the new rule on appeal is this: *Is the rule not contradictory to Article 259 of the Labor Code which allows appeals from certification election orders regardless of whether the bargaining unit is organized or unorganized*? The answer should be in the negative.

A close examination of Article 259[88] shows that the appeal referred to is a post-election appeal or an appeal of the order or results of a certification election after it has already been conducted. In fact, the provision uses the phrase "party to an election" instead of "party to the case" or "party to the certification election proceedings." Furthermore, the provision speaks of

---

87. D.O. 40, Rule VIII, § 17.

88. LABOR CODE, art. 259 ("Appeal from certification election orders. – Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.").

"the conduct of the election" in referring to the ground for the appeal. Certainly, Article 259 does not refer to the decision of the Med-Arbiter granting the petition and ordering the conduct of a certification election.

In prohibiting the appeal of an order granting the conduct of a certification election in an unorganized establishment, D.O. 40 provides that any issue arising from such order may be raised by means of protest on the conduct and results of the certification election.[89] The right of any party to the case to question the said order is not totally lost. The opportunity to exercise such right to question the order is postponed, however, to the period after the election has already been conducted.

There is no inconsistency, therefore, between the Labor Code and the new rule prohibiting the appeal of the Med-Arbiter's decision granting the petition for certification election in an unorganized establishment.

On the contrary, this new rule on appeal under D.O. 40 is more consistent with the provision of Article 257, which states that "any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by a legitimate labor organization."[90] It is interesting to note that Article 257 does not even refer to an order of the Med-Arbiter directing the conduct of the election. The provision directly states that the certification election "shall automatically be conducted" by the Med-Arbiter.

Lastly, the new rule on appeal is based on the principle that a certification election is not a litigation but merely an investigation of a non-adversarial fact-finding character in which the government plays the part of a disinterested investigator seeking merely to ascertain the employees' will as regards their representation.[91]

SUMMARY AND CONCLUSION

As seen from the discussion of selected modifications introduced by D.O. 40 and D.O. 40-B to the Rules Implementing Book V of the Labor Code, the revised rules on the right to self-organization contain a mixture of progressive and regressive provisions. Some modifications are expected to facilitate the formation of labor organizations and the selection of bargaining representatives, while others may have adverse effects on the employees' exercise of their right to self-organization.

This Article has discussed the revisions in the following areas:

89. D.O. 40, Rule VIII, § 17.

90. LABOR CODE, art. 257.

91. Airline Pilots Association of the Philippines v. CIR, 76 SCRA 274 (1977).

a.) Classification of labor organizations, where the revisions blur the difference between an Independent Union and a Chartered Local;
b.) Requirements for registration of labor organizations, where the revisions demonstrate DOLE's flip-flopping regulations;
c.) Acquisition of legal personality of labor organizations, where the new rules create confusion on the relationship between a Federation and its Chartered Local;
d.) Effect of registration on labor organizations, where the revisions clarify the rules concerning issues on the legitimacy of a labor organization;
e.) Voluntary recognition, where the rules have changed from bad to worse insofar as ensuring the participation of employees in the selection of their bargaining agent is concerned;
f.) Bars to certification election, where the new rules correct the confusing formulation in the previous rules concerning the effect of negotiations on a subsequent certification election;
g.) Consent election, where the new rules improve the old provisions on the procedure for consent elections;
h.) Resolution of petitions for certification election, where the revisions attempt to regulate the period for the Med-Arbiter's action on the petition; and
i.) Appeals in certification election cases, where the rules seek to facilitate the conduct of certification election by limiting appeals to certain cases.

This Article has discussed the merits of the revisions, pointed out some potential sources of confusion, and offered proposed interpretations in some cases. The true test of these revisions, however, will be their actual implementation or non-implementation over the next few years, and their influence on the direction of labor jurisprudence.

On a last note, it must be said that, taken in its totality, D.O. 40, despite its defects and imperfections, has introduced a significant number of improvements, both simple and complex, to the rules on labor relations. The arrangement in alphabetical order of the terms defined in the very first section of the rules is foremost proof this.