

and more as a norm. Judicial institutions are retrofitted, as it were, into a set of institutions designed to place subjects within the normalized order. Normative practices, based on the notions of equality and the common standard, are therefore compatible with the existence of a certain kind of law, a social law, a law that is constituted with reference to the particular society it claims to regulate and not with respect to its source in a sovereign will or in a set of universal principles.

In sum, then, if, "at bottom, despite the differences in *epoches* and objectives, the representation of power has remained under the spell of monarchy," if "in political thought and analysis, we still have not cut off the heat of the king,"²² it is because the contractual theory of sovereignty itself serves a disciplinary function; that is, it serves to conceal disciplinary coercions and modes of domination by deflecting attention away from them.

The theory of sovereignty, and the organization of a legal code centered upon it, have allowed a system of right to be superimposed on the mechanisms of discipline in such a way as to conceal its actual procedures, the element of domination inherent in its techniques, and to guarantee to everyone, by virtue of the sovereignty of the State, the exercise of his proper sovereign rights.²³

Permit me to end as I began, with a long quote from Foucault:

Modern society ... has been characterized on the one hand, by a legislation, a discourse, an organization based on public right, whose principle of articulation is the social body and the delegative status of each citizen; and on the other hand, by a closely linked grid of disciplinary coercions whose purpose is in fact to assure the cohesion of the same social body. Though a theory of right is a necessary companion to this grid, it cannot in any event provide the terms of its endorsement. Hence these two limits: a right of sovereignty and a mechanism of discipline, which define, I believe, the arena in which power is exercised. But these two limits are so heterogeneous that they cannot possibly be reduced to each other. The powers of modern society are exercised through, on the basis of, and by virtue of this very heterogeneity between a public right of sovereignty and a polymorphous disciplinary mechanism.²⁴

The Philippine Labor Movement and the Law

Jose Cecilio J. Magadia, S.J., Ph.D. *

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I. INTRODUCING THE DYNAMISM OF THE PHILIPPINE LABOR MOVEMENT

Organized labor observed 2002 as its centennial year to commemorate how on 2 February 1902, *Katipunero* Don Isabelo de los Reyes founded the *Unión Obrera Democrática Filipina*, or the UOD (the Filipino Democratic Workers' Union) for the emancipation of the workers. A year later, or on 1 May 1903 — the first observance of the Labor Day in the Philippines, thousands of UOD affiliates came together for a demonstration in a maiden show of strength by this emerging sector, on the occasion of the first observance of Labor Day in the Philippines. Consequently, the labor movement has established itself as a major stakeholder in the Philippine socio-economic and political scene.

The different labor organizations have, through the years, championed the sector's causes — from the fight for the recognition of workers' rights to demands for increasing the minimum wage. They have also led in the moves to call attention to many of the country's other social ills and political problems. In the build-up of activism that contributed in a major way to the unrest of the 1960s and early 1970s, labor unions provided vocal and

* The author received his Doctorate in Philosophy in Political Science from the Columbia University (1999). He is a professor of Political Science at the Department of Political Science of the Ateneo de Manila University. He is also Rector of the Loyola House of Studies and Executive Director of the Ateneo Center for Social Policy and Public Affairs.

The author wishes to express his gratitude to Anna Liza L. Su and Marie Camille L. Bautista for their assistance in preparing this article.

Cite as 47 ATENEO L.J. 899 (2003).

22. FOUCAULT, *HISTORY OF SEXUALITY*, *supra* note 2, at 88-89.

23. Foucault, *POWER/KNOWLEDGE*, *supra* note 1, at 105.

24. *Id.* at 106.

numerical representation at many a street mobilization. During the Martial Law era, militant labor groups were among the few who visibly and courageously defied the repressive dictates of Ferdinand Marcos. In the 1980s, workers contributed in a significant way to the downfall of the dictatorship and the restoration of democracy.

History witnessed how organized labor did, and continues to, provide the necessary pressure for government to create space, both for the delivery of goods and services to workers and for labor's interests to be articulated and heard. To its credit, the government did, and continues to, respond albeit in a largely reactionary fashion.

This article represents the labor movement-government dynamic as it has been played out specifically in labor relations. The first part presents a historical sketch of the growth of the labor sector and the corresponding development of laws in response to calls for reform. From this cursory overview, the major trends are identified in the interaction between the state and labor organizations. The second part focuses on recent developments in the area of what has been called 'globalization,' which might be more precisely labeled 'trade liberalization.' The third part looks into possible new responses in legislation, given the potential major changes in the contours of labor relations.

II. ON LABOR INTERESTS, THE LABOR MOVEMENT, AND THE DEVELOPMENT OF LABOR LAW I

A. *The Evolution of the Philippine Labor Movement*

In the last half century of Spanish colonization, the beginning of the labor movement was made possible by the birth of guilds (*gremios*) organized around specific work environments and trades — from carpenters and shipyard workers, to workers in tobacco factories and printing houses. These constituted the settings for new awakenings as a working class, the formation of a new consciousness, an exposure to new ideas, and an attempt to experiment at new types of organized activities. These initial steps were given further impetus in the new colonial system set up under the United States. The most important workers' organization before the Japanese occupation was established in 1913, the *Congreso Obrero de Filipinas*, or the COF (Workers' Congress of the Philippines). The COF, led by

1. This article summarizes various works on the history of the labor movement. For a more thorough discussion, see EDILBERTO VILLEGAS, *THE POLITICAL ECONOMY OF PHILIPPINE LABOR LAWS* (1988); Gert A. Gust, Ph.D., *History of Philippine Industrial Relations*, Lecture given in the UP School of Labor and Industrial Relations (July 2000); John J. Carroll, S.J., *Philippine Labor Unions*, in *PHILIPPINE STUDIES* 220-54 (1959).

Hermenegildo Cruz and Crisanto Evangelista, took advantage of the relatively more democratic space provided by the US and by the 1935 Commonwealth Government of President Manuel Quezon.

In the early years of Philippine independence after World War II, the Congress of Labor Organizations, or the CLO, emerged as the first national labor center and the most influential workers' organization. It sought to unite all workers by actively promoting the workers' good, specifically within the framework of socialism. Like its predecessors, the CLO was inspired by a much wider ideologically-based advocacy for more radical social and political change. Unfortunately, caught in the McCarthyism that was infecting Philippine politics through continuing United States influence, the CLO was banned by President Elpidio Quirino in 1951 and labeled as a communist organization.²

Since the 1930s, parallel non- and anti-communist labor organizations were also being formed. Among those that emerged after the war were the National Confederation of Trade Unions (NACTU), the Federation of Free Workers (the Catholic social teaching-inspired FFW), and the Philippine Trade Union Council (PTUC). From the mid-1950s to 1972, labor organizations' activities were heightened in the wake of activism, growing social unrest, continuing inequalities, ideological ferment, all moving within the ambit of the system of collective bargaining established in 1953.

President Marcos' declaration of martial law in 1972 put an end to all this, and installed a repressive authoritarian regime that curtailed many of the rights previously enjoyed by workers. The President, himself, tried to reorganize the labor sector through attempts of implementing experiments in corporatism. Out of this experiment was born the Trade Union Congress of the Philippines (TUCP) in 1975. In reaction to the Marcos strategies of co-optation, the more militant workers' groups established the *Kilusang Mayo Uno* (KMU) in 1980. To this day, the TUCP and the KMU remain among the stronger groups, along with other groups like the FFW.

In 1986, the Marcos dictatorship was dismantled, and in the renewed democracy, President Corazon Aquino re-created the political space that Marcos did away with, and renewed organizing by workers' organizations and unions ensued for national policies, political objectives, and basic factory-based collective bargaining. It was in the early Aquino period that the Labor Advisory and Coordinating Council (LACC) was organized as an umbrella group for labor centers, as well as the *Lakas Manggagawa* Labor Center (LMLC), which developed into a new major labor center in the country. In the succeeding administrations, new labor organizations emerged,

2. EDILBERTO VILLEGAS, *THE POLITICAL ECONOMY OF PHILIPPINE LABOR LAWS* 42 (1988).

contending to represent the labor sector. Among these were the 1993-founded *Bukluran ng Manggagawa para sa Pagbabago* (BMP), the 1994-founded National Confederation of Labor of the Philippines (NCLP), and the 1996-founded Alliance of Progressive Labor (APL). The general conditions set by Aquino constituted the dominant arrangement that held sway, until the initial effects of world trade liberalization began to be felt in the late 1990s.

B. *The Ideological Underpinnings of the Philippine Labor Movement*

Developments in history indicate the gradual build-up of the ideological and bureaucratic networks that have come to constitute the labor movement in the Philippines. Specific trends that continue to characterize the movement to this day were set in motion by corresponding historical events, both here and abroad.

At the core of all these is the basic reality of worker marginalization in the modern world as a whole, based on the violation of human rights and human dignity. The dissolution of the old land-based order and the breakdown of protective feudal relationships meant that in the new settings, laborers began to find that they could be hired and fired at will. Workers had no recourse but to sell their labor for whatever the going rate was, which rate was determined by competition to work cheaply enough to gain them an advantage in the job market. In this new milieu, new rules and protection systems had to be fought for and eventually set in place to counter the many emerging abuses that came with these realities, *i.e.*, low substandard wages, inhuman working conditions, and child labor. To this day, these are the very same woes that continue to be felt by many laborers worldwide.

Among the central strategies employed by the labor movement were those of organizing laborers around a cause or mobilizing them as a sector. From the onset of their movement, labor groups utilized these strategies both defensively and offensively, to protect the worker's good in a single factory or to promote specific sectoral claims, like higher wages. The central unit of organization, which evolved through the years, was the union, which in turn organized themselves as groups of unions into labor federations and further on into labor centers. The most utilized weapon was the laborers' strike, and from its uneasy beginnings, mobilizations for strikes began to increase in incidence.

Through the years as well, the growth of the labor movement was prompted by the parallel development of socialist ideas in the country. The earliest, most vocal, and recognized union leaders right up to the time of independence in 1946 were identified with left-leaning socialist organizations such as the *Partido Komunista ng Pilipinas* and the Socialist Party of the Philippines, and their corresponding leftist international labor associations like the World Federation of Trade Unions. After the war, the same

ideological sway continued to underpin many of the major labor groups that formed, from the CLO to the KMU. Notably, 'socialist' elements have always been present in the labor movement as a whole, even if later, a spectrum covering a wider ideological range began to develop among labor groups.

C. *The Government and its Response to the Workers' Initiatives*

The government and business sector acted as the two other major groups of players in the labor scene. Both began as fundamentally conservative forces that, in general, did not pro-actively champion workers' rights but rather responded to workers' initiatives. However, this trend has changed throughout time as illustrated by the evolution of Philippine labor movement.

Owing to the close ties it had with the government, the business sector almost always followed the lead of the State. In view of this, this article shall focus on the government side *vis-a-vis* Philippine labor groups, as the private sector continue to recognize its social responsibility to the workers and their families.

Government's response to the burgeoning labor movement was two-fold: the creation of agencies to provide specific services and the provision of goods and benefits through legislation. Agencies were organized to look after labor's good and to supervise relations with the labor associations. The most important of these agencies was the Bureau of Labor, created in 1908,³ which evolved into today's Department of Labor and Employment (DOLE). Among its mandates were the administration of relations with laborers, the compilation and analysis of statistics pertinent to labor and the labor market situation, the organization of employment agencies, and the settlement of labor disputes.

In 1936, in line with President Quezon's social justice program, Commonwealth Act 103⁴ created a Court of Industrial Relations (CIR), tasked to mediate industrial and agrarian disputes.⁵ In the 1970s, President Marcos then established the National Labor Relations Commission (NLRC) replacing the CIR. The Commission was tasked with the settlement of all labor disputes and required that all concluded collective bargaining

3. *Id.* at 18.

4. An Act to Afford Protection of labor by Creating a Court of Industrial Relations Empowered to Fix Minimum Wages or Laborers and Maximum Rental to be Paid Tenants and to Enforce Compulsory Arbitration between Employers or Landlords and Employees or Tenants (1936).

5. VILLEGAS, *supra* note 2, at 30.

agreements should include an agreed-upon arbitration procedure.⁶ It also made it mandatory for employers to seek prior authorization from the Ministry of Labor and Employment (MOLE) for dismissal of employees.⁷ The creation of the NLRC was deemed an innovative approach in handling industrial disputes for it was not run like a regular court and was under the Ministry of Labor instead of the judiciary.⁸

Aside from the creation of agencies to service the needs of labor, government also directly provided benefits through legislation. In response to the labor movement's clamors and complaints, the list of benefits granted by law increased. During the Commonwealth era, the CIR's power to fix minimum wage for workers and maximum rentals for tenants was considered a milestone in humanitarian labor legislation.⁹ During this period, the government also finally recognized the right of the workers to collectively bargain with their employers, with the passage of Commonwealth Act No. 213.¹⁰ Likewise, the old Spanish law prohibiting any movement to increase or decrease the price of labor was abrogated. In 1939, industrial workers finally won the eight-hour workday with the enactment of Commonwealth Act 444.¹¹ As provided by such law, workers covered by C.A. 444 could only be made to work beyond eight hours, provided they were paid the same rates as their regular wages plus at least 25% additional.

Another major area of legislation was labor relations. From the *laissez faire* stance of the early US Colonial Period, government moved towards greater intervention in 1936, through compulsory arbitration of labor disputes in the CIR. After the war, this was overruled in 1953 by Republic Act No. 875, the *Magna Carta* of Labor, which did away with compulsory arbitration. The focus was moved to collective bargaining agreements (CBAs) and negotiated dispute settlements. While the Marcos Martial Law regime repressed all these in 1972, it was this same administration that ironically initiated the promulgation for the first time of a comprehensive Labor Code of the Philippines in 1974.

In the aftermath of democratic restoration and the promulgation of the 1987 Constitution, labor relations were once again liberalized, with the passage of R.A. 6715. Founded on the old *Magna Carta*, R.A. 6715 made it easier for the enterprise workers to organize by having the vote percentage of the total numbers of employees required for a union to qualify as a

6. *Id.* at 62.

7. *Id.*

8. *Id.*

9. *Id.* at 31.

10. C.A. No. 213 (1936).

11. C.A. No. 444 (1939).

collective bargaining unit reduced from 25% to 20%. Moreover, the required minimum for a union to be recognized as a bargaining agent in cases of dispute was likewise reduced from 30% to 25%.

In the area of dispute settlement, the National Conciliation and Mediation Board (NCMB) was established for the amicable settlement of labor disputes, and Labor Management Councils (LMCs) were promoted as a means towards greater industrial peace. Decisions of the Labor Arbiter were also made appealable first to the National Labor Relations Commission (NLRC), and then to the Supreme Court. R.A. 6715 likewise mandated the creation of a Tripartite Industrial Peace Council (TIPC), composed of representatives from the government, management, and labor.

Since then, the Supreme Court has had several occasions to advance the understanding of these laws. For instance, in the area of the right to self-organization or freedom of association, *California Manufacturing v. Laguesma*¹² held that the employer had no legal personality to oppose a petition for certification election but could file a petition for an election when requested to bargain collectively. This has come to be known as the "by-stander rule."

In *University of the Philippines v. Calleja*,¹³ the Supreme Court ruled that what constituted an appropriate bargaining unit would depend on the community or mutuality of interests, the bargaining history of the plant, and the will of the workers themselves. The Court held that owing to the differences in interests amongst the workers, there should be two bargaining units, that is, one for the academic and another for the non-academic personnel.

Jurisprudence relating to collective bargaining has likewise proved to be a boon to the development of this bargaining process as it is the centerpiece of the entire labor relations system. In a number of cases decided by the Supreme Court,¹⁴ the consistent rule in relation to the application and enforcement of collective bargaining agreements has been to emphasize the duty of the parties to bargain in good faith.

In the area, meanwhile, of increased workers' participation in policy-making affecting their interests, the landmark case is *Philippine Airlines v. NLRC*.¹⁵ In this case, the Court ruled that the formation of a Code of

12. 209 SCRA 606 (1992).

13. 211 SCRA 464 (1992).

14. *Kimberly Clark Philippines v. Lorredo*, 226 SCRA 639 (1993); *Alex Ferrer v. NLRC*, 224 SCRA 410 (1993); *Marcopper Mining v. NLRC*, 200 SCRA 167 (1991); *Pe v. IAC*, 195 SCRA 137 (1991).

15. *PAL v. NLRC*, 225 SCRA 301 (1993).

Discipline is a shared responsibility of the employer and the employees since such a Code has repercussions on the employees' right of tenure.

During the early Aquino years as well, the beginnings of tripartism were realized, based on ideas floated mainly during the early Marcos period, and identified as a more constructive approach to industrial peace. Tripartism has been identified as the process by which workers, employers, and government contribute to the setting of workplace standards and the protection of workers' rights. Since its initial activities in 1986, tripartism has gained ground and has become a fundamental principle recognized and accepted by government, business, and labor alike.

III. GLOBALIZATION AND ITS CHALLENGE

That a legal framework is in place for dialogue among stakeholders provides no solid assurance that the workers' welfare will always be considered. Despite the seemingly hospitable environment that the law provides, that the post-Marcos administrations have tried to foster, and that labor associations have pushed to protect and enrich, new factors have arisen that have circumscribed development. This so-called culprit has been given the tag, "globalization."

In general, globalization refers to a whole set of inter-related phenomena that have distinct political, socio-economic, cultural, and technological dimensions. The least complicated and most concrete definition turns to basic economic concepts. The Canadian government's official website declares, "The term 'globalization' describes the increased mobility of goods, services, labor, technology and capital throughout the world. Although globalization is not a new development, its pace has increased with the advent of new technologies, especially in the area of telecommunications."¹⁶

An International Labour Organization report echoes the same economic flavor:

Economic globalization can be simply defined as a process of rapid economic integration between countries. It has been driven by the increasing liberalization of international trade and foreign direct investment, and by freer capital flows. The process manifests itself mainly through an intensification of activities in the following areas: international trade in goods and services; capital flows (FDI [foreign direct investments] and short-term flows); the role of multinational enterprises (MNE); the

reorganization of production networks on an international scale; the adoption of new technology, including information technology.¹⁷

Governments, business leaders, and many ambitious politicians have hailed the benefits of globalization. They have pointed to the geometric economic growth that it has facilitated for many and its potential to provide for many more through increased efficiency of business and trade, greater opportunities for the development of entrepreneurship, finance, and technology, and better quality of goods due to healthy competition. But, as even the advocates of globalization policies have admitted, the transition to growth does translate into disadvantages for various sectors, especially among those already on the periphery. For workers worldwide, the effect of this phenomenon has been seen as quite devastating, and labor leaders from both developed and developing countries alike share the same feeling of alarm.

One such statement reads,

Globalization ... is not just about trade. Corporations are not only moving goods across borders—they are also moving capital, factories, jobs. The fight is not just about tariffs but all kinds of laws protecting labor, defending the environment. Globalization is also threatening many useful public services with private corporations demanding the right to obtain social security, schools, airports, prisons, transit systems—and even our drinking water.... we were told by many 'friends of labor' free trade was a win-win situation. Economic growth would mean increased prosperity (for workers) The result has been just the opposite. While a new, thin layer of rich has developed ... workers and farmers ... have taken a beating.... The impact ... has been far greater than the several hundred thousand jobs that have been directly lost to 'free trade.' The mere threat by bosses to relocate jobs has had a chilling effect on labor relations. Workers displaced by job movement have taken a cut in wages and benefits while most other workers, wary of relocation threats, have settled for stagnant wages — even in the midst of what is supposed to be unprecedented prosperity.¹⁸

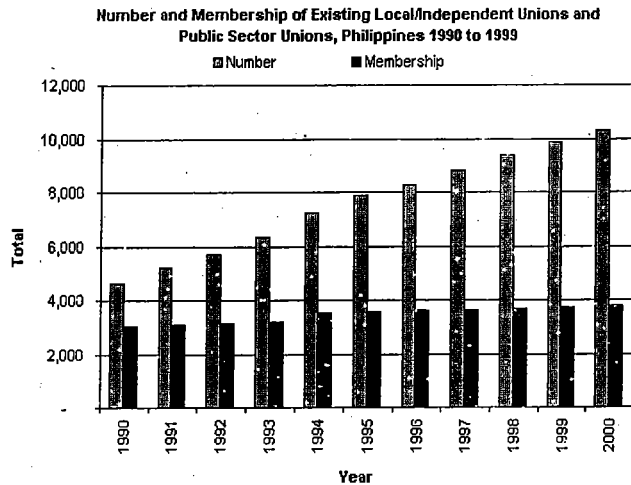
There are indications from data on labor in the Philippines that validate some of these fears. Despite the growing number of unions in the Philippines, actual membership in these unions has not increased significantly as illustrated by Figure 1.

17. Governing Body of the International Labour Organization, Country Studies on the Social Impact of Globalization: Final Report, GB.276/WP/SDL/1, 276TH Session, at 14-15 (1999).

18. LABOR ADVOCATE, available online at <http://www.kclabor.org/globalization.htm> (last accessed 27 Feb. 2003).

16. GLOBALIZATION, at <http://canadianeconomy.gc.ca/english/economy/globalization.html> (last accessed 28 Feb. 2003).

FIGURE I. NUMBER AND MEMBERSHIP OF EXISTING LOCAL/INDEPENDENT UNIONS AND PUBLIC SECTOR UNIONS: 1990 TO 1999¹⁹



DOLE Assistant Secretary Ernesto Bitonio points out that a better measure of union strength is the number of unions able to conclude collective bargaining agreements (CBAs) and the number of workers covered by such agreements.²⁰ Bitonio's figures are presented in Table I below.

TABLE I. NUMBER OF UNIONS AND NUMBER OF CBAs, 1989-1999

YEAR	NUMBER OF UNIONS	NUMBER OF CBAs
1989	4084	4084
1990	4637	4982
1991	5236	4409

19. Available online at http://www.virtualasia.com/ph/bizpak/statistics/labor/labor_12chart.htm (last accessed 27 Feb. 2003).

20. Benedicto Ernesto Bitonio, Jr., *Unions on the Brink: Issues, Challenges and Choices Facing the Philippine Labor Movement in the 21st Century*, in PHILIPPINE INDUSTRIAL RELATIONS FOR THE 21ST CENTURY: EMERGING ISSUES, CHALLENGES AND STRATEGIES 128, 132 (2001).

1992	5710	4537
1993	6340	4983
1994	7274	4497
1995	7882	3264
1996	8248	3398
1997	8822	2987
1998	9374	3104
1999	9690	3043

It is significant to note, for instance, that even if the number of unions in 1999 is more than double that of 1989, the number of CBAs concluded in 1989 even exceeds the 1999 count by 1,055. Data for 2001 and the first half of 2002 confirm the trend, with further increases in the number of unions, with insignificant increases in the number of members, while the number of CBAs continues in its downswing as shown below.

UNIONISM		
INDICATOR	2001	2002 JANUARY - JUNE
EXISTING LABOR ORGANIZATIONS	10,924	11,245
MEMBERSHIP (000)	3,850	3,893
EXISTING CBAs	2,518	2,515
WORKERS COVERED (000)	462	484

Source of data: Bureau of Labor Relations, Statistical and Performance Reporting System (SPRS).

In addition, Bitonio calls his readers' attention to other significant developments. First, there is the reality that the union to CBA ratio is widening (with only one in three unions able to conclude CBAs), as well as the union membership to CBA coverage (only one in six members is covered by CBA).²¹ These point to the high likelihood that inactive and minority unions are accumulating.²² They also support the DOLE suspicion

21. *Id.*

22. *Id.*

that inter-union rivalries are prevalent, in a situation of a multiplicity of unions within single enterprise bargaining units.²³ Second, the number of new unions being registered each year has been consistently decreasing.²⁴ Third, the number of petitions for certification elections has also been consistently declining, as unions no longer seem to be interested in acquiring exclusive bargaining status within a company.²⁵

There are many plausible causes for these alarming developments, within individual unions and companies for instance, but also out in the larger Philippine socio-economic context as well. Not to be discounted is precisely the new dynamics that a more globalized economic system brings in. Though still to be validated, it is not inconceivable that what is happening to labor is in part the result of businesses rationalizing and downsizing, merging and outsourcing, spinning-off or re-engineering, and even relocating to more business-friendly sites where labor demands are not as stringent.

Analysts from the labor sector have argued that market liberalizing and globalizing forces have resulted in structural changes in the labor force.²⁶ As a result, for example, employment demand has shifted away from industry and agriculture and towards the service sector.²⁷ This includes many who work in the hotel and restaurant industries, government frontline offices, banks, tourism-related outfits, various forms of health care units, and public transportation. It is said that in 1997, the service sector already overtook agriculture as the foremost source of employment in the country.²⁸

Interestingly, an increasing number of workers are under-employed, as they tend to take on a combination of part-time, casual, and contractual work, thereby contributing to what has been called "labor flexibility." The phenomenal and continuing rise in the numbers of overseas Filipino workers (OFWs) shows how work migration has been seen as an attractive and viable alternative. The feminization of labor has also been noted, bolstered by the trend towards the service sector. National Statistic Office (NSO) data supports this point as it shows that the annual growth rate of women in employment has been increasing. The informal sector is also expanding, composed of the self-employed, a growing number of unpaid or underpaid family workers, and those working for micro or small enterprises. One

23. *Id.*

24. *Id.*

25. *Id.* at 135, 138.

26. *Id.* at 141.

27. *Id.* at 142.

28. *Id.* at 142.

estimate places the number of those in the informal sector at 15 million.²⁹ All these, which manifest greater job insecurity, are aggravated by a decline in real wages. The DOLE compensation index shows a decline from a high of 125 in 1988, to a low of 105 in 1998.

Given these difficulties, it is no wonder that despite the presence of a structure for industrial peace, effective unionism has been on a decline. Its starting point was not great in the first place, as trade unions and collective bargaining covered only 13% of the employed labor force and 12% of the total labor force. But in an increasingly globalizing context, the prognosis cannot be good, as workers find themselves more and more in situations of being held hostage by their weakness in the face of a consolidating corporate world, and of begin unable to effectively articulate their needs.

It is at this point that the legal framework might be re-assessed. And the challenge is the reconfiguration of a system that will be able to respond to the powerful shifts brought about by globalization.

IV. A NEW LINE OF RESPONSES

An informal and unstructured survey of possible directions for reform is in order. Three views are presented here, one each from the perspectives of employers, the academe, and laborers.

Atty. Vicente Leogardo, Director General of the Employers' Confederation of the Philippines (ECOP), cites a basic problem observed by all sectors which is a serious limitation of the Labor Code itself, by virtue of its restricted scope, as well as its unfacilitative and rigid provisions.³⁰ Specifically debilitating is the Code's inability to cover emerging sectors, like that of informal labor or those in the flexible employment mode, and to reach the bigger groups of workers, especially the unorganized majority. This is partly attributed to the complex restrictions and processes outlined by the Code for the organizing, registration, and actual functions of collective bargaining agents. Coupled with the current trend of disinclination to unionizing, this weakness renders the workers even more vulnerable. Thus, in the context of greater vulnerability, reforms that improve workers' access to speedier disposition of justice are considerably remote.

The difficulty with regard to processes is especially pronounced in the area of the administration of labor justice, specifically litigation. Thus, Atty.

29. ECOP Study on Informal Sector (unpublished manuscript on file with Atty. Vicente Leogardo).

30. Interview by Anna Su and Camille Bautista with Atty. Vicente Leogardo, Director General, Employer's Confederation of the Philippines (Jan. 17, 2003).

Leogardo's reform proposals are focused along six lines.³¹ First, the system should seek to make operative the principle of shared responsibility with strong preference for consensual modes of dispute settlement. Second, the system should be simplified with the end in view of eliminating overlapping processes and layers of adjudication. Third, conciliation and mediation to the extent possible should be the entry point of all disputes. To this end, DOLE should establish a kind of one-stop center where all unassisted workers seeking redress for violation of their legal rights arising from employment can be advised and directed, and in meritorious cases provided with counsel. Fourth, arbitration, whether compulsory or voluntary, should be the last administrative recourse. Fifth, a system of tripartite accountability should be established in decision making and in selecting, appointing, and supervising personnel in the entire dispute settlement system. Sixth, voluntary arbitration should be strengthened by emphasizing the binding yet appealable character of voluntary arbitration decisions.

The University of the Philippines School of Labor and Industrial Relations (UP-SOLAIR) returns to basic principles in order to confront the challenges of the global economy. The institution re-states general guiding principles, in light of changing work patterns and relationships in the work environment.³² For instance, labor law reforms should reaffirm the democratic values and traditions of our society, including the importance given to the development and protection of the work force. The new labor laws should, however, recognize the needs of employers, whose survival and expansion in the new economic environment also means the survival and expansion of jobs. Further, the best approach in labor law reforms is to seek win-win solutions in dispute settlement and in the preservation of jobs and businesses. Should these not be possible, there should be a careful balancing of interests of all stakeholders, including workers and employers, while closing the gap between them.

The study also elaborates that the approach in labor relations requires the promotion of non-adversarial and non-litigious or non-legalistic types of dispute settlement. This approach would thereby require the promotion of economic growth under conditions of global competition while preserving and expanding decent jobs. Philippine labor laws should moreover be aligned with fundamental international labor standards.

31. Position Paper of the Employer's Confederation of the Philippines (ECOP) on Labor Dispute Settlement / Administration of Labor Justice, Technical Meeting, COCLE (Nov. 14, 2002)

32. Rene E. Ofeneo, et al., Integration and Summary: Philippine Labor Laws for the 21ST Century, in School of Labor and Industrial Relations and U.P. Center for Integrative and Development Studies, Study Group on Philippine Labor Law Reforms and the Future of Work Relations (2000) (on file with the SOLAIR Library).

With these principles in mind, the proposed direction of labor law reforms would include aligning labor laws with core labor standards, that is, international labor standards, and enhancing industrial harmony, and streamlining the system of dispute settlement. A variety of mechanisms are employed to achieve the latter including settling disputes at the plant level by institutionalizing the grievance machinery and strengthening dialogue through labor-management councils, strengthening the use of voluntary modes, and limiting the use of compulsory forms of dispute settlement, thereby promoting conciliation at all levels of dispute settlement. Improving the compulsory arbitration process also needs converting the NLR into a special division of the Court of Appeals that will only handle labor cases and place the corps of labor arbiters under the administrative control of the Secretary of Labor and Employment.

Imperatively, streamlining the system of dispute settlement calls for adjusting the challenge of global competition by promoting cooperation between workers and employers in skills development, upgrading of the work force, linking collective bargaining and wage increases to company performance and productivity, and recognizing new forms of flexible but mutually beneficial work arrangements, such as the compressed work week. Also essential is the strengthening of workers' education by making employment relations part of secondary and tertiary *curricula*, and by making workers undergo seminars and employers to undergo briefings on the law and ethical standards. Such streamlining of the dispute settlement process further necessitates the widening of the scope of union organizing, expanding the concept of freedom of association to embrace workers under various flexible employment arrangements, and recognizing the rights of workers in the informal sector to form unions.

Most interesting of all, and most creative, are some of the proposals from the labor sector itself. In various public presentations and discussions, an important guiding principle that has been articulated is one of commitment to cooperation with other stakeholders, rather than conflict, and to strategies that are less adversarial and more consensus building. There have been calls for more creative strategizing and alternative organizing and bargaining.

On the level of strategy, this means moving bargaining from a purely socio-economic plain to one that incorporates socio-political dynamics. Thus, for instance, a response might be moving the arena for bargaining from the plant or the factory, to a whole industry or to a community, and even to the global level. Bargaining, then, breaks out of its single-level and single-mode concentration.

In these proposals, an underlying reality is the acceptance that the single-factory single-union (through a single CBA) approach has become much less viable and potent in a globalizing context. Looking beyond management, for example, workers might now begin to look to various levels and arenas of

government as loci of bargaining. Unionism, in this context, evolves into a form of social unionism, where there is a greater integration of social sectors (through incorporation and networking), increasing resort to social and political advocacy, and multi-mode organizing (on the levels of the plant, the industry, the craft, the community, the sector). Likewise, new forms of activity might be explored, including the provision of non-traditional services (job matching and placement, enterprise development program, social housing, and the like) and an increasing resort to what some call "global unionism."

Consequently, in this wider perspective, collective bargaining beyond the factory can now begin to incorporate much wider concerns: overarching social clauses, pre- and post-employment benefits, over-all social welfare programs, and even international standards setting.

V. CONCLUSION

These creative responses are not possible without greater workers' awareness and conscientization with regard to globalization itself. Even as this should be done, there should also be continuing education on the prevailing given structures in Philippine jurisprudence, as all employers and employees, and prospective employers and employees must be adequately informed of their respective rights and responsibilities under Philippine labor law. More importantly, workers and employers are also called to a greater awareness of all other possible avenues for interaction within the present framework. For example, there is a need to further explore and pursue the formation of workers associations, LMCs, and other non-union organizations at the enterprise level as providing an alternative *locus* for preliminary collective bargaining that can be less adversarial and threatening to management, and more collegial.

In the end, the more long-term response in law would mean the alteration of the legal infrastructure itself to correspond to the shifts due to globalization. In conjunction with this, there is a corollary demand for the development of new legal recourses that might better address the plight of the working class in the new global economy. In the meantime, the efforts should be directed to a deeper understanding of the processes and ways of globalization and the discovery of alternative responses within the existing dispensation.

The Real Thing: 7x Plus More*

Selina Tolosa**

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* This article is based on "The Evolution of the Real Thing: A Case Study by Kristin Greene, Nobu Kawanishi, Jennifer Ni, Kimberly Schuy, and Selina Tolosa, Wharton Batch 2002, University of Pennsylvania, Business School.

Under current Philippine laws, there is no specific provision addressing the protection of trade secrets similar to trade names, trade marks, or service marks. Yet the Intellectual Property Office is of the opinion that trade secrets are adequately protected by the Civil Code and Revised Penal Code. This paper is based on American laws and jurisprudence.

** Selina Tolosa is Senior Associate of Information Management at New American Schools. She was also an Associate for the Ball Foundation, a non-profit organization that partners with school districts to instill student achievement. Ms. Tolosa also has previously worked as a Consultant for Accenture where she led reengineering efforts on Information Technology for various clients. She provided direction on business operations and financial services for the Bureau of Internal Revenue (in the Philippines). Ms. Tolosa served as an Adjunct Professor in Management Information Systems, Ateneo de Manila University.