# Comparative Study on Voluntary Arbitration and Commercial Arbitration, and Critique of the Supreme Court Decision in *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation* in Regard to Voluntary Arbitration

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## I. INTRODUCTION

> [*A*]*rbitration is meant to be an end, not the beginning, of litigation.*
>
> — Justice Arturo D. Brion[1]

Arbitration is a mode of dispute resolution that does not involve a State-sanctioned body.[2] It is a creature of contract, i.e., if there is no agreement providing for a resort to arbitration in any dispute arising from a contractual relationship, there will be no arbitration.[3] Furthermore, ideally, this mode of dispute resolution puts an end to the dispute between the parties.[4] Unfortunately, Philippine law and jurisprudence provide a different characterization of arbitration depending on the arbitration's subject matter.[5] This Essay first discusses the nature and kinds of arbitration recognized by Philippine law, beginning with the basic premises of arbitration, then the advantages of arbitration, and finally, the kinds of arbitration. The

1. Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation, 810 SCRA 280, 301 (2016) (citing Asset Privatization Trust v. Court of Appeals, 300 SCRA 579, 601-02 (1998)).
2. GARY B. BORN, INTERNATIONAL ARBITRATION: LAW AND PRACTICE 4 (2012).
3. *See Fruehauf Electronics Philippines Corporation*, 810 SCRA at 303.
4. *Freuhauf Electronics Philippines Corporation*, 810 SCRA at 301 (citing *Asset Privatization Trust*, 300 SCRA at 601-02).
5. *See generally* JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 693-94 (2019).

proceeding Chapters of this Essay discuss the issues on Labor Arbitration, particularly Voluntary Arbitration.

*A. Nature of Arbitration as a Creature of Contract*

Arbitration is a purely consensual act of the parties to submit their dispute to a third person, usually a non-State actor, for a final decision.[6] There can be no arbitration without a contract because the laws providing for arbitration require the consent of the parties.[7] In domestic commercial arbitration, the parties to a contract must (1) reduce the arbitration agreement into writing and (2) subscribe to the written arbitration agreement.[8] An arbitration agreement is the manifestation of the parties to submit their dispute to arbitration.[9]

An arbitration agreement must contain (1) the agreement to arbitrate of the parties and (2) the scope of arbitration.[10] The scope of the arbitration may vary depending on the parties' intent.[11] Hence, an arbitration agreement stated in this guise — "any and all dispute arising from this contract shall be resolved through arbitration" — is valid and binding.[12] In the same vein, an arbitration agreement stating, "any dispute relating to the payment of wages in relation to this employment contract," is valid and binding among the parties.

A valid arbitration agreement necessarily includes the consent of the parties to be bound by the decision of the decision-maker or arbitrator.[13] Thus, the parties generally cannot question the decision of the arbitrator.[14]

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6. *See* BORN, *supra* note 2, at 4.
7. *Id.* at 4-5.
8. An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes [Arbitration Law], Republic Act No. 876, § 4 (1953).
9. *Id.* § 4, para. 2.
10. BORN, *supra* note 2, at 35.
11. *Id.* at 36.
12. *Id.* The contract being referred herein is a commercial contract.
13. *Id.* at 4.
14. *See* BORN, *supra* note 2, at 4-5.

1. Arbitration involves a neutral non-State third party which decides a controversy between two parties

Arbitration being an alternative mode of dispute resolution essentially requires the participation of a non-State third party to preside and decide over the controversy.[15] One of the very reasons why arbitration is resorted to by the parties is precisely to avoid State participation, either via judicial or administrative resolution, because of the inconvenience arising from those remedies.[16]

This preference for a non-State third person to decide does not remove the State's authority to regulate the qualifications of these non-governmental decision makers or arbitrators because the State still has an interest over the resolution of disputes among the people that it governs.[17] For example, the Arbitration Law of the Philippines requires that arbitrators must: (1) be at least 18 years old; (2) be able to read and write; and (3) have full enjoyment of his or her civil rights.[18] On the other hand, in labor arbitration, the arbitrator(s) must be from an accredited list of the National Conciliation and Mediation Board (NCMB).[19]

2. Arbitration, as opposed to other modes of dispute resolution, produces a valid and binding decision

As constantly defined, arbitration is where the parties submit their dispute to a non-State decision-maker for a binding decision.[20] This is the unique characteristic of arbitration.

Arbitration is the mode of alternative dispute resolution whose mechanism is closest to judicial dispute resolution.[21] Basically, arbitration

15. *Id.* at 4.

16. *Id.* at 10-11.

17. *See* Arbitration Law, § 24 (c).

18. Arbitration Law, § 10.

19. 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 Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 219 (n) (1974) (as amended).

20. BORN, *supra* note 2, at 4.

21. CESARIO A. AZUCENA, JR., 2 THE LABOR CODE WITH COMMENTS AND CASES 544 (9th ed. 2016).

begins when a party to a contract notifies the other party that the former will submit an existing dispute for arbitration.[22] The party who initiates the arbitration is the claimant while the party sought to be held liable is the respondent.[23] The claimant then submits his or her claim to the arbitrator duly constituted according to the claimant and respondent's contract.[24] Depending on the agreement of the parties, hearings may be conducted on the basis of the claim of the claimant and the response of the respondent.[25] After the hearings, the arbitrator or arbitration tribunal shall issue a decision as to the facts and law governing the dispute.[26] The winner in the arbitration then goes to Court to have the arbitration judgment enforced or recognized, depending on the type of the arbitration.[27] The resort to arbitration, generally, closes the doors for any judicial remedy as to fixing the findings of facts and law of the arbitrator.[28]

As opposed to arbitration, mediation only involves a situation where a third party (which may be a governmental entity or a non-governmental mediator) sits down with the parties and presides over the parties' negotiation.[29] The mediator does not give suggestions as to the facts and laws but only asks clarificatory questions.[30] His or her goal is to have the parties agree to settle the dispute.[31] His or her failure to achieve his or her goal has no relevance to the parties' future judicial and administrative

22. *See* National Conciliation and Mediation Board, Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule IV, § 4, 16 ONAR 33 (2005) (Annex A).

23. National Conciliation and Mediation Board, Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule IV, § 4, 16 ONAR 33 (2005) (Annex A).

24. *Id.*

25. *Id.* rule VI, § 2.

26. *Id.* rule VII, § 2.

27. *See* An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes [Alternative Dispute Resolution Act of 2004], Republic Act No. 9285, §§ 40 & 42 (2004).

28. Alternative Dispute Resolution Act of 2004, §§ 40 & 42.

29. *See* ALAN REDFERN & MARTIN HUNTER, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION 23-25 (6th ed.).

30. *Id.*

31. *Id.*

actions, but the admissions made by the Parties during the mediation may be used against the Party who made such admissions.[32] In the international landscape, mediation is different from conciliation such that the latter requires a "suggestion" as to the resolution of the dispute.[33] In the Philippines, Republic Act No. 9285 provides that conciliation and mediation are the same.[34]

*B. Advantages of Arbitration*

Commentators and scholars on dispute resolution say that arbitration is generally advantageous to parties than disadvantageous because:

(1) Arbitration assures the neutrality in the resolution of issues;[35]

(2) There are laws and institutional rules governing certain substantive and procedural rules on the validity of arbitral proceedings;[36]

(3) The awards from arbitration are enforceable against the parties;[37]

(4) Decisions on arbitration are generally final subject to the provisions of substantive laws;[38]

(5) Parties may agree on the costs of the proceedings;[39]

(6) Arbitration assures the expediency of the resolution of an issue;[40]

(7) Parties may subject themselves to the rules of confidentiality of proceedings;[41] and

32. *Id.*

33. *Id.*

34. Alternative Dispute Resolution Act of 2004, § 7.

35. BORN, *supra* note 2, at 10.

36. *Id.*

37. *Id.* at 11-12.

38 *Id.* at 13.

39. *Id.* at 14.

40. *Id.*

41. BORN, *supra* note 2, at 15

(8) There is a procedural flexibility because parties are free to stipulate the rules governing their proceeding.[42]

*C. Types of Arbitration in the Philippines*

In the Philippines, there are four types of arbitration, namely:

1. International Commercial Arbitration

International commercial arbitration (ICA) has no concrete definition under Philippine law.[43] Rather, each word in the term ICA was specifically defined in Philippine law with reference to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration.[44] An arbitration is international if:

(1) [T]he parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States;

(2) [O]ne of the following places is situated outside the State in which the parties have their places of business:

2.1 [T]he place of arbitration if determined in, or pursuant to, the arbitration agreement;

2.2 [A]ny place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(3) [T]he parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.[45]

An arbitration is commercial when

it covers matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a transactions: any trade transaction for the supply or exchange of goods or services; distribution agreements; construction of works; commercial representation or agency;

42. *Id.* at 13-14.

43. *See* Alternative Dispute Resolution Act of 2004, § 19.

44. *Id.* § 19.

45. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 1-2 (1985) [hereinafter MODEL LAW].

> factoring; leasing, consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; [and] carriage of goods or passengers by air, sea, rail or road.[46]

2. Labor Arbitration

Labor arbitration may be compulsory or voluntary.[47] Compulsory arbitration is one conducted by the Labor Arbiter of the National Labor Relations Commission (NLRC) with which almost all labor disputes must undergo.[48] On the other hand, voluntary arbitration is one conducted by a person appointed by the employer and employee in accordance with their agreement.[49] For the purposes of this Essay, only the latter one will be discussed.

3. Construction Arbitration

Construction arbitration refers to the mode of dispute resolution via arbitration on matters within the jurisdiction of the Construction Industry Arbitration Commission (CIAC) and "shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman[,] or issuer of an insurance policy in a construction project."[50] Even though the matter is commercial, if it involves construction, CIAC has jurisdiction over the dispute.[51]

> Under Executive Order No. 1008, CIAC has
>
> original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire

46. Alternative Dispute Resolution Act of 2004, § 21.

47. AZUCENA, *supra* note 21, at 543.

48. LABOR CODE, art. 224 (a).

49. *Id.* art. 219 (n). *See also* AZUCENA, *supra* note 21, at 543-44 (citing Luzon Development Bank v. Association of Luzon Development Bank Employees, 249 SCRA 162 (1995)).

50. Alternative Dispute Resolution Act of 2004, § 35, para. 1.

51. *Id.* § 35, para. 2.

> jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.[52]

In sum, all construction-related arbitration must pass through the CIAC.

4. Domestic Commercial or Contractual Arbitration

Domestic commercial or contractual arbitration is governed by Republic Act No. 876.[53] Domestic arbitration is one that is not international under the Article 1 (3) of the UNCITRAL Model Law.[54] However, some provisos of the UNCITRAL Model Law and those applicable to ICA are made applicable to domestic arbitration.[55]

*D. Persons Involved in Arbitration*

In an arbitration proceeding, the following persons are involved:

1. Claimant

The claimant or complainant is the one asking for compensation due to the other person's violation of the contract.[56] In voluntary arbitration, since the parties agreed to submit any and all dispute arising from the employment contract, the claimant may either be the employer or the employee.

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52. Office of the President, Creating an Arbitration Machinery in the Construction Industry of the Philippines [Construction Industry Arbitration Law], Executive Order No. 1008, § 4 (Feb. 4, 1985).

53. Alternative Dispute Resolution Act of 2004, § 32.

54. *Id.* The law erroneously provided that the definition of international in the Model Law is "Article (3)" and not "Article 1 (3)."

55. *Id.* § 33. It states, "Articles 8, 10, 11, 12, 13, 14, 18, 19 and 29 to 32 of the Model Law and Sections 22 to 31 of the preceding Chapter 4 [of the Alternative Dispute Resolution Act of 2004] shall apply to domestic arbitration." *Id.*

56. Department of Justice, Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004, rule 2, art. 1.6 (d) (6) (Dec. 4, 2009). *See* REDFERN & HUNTER, *supra* note 29, at 20.

An employer may be the claimant if the employee violated the terms of the contract, e.g., violation of the non-compete clause, confidentiality agreement, or hours of work. On the other hand, an employee may be the complainant if the claim arises from the employer's violation of the employee's rights under the Labor Code or violation of contractual arrangements, e.g., non-payment of signing bonuses or quota bonuses.

2. Respondent

The respondent is the one against whom a claim is made.[57] He or she may also file a counterclaim against the claimant should the latter be alleged to have violated the terms and agreement of the contract.[58]

3. Arbitrator or Arbiter

The Arbitrator(s) or Arbiter(s) are the ones who resolve the dispute between the parties.[59] They make finding of facts and then apply the law.[60] They are appointed by the parties either before the dispute or before the institution of the proceeding.[61] Parties may choose whether to have one or more arbitrators.[62]

*a. Appointment of Arbitrators*

In the context of voluntary arbitration, the arbitrator may be permanent or *ad hoc.* A permanent arbitrator is one selected by the parties in the arbitration agreement, i.e., even before the dispute arose.[63] On the other hand, an *ad hoc* arbitrator is one appointed *after* the dispute arose and the parties are about

57. Rules and Regulations Implementing the Alternative Dispute Resolution Act of 2004, rule 2, art. 1.6 (d) (13).

58. *See* REDFERN & HUNTER, *supra* note 29, at 20.

59. Alternative Dispute Resolution Act of 2004, § 3 (e). *See also* REDFERN & HUNTER, *supra* note 29, at 38.

60. *Id.*

61. Rules and Regulations Implementing the Alternative Dispute Resolution Act of 2004, rule 3, art. 4.11.

62. *Id. See also* Model Law, art. 10.

63. Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule II, § 1 (e) (1).

to initiate an arbitration proceeding.[64] The arbitrator so appointed must be accredited by the NCMB.[65]

In the context of commercial arbitration, the arbitrator may be any person so long as he or she is able to read and write, of legal age, and not deprived of civil liberties.[66] If the parties agreed to submit their dispute to an institutional arbitrator, the arbitrator may come from the list of arbitrators by the chosen institution.[67]

*b. Arbiters Based on Composition*

Parties may agree that the arbitration is to be resolved by a single person or a group.[68] In voluntary arbitration, a group of arbitrators resolving the same dispute is called a panel,[69] whereas in commercial, it is called a tribunal.[70]

4. General Rule on Impleading Persons; Exceptions

The general rule in arbitration is that only parties to the contract of arbitration may be parties to an arbitral proceeding.[71] However, in *Lanuza, Jr. v. BF Corporation*,[72] the Supreme Court made an exception. To wit —

> As a general rule, therefore, a corporation's representative who did not personally bind himself or herself to an arbitration agreement cannot be forced to participate in arbitration proceedings made pursuant to an agreement entered into by the corporation. He or she is generally not considered a party to that agreement.
>
> However, there are instances when the distinction between personalities of directors, officers, and representatives, and of the corporation, are disregarded. [It is] call[ed] [ ] *piercing the veil of corporate fiction.*

64. *Id.* rule II, § 1 (e) (2).

65. LABOR CODE, art. 219 (n).

66. Arbitration Law, § 10.

67. *See generally* Model Law.

68. LABOR CODE, art. 273, para. 3. *See also* Model Law, art. 10 (1).

69. LABOR CODE, art. 273, para. 3.

70. *See generally* MODEL LAW, *supra* note 45.

71. Lanuza, Jr. v. BF Corporation, 737 SCRA 275, 228 (2014) (citing Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation, 320 SCRA 610, 614 (1999)).

72. *Lanuza, Jr.*, 737 SCRA.

...

> When corporate veil is pierced, the corporation and persons who are normally treated as distinct from the corporation are treated as one person, such that when the corporation is adjudged liable, these persons, too, become liable as if they were the corporation.[73]

The rationale of the Court in so ruling is that

> [w]hen there are allegations of bad faith or malice against corporate directors or representatives, it becomes the duty of courts or tribunals to determine if these persons and the corporation should be treated as one. Without a trial, courts and tribunals have no basis for determining whether the veil of corporate fiction should be pierced. Courts or tribunals do not have such prior knowledge. Thus, *the courts or tribunals must first determine whether circumstances exist to warrant the courts or tribunals to disregard the distinction between the corporation and the persons representing it.* The determination of these circumstances must be made by one tribunal or court in a proceeding participated in by all parties involved, including current representatives of the corporation, and those persons whose personalities are impliedly the same as the corporation. This is because when the court or tribunal finds that circumstances exist warranting the piercing of the corporate veil, the corporate representatives are treated as the corporation itself and should be held liable for corporate acts. The corporation's distinct personality is disregarded, and the corporation is seen as a mere aggregation of persons undertaking a business under the collective name of the corporation.[74]

In effect —

> [T]he issue of whether the corporation's acts in violation of complainant's rights, and the incidental issue of whether piercing of the corporate veil is warranted, should be determined in a single proceeding. Such finding would determine if the corporation is merely an aggregation of persons whose liabilities must be treated as one with the corporation.
>
> However, when the courts disregard the corporation's distinct and separate personality from its directors or officers, the courts do not say that the corporation, in all instances and for all purposes, is the same as its directors, stockholders, officers, and agents. It does not result in an absolute confusion of personalities of the corporation and the persons composing or representing it. Courts merely discount the distinction and treat them as one, in relation to a specific act, in order to extend the terms of the

73. *Id.* at 298-99 (emphasis supplied).

74. *Lanuza, Jr.*, 737 SCRA at 301 (emphasis supplied).

> contract and the liabilities for all damages to erring corporate officials who participated in the corporation's illegal acts. This is done so that the legal fiction cannot be used to perpetrate illegalities and injustices.
>
> Thus, in cases alleging solidary liability with the corporation or praying for the piercing of the corporate veil, parties who are normally treated as distinct individuals should be made to participate in the arbitration proceedings in order to determine if such distinction should indeed be disregarded and, if so, to determine the extent of their liabilities.[75]

In sum, the general rule is that the officers of a corporation cannot be impleaded in the arbitration proceeding, except when there is an allegation of fraud or bad faith on their part.[76] In such case, the determination that can be made by the arbitrator(s) is only limited to whether they acted in bad faith.[77]

Admittedly, the *Lanuza* ruling arose from a domestic commercial arbitration case. However, this does not mean that the domestic commercial arbitration character of the ruling does not apply to the case of a voluntary arbitration. The Author is of the opinion that the *Lanuza* ruling may be applied in a voluntary arbitration case.

## II. COMPARING COMMERCIAL ARBITRATION AND VOLUNTARY LABOR ARBITRATION

As mentioned, commercial arbitration may be international or domestic and involves any matter that is commercial in nature regardless if it is based on a contract.[78] On the other hand, labor arbitration is one that arises from an employer-employee relationship according to the Labor Code.

The Supreme Court had the opportunity to distinguish the two general forms of arbitration in *Fruehauf Electronics Philippines Corporation v. Court of Appeals*.[79] In this case, Fruehauf Electronics leased parcels of lands it owned to Signet Filipinas Corporation for 25 years.[80] A few years thereafter, Signet was bought by Technology Electronics Assembly and Management Pacific

75. *Id.* at 303-04.

76. *Id.*

77. *Id.*

78. *See* Alternative Dispute Resolution Act of 2004.

79. Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation, 810 SCRA 280 (2016).

80. *Id.* at 288.

Corporation (TEAM).[81] Fruehauf filed an illegal detainer case against TEAM.[82] After settling the dispute, TEAM notified Fruehauf that it will sublease the lands to Capitol.[83] In 2003, the lease between TEAM and Fruehauf expired.[84] The lease agreement was not renewed, yet Capitol stayed in the premises until 2005.[85] This prompted Fruehauf to file a petition before the Regional Trial Court to submit its dispute with TEAM to arbitration.[86] This petition was granted.[87] The arbitral tribunal ruled in favor of Fruehauf.[88] TEAM filed a petition before the Regional Trial Court to partially vacate or modify the ruling of the arbitral tribunal on the ground that the arbitral tribunal failed to properly appreciate the law and facts involved in the parties' dispute.[89] The Regional Trial Court denied TEAM's petition.[90] This prompted TEAM to file a petition for *certiorari* before the Court of Appeals.[91] The Court of Appeals initially dismissed the case, but it reconsidered its decision.[92] It held that a *certiorari* petition is a proper remedy when the Regional Trial Court committed a grave abuse of discretion amounting to lack or excess of jurisdiction in regard to a petition to vacate or modify an arbitral award.[93] Furthermore, the Court of Appeals looked into the findings of law and fact of the arbitral tribunal on the basis of the voluntary arbitration case.[94] It reversed the decision of the arbitral tribunal, which prompted Fruehauf to appeal to the Supreme Court.[95]

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81. *Id.*

82. *Id.*

83. *Id.* at 289.

84. *Id.*

85. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 289.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 293.

90. *Id.* at 293-94.

91 *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 294.

92. *Id.* at 295-96.

93. *Id.* at 296.

94. *Id.* at 297.

95. *Id.*

The Supreme Court ruled in favor of Fruehauf and made a delineation of different form of arbitrations under Philippine Law. Thus —

> *Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements.* These disputes were specifically excluded from the coverage of both the Arbitration Law and the [Alternative Dispute Resolution Act of 2004].
>
> Unlike purely commercial relationships, the relationship between capital and labor are *heavily impressed with public interest.* Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.
>
> On the other hand, commercial relationships covered by [the] commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* instead of government instrumentalities wielding quasi-judicial powers.
>
> *Moreover,* judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.
>
> ...
>
> These account for the legal differences between 'ordinary' or 'commercial' arbitrators under the Arbitration Law and the ADR Law, and 'voluntary arbitrators' under the Labor Code. The two terms are *not* synonymous with each other. Interchanging them with one another results in the logical fallacy of *equivocation* [—] using the same word with different meanings.
>
> ...
>
> All things considered, there is no legal authority supporting the position that commercial arbitrators are quasi-judicial bodies.[96]

To summarize the differentiation, below is a table of comparison:

| Aspect/Arbitration | Commercial/Ordinary | Voluntary Arbitration |
|---|---|---|

96. *Id.* at 307-09 (citing LABOR CODE, arts. 274 & 275; Arbitration Law, § 3; Alternative Dispute Resolution Act of 2004, § 6; An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386 [CIVIL CODE], art. 1700 (1949); & Halagueña vs. Philippine Airlines, Inc., 602 SCRA 297, 314 (2009)) (emphases supplied).

| | | |
|---|---|---|
| Governing Law | Primarily: Alternative Dispute Resolution Act of 2004[97]<br><br>If Domestic Commercial Arbitration: Republic Act No. 876[98]<br><br>If International Commercial Arbitration: UNCITRAL Model Law on International Commercial Arbitration[99] | Labor Code[100] |
| Subject Matter | Any and all dispute arising from a contractual relationship that does not involve:<br><br>(1) Labor disputes covered by the Labor Code;<br><br>(2) Civil status of persons;<br><br>(3) Validity of marriage;<br><br>(4) Any ground for legal separation;<br><br>(5) Jurisdiction of courts;<br><br>(6) Future legitime; | Any and all labor disputes including the interpretation of a collective bargaining agreement[102] |

97. Alternative Dispute Resolution Act of 2004, § 21.

98. *Id.* § 32.

99. *Id.* § 19.

100. LABOR CODE, art. 224.

| | | |
|---|---|---|
| | (7) Criminal liability; and<br>(8) Those which cannot be compromised.[101] | |
| Nature of public interest | Purely private[103] | Imbued with public interest[104] |
| Nature of the arbitrator's power | Purely private dispute settlement mechanism[105] | Quasi-judicial[106] |
| Who can be arbitrators? | Any person who can read and write, is not deprived of civil liberties, and is of legal age if domestic[107] | Only those accredited by the National Conciliation and Mediation Board[108] |
| Nature of the arbitrator in reference to a judicial authority | Different and not similar to RTC as it is purely private[109] | Same rank as an RTC |
| Questioning an erroneous decision of the arbitrator(s) | Domestic arbitral award: Vacate or modify the decision under Republic Act No. 876 to the appropriate Regional Trial Court[110] | Appeal to the Court of Appeals under Rule 43 |

102. *Id.* at 224 (c).

101. Alternative Dispute Resolution Act of 2004, § 6.

103. *Id.* § 23.

104. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 308 (citing CIVIL CODE, art. 1700).

105. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 308.

106. *Id.*

107. Arbitration Law, § 10.

108. LABOR CODE, art. 273.

109. Alternative Dispute Resolution Act of 2004, § 23.

110. Arbitration Law, § 26.

| | | |
|---|---|---|
| | International arbitral award: Refuse to recognize under the New York Convention[111] | |

Because of the ruling in *Fruehauf*, the Court made a proper delineation of voluntary and commercial arbitration. However, this Author is of the position that this characterization of the Court puts a misnomer to the nature of arbitration, i.e., any and all findings of fact and law of an arbitrator is final and binding except in specific circumstances provided by law.[112] This characterization of voluntary arbitration renders the "final" nature of arbitral decisions nugatory with respect to a voluntary labor arbitration.

## III. RULES OF PROCEDURE ON VOLUNTARY LABOR ARBITRATION

Generally, the agreement of the parties as to the procedure of the voluntary arbitration governs.[113] In the absence thereof, the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process and the pertinent provisions of the Rules of Court shall govern.[114]

The arbitral proceedings begin when jurisdiction is conferred to the voluntary arbitrator.[115] Jurisdiction is conferred to the arbitrator:

(1) Upon receipt of a submission agreement duly signed by both parties [to the dispute];

(2) Upon receipt of the notice to arbitrate when there is refusal from one party; [or]

(3) Upon receipt of an appointment/designation as voluntary arbitrator by the [National Conciliation and Mediation Board] in either of the following circumstances:

3.1 In the event that parties fail to select an arbitrator; or

111. Alternative Dispute Resolution Act of 2004, §§ 40-42.

112. BORN, *supra* note 2, at 4.

113. Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule 1, § 3.

114. *Id.*

115. *Id.* rule IV, § 4 (emphasis omitted).

> 3.2 In the absence of a named arbitrator in the CBA and the party upon whom the notice to arbitrate is served does not favorably reply with seven days from receipt of such notice.[116]

The submission agreement must contain (1) the agreement that the dispute shall be resolved through arbitration, (2) the scope of arbitration, i.e., the issues of the parties, (3) the appointed arbitrator, (4) the "names, addresses, and contact details of the parties", and (5) the agreement that the decision of the voluntary arbitrator is binding upon the parties.[117]

In the event that any of the parties refuse to submit the dispute to a voluntary arbitration, the following shall be observed:

> (1) A notice to arbitrate shall be served upon the unwilling party, copy furnished the permanent arbitrator and the [National Conciliation and Mediation Board] Regional Branch having jurisdiction over the workplace;
>
> (2) Upon receipt of a notice to arbitrate after the lapse of the seventh-day period within which to respond, the permanent arbitrator/s shall immediately commence arbitration proceedings; [and]
>
> (3) In the absence of a permanent arbitrator in the CBA, the Board appoints a voluntary arbitrator who shall immediately commence arbitration proceedings upon receipt of such appointment.[118]

Upon the assumption of jurisdiction by the voluntary arbitrator, he or she shall set the date of the initial conference which shall be made within two days from the receipt of the submission agreement or notice to arbitrate or appointment; a notice thereof shall be given to the parties.[119]

In the initial conference, the parties may agree already on some aspects of their disputes.[120] The voluntary arbitrator may also require the parties to stipulate facts.[121] After the issues are laid down, simplified, or clarified,[122] the voluntary arbitrator, along with the parties, may formulate ground rules for

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116. *Id.*

117. *Id.* rule IV, § 5.

118. *Id.* rule IV, § 6.

119. Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule VI, § 2.

120. *Id.* rule VI, § 3.

121. *Id.* rule VI, § 4.

122. *Id.* rule VI, § 5.

the proceedings.[123] Should any of the parties fail to appear, either personally or through counsel, despite notice, in two consecutive conferences (the proceedings where parties present their case), the arbitrator may suspend the conference and require the parties to submit their respective position papers.[124] If the parties failed to submit their position papers within the reglementary period, the arbitrator may render a decision based on the record at hand.[125] The position papers of the parties must be verified and must be limited to the factual and legal issues mentioned in the submission agreements.[126] The proceedings need not be recorded.[127] Furthermore, ocular inspections may be had after the submission of the position papers and upon notice to the parties.[128]

## IV. JUDGMENT IN A VOLUNTARY ARBITRATION

Upon the receipt of the position papers of the parties and the conduct of ocular inspection, if granted, the voluntary arbitrator shall render a decision within the period specified by the parties which shall not exceed 20 days from submission of the case for decision.[129] The decision of the arbitrator must state the legal and factual bases and the computation, if there is a monetary award, and it shall not be subject to a motion for reconsideration.[130] It shall be final within 10 days from receipt of the decision.[131]

The decision of the voluntary arbitrator is appealable to the Court of Appeals under Rule 43.[132] In *Fruehauf*, the Court explained —

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123. *Id.* rule VI, § 6.

124. *Id.* rule VI, § 7.

125. Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule VI, § 7.

126. *Id.* rule VI, § 8.

127. *Id.* rule VI, § 10.

128. *Id.* rule VI, § 9.

129. *Id.* rule VII, § 2.

130. *Id.* rule VII, §§ 5 & 7.

131. Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule VII, § 6.

132. 1997 RULES OF CIVIL PROCEDURE, rule 43, § 1.

The *ABS-CBN* Case opined that a voluntary arbitrator is a 'quasi-judicial instrumentality' of the government pursuant to *Luzon Development Bank v. Association of Luzon Development Bank Employees*, *Sevilla Trading Company v. Semana*, *Manila Midtown Hotel v. Borromeo*, and *Nippon Paint Employees Union-Olalia v. Court of Appeals*. Hence, voluntary arbitrators are included in the Rule 43 jurisdiction of the Court of Appeals:

SECTION 1. Scope. [—] This Rule shall apply to appeals from ... awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are ... voluntary arbitrators authorized by law.

Citing *Insular Savings Bank v. Far East Bank and Trust Co.*, the *ABS-CBN* Case pronounced that the losing party in an arbitration proceeding may avail of three alternative remedies: (1) a petition to vacate the arbitral award before the RTC; (2) a petition for review with the CA under Rule 43 of the Rules of Court raising questions of fact, of law, or of both; and (3) a petition for certiorari under Rule 65 should the arbitrator act beyond its jurisdiction or with grave abuse of discretion.

At first glance, the logic of this position appears to be sound. However, a critical examination of the supporting authorities would show that the conclusion is wrong.

First, the pronouncements made in the *ABS-CBN* Case and in the *Insular Savings Bank* Case (which served as the authority for the *ABS-CBN* Case) were both obiter dicta.

In the *ABS-CBN* Case, [the Court] sustained the CA's dismissal of the petition because it was filed as an 'alternative petition for review under Rule 43 or petition for certiorari under Rule 65.' [The Court] held that it was an inappropriate mode of appeal because, a petition for review and a petition for certiorari are mutually exclusive and not alternative or successive.

In the *Insular Savings Bank* Case, the *lis mota* of the case was the RTC's jurisdiction over an appeal from an arbitral award. The parties to the arbitration agreement agreed that the rules of the arbitration provider [—] which stipulated that the RTC shall have jurisdiction to review arbitral awards [—] will govern the proceedings. The Court ultimately held that the RTC does not have jurisdiction to review the merits of the award because legal jurisdiction is conferred by law, not by mere agreement of the parties.

In both cases, the pronouncements as to the remedies against an arbitral award were unnecessary for their resolution. Therefore, these are obiter dicta [—] judicial comments made, in passing which are not essential to the resolution of the case and cannot therefore serve as precedents.

...

> Notably, the other arbitration body listed in Rule 43 [—] the Construction Industry Arbitration Commission (CIAC) [—] is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject-matter jurisdiction of commercial arbitrators is stipulated by the parties.
>
> ...
>
> Further, Rule 43, Section 1 enumerates quasi-judicial tribunals whose decisions are appealable to the CA instead of the RTC. But where legislation provides for an appeal from decisions of certain administrative bodies to the CA, it means that such bodies are co-equal with the RTC in terms of rank and stature, logically placing them beyond the control of the latter.
>
> However, arbitral tribunals [on commercial arbitration] and the RTC are not co-equal bodies because the RTC is authorized to confirm or to vacate (but not reverse) arbitral awards. If [the Court was] to deem arbitrators as included in the scope of Rule 43, [the Court] would effectively place it on equal footing with the RTC and remove arbitral awards from the scope of RTC review.[133]

Basically, the Court in *Fruehauf* characterized the decisions of voluntary arbitrators as decisions of a quasi-judicial body even if the parties and the arbitrators are private individuals merely because their subject-matter jurisdiction is conferred by law.[134] The findings of the voluntary arbiter is reviewable both in law and fact.[135]

Upon the finality of the arbitrator's decision, the parties must comply with his or her orders.[136] In case any of the parties refuses to comply, the

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133. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 304-09 (citing ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd., 544 SCRA 308, 317 (2008); Luzon Development Bank v. Association of Luzon Development Bank Employees, 249 SCRA 162 (1995); Sevilla Trading Company v. Sernana, 428 SCRA 239, 243 (2004); Manila Midtown Hotel v. Borromeo, 438 SCRA 653 (2004); Nippon Paint Employees Union-Olalia v. Court of Appeals, 443 SCRA 286, 290 (2004); RULES OF CIVIL PROCEDURE, rule 43, § 1; & Insular Savings Bank v. Far East Bank and Trust Co., 492 SCRA 145, 157 (2006)).

134. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 308.

135. *Id.*

136. Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Process, rule VIII, § 1.

party who is entitled to an award may, through a motion, initiate an enforcement proceeding before the same arbitrator or the labor arbiter in the absence or incapacity of the voluntary arbitrator.[137] The arbitrator/arbiter with whom the motion for execution was filed must conduct a pre-execution conference within two days from the receipt of the motion to require the parties to respond or comment on the motion.[138] Thereafter, the arbitrator may issue the writ ordering the appropriate sheriff to effect the execution.[139] The order of execution may be questioned via petition for *certiorari* to the Court of Appeals or the Supreme Court, but it shall not stay the execution unless a temporary restraining order or writ of preliminary injunction was issued to that effect.[140] This is different from the appeal procedures mentioned above because this situation presupposes that there is a final and executory judgment by a voluntary arbitrator whereas in Rule 43 discussed above, there has not been any final and executory judgment yet.[141] The decision or judgment referred to in Rule 43 is one that can be reviewed both on the factual and legal merits.[142] The one referred to here is a review that revolves around whether the voluntary arbitrator acted in grave abuse of discretion amounting to lack or excess of jurisdiction in issuing a writ of execution or ordering a sheriff to that effect.[143]

## V. CRITIQUE OF THE VOLUNTARY ARBITRATION MECHANISM

Unfortunately, the Supreme Court has put a silence on the treatment of voluntary arbitration vis-à-vis commercial or ordinary arbitration in *Fruehauf.* Nevertheless, it does not foreclose the possibility for the Court to revisit its decision in *Fruehauf* to correct the misnomer and/or mischaracterization of voluntary arbitration.

It is the position of this Author that voluntary arbitration should not be characterized as a quasi-judicial body merely because the decision of a voluntary arbitrator is reviewable on appeal under Rule 43 of the Rules of Court. For one, the voluntary arbitrators are not public officers, but are

137. *Id.* rule VIII, § 1.

138. *Id.* rule VIII, § 2.

139. *Id.* rule VIII, § 3.

140. *Id.* rule VIII, § 6.

141. RULES OF CIVIL PROCEDURE, rule 43, § 4.

142. *Id.* rule 43, § 3.

143. *Id.* rule 65, § 1.

merely accredited by the National Conciliation and Mediation Board.[144] Another reason is that parties submit their dispute to voluntary arbitrators not in a public capacity but as private settlers of disputes.[145]

With all due respect, the Court, to the mind of this Author, erred in saying that the mere nature of labor disputes being imbued with public interest and the jurisdiction of voluntary arbiters as one conferred by law qualify the functions of the voluntary arbitrator as quasi-judicial.[146] The reason is that all jurisdictions of arbitrators, commercial or voluntary, are conferred by law.[147] An ordinary arbitrator's jurisdiction under the Alternative Dispute Resolution Act of 2004 is vast enough to cover almost everything except those specifically excluded by the same act.[148] Thus, the rationale of the Court that merely because the law specifically confers jurisdiction to the voluntary arbitrator makes him or her a quasi-judicial entity is misplaced.

The characterization of the Court that a decision of a voluntary arbitrator may be reviewed both in law and fact under Rule 43 of the Rules of Court, with respect to the essence of arbitration, is also inconsistent with the nature of arbitration.[149] The reason is that arbitration, aside from being a mode of dispute resolution, is a mode of compromise wherein parties bind themselves to whatever the decision that an arbitrator might render, subject to certain exceptions.[150] It is contractual in nature.[151] Thus, a party cannot seek to correct the erroneous finding of fact of an arbitrator if he or she expressly agreed to be bound by such finding.

On the other hand, this Author agrees that the decision of a voluntary arbitrator as regards questions of law may be reviewed because labor disputes are indeed imbued with public interest but only insofar as jurisdictional questions are concerned.[152] Because of this nature, there has to be at least

144. LABOR CODE, art. 219 (n).

145. AZUCENA, *supra* note 21, at 544.

146. *See generally Fruehauf Electronics Philippines Corporation*, 810 SCRA 280.

147. *Id.*

148. Alternative Dispute Resolution Act of 2004, § 6.

149. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 309.

150. *See* Arbitration Law, § 2.

151. *Id.*

152. *Fruehauf Electronics Philippines Corporation*, 810 SCRA at 308.

something that the State could do in assuring that the rights of laborers are well-preserved.[153] If the interpretation of the voluntary arbitrator of the law involved amounts to grave abuse of discretion amounting to lack or excess of jurisdiction, it is but just to allow the parties to have the decision of the voluntary arbitrator reviewed *not by the courts* but by the National Labor Relations Commission because it has expertise to decide on matters involving labor laws.

## VI. CONCLUSION

The very reason why the laws encourage arbitration to be a mode of dispute resolution between the employer and employees is to give them convenience. However, with this characterization of the Court and the remedies it granted, that reason was defeated.

However, despite the confusion in characterization, it does not mean that when the Court or the Congress reconsiders the characterization of voluntary arbitration, the court should no longer be empowered to review the decisions of the voluntary arbitrator except on jurisdictional grounds. It is the opinion of this Author that courts should still have the power to review the decisions of the voluntary arbitrator only as regards to questions of law but not as to questions of facts. That said, the findings of fact of the voluntary arbitrator exercising lawful jurisdiction should be conclusive upon the parties.

153. *See* LABOR CODE, art. 229.