

Labor-Saving Devices: Republic Act No. 9481 and Its Implementing Rules

Vicente Carlos S. Lo*

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* '11 J.D., Ateneo de Manila University School of Law. The Author was previously a Member of the Board of Editors of the *Ateneo Law Journal* (2009-2011). He was Associate Lead Editor for the fourth issue of the 54th volume. His published works in the *Journal* include *Right to Water, Right to Life*, 55 *ATENEO L.J.* 1042 (2011); *The Sounds of Sirens: Renewed Interest in Presidential Decree No. 96 and Other Related Issuances*, 55 *ATENEO L.J.* 819 (2010); and *A Bribe for the Boatman: The Pains and Politics of the Value-Added Tax (VAT) on Tolls*, 55 *ATENEO L.J.* 514 (2010).

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I. INTRODUCTION

A. Republic Act No. 9481

On 25 May 2007, Republic Act (R.A.) No. 9481,¹ entitled An Act Strengthening the Workers' Constitutional Right to Self Organization, Amending for the Purpose Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines, lapsed into law.² The law is a composite of House Bill (H.B.) No. 1351,³ introduced by Representative Del R. de Guzman of the then Lone District of Marikina City, and Senate Bill (S.B.) No. 2466,⁴ introduced by Senators Francis N. Pangilinan, Richard J. Gordon, and Jinggoy P. Ejercito-Estrada, Jr. — filed during the 13th Congress. The new law is a recent amendment to Presidential Decree (P.D.) No. 442 or the Labor Code of the Philippines,⁵ the country's principal codification of labor legislation.

It is of note that President Gloria Macapagal-Arroyo neither signed R.A. No. 9481 into law nor vetoed it back to Congress.⁶ According to Arturo D. Brion,⁷ then Secretary of the Department of Labor and Employment

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1. An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purposes Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines, Republic Act No. 9481 (2007).
 2. GMA News.TV, Arroyo lets labor rights bill to lapse into law, *available at* <http://www.gmanews.tv/story/44034/Workers-rights-bill-lapses-into-law> (last accessed May 23, 2011).
 3. An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purposes Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines, H.B. No. 1351, 13th Cong., 1st Sess. (Nov. 23, 2005).
 4. An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purposes Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines, S.B. No. 2466, 13th Cong., 3d Sess. (Sep. 19, 2006).
 5. 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, As Amended (1974).
 6. See PHIL. CONST. art. VI, § 27, ¶ 1.
 7. Arturo D. Brion is now an incumbent Associate Justice of the Supreme Court of the Philippines, having taken his oath as a member of the High Court on Mar. 17, 2008. He was appointed by President Arroyo as Labor Secretary in July

(DOLE), the Bill was merely allowed to lapse into law so as not to “disturb the current labor relations” and the “(industrial) peace that the country now enjoys.”⁸ The move was also in line with the Arroyo Administration’s policy of letting controversial bills lapse into law, rather than taking sides by signing them into law or vetoing it back to Congress.⁹

On one hand, Secretary Brion notes, a vetoed bill would “incur the ire of all shades of unions and give them common cause against the [A]dministration.”¹⁰ On the other hand, a signed law would rile up employers or the business sector.¹¹ By allowing the Bill to lapse into law, Malacañang thus avoided a “political confrontation with unified labor,”¹² and whatever flaws the law may have would be mitigated through a priority bill filed after or through the implementing rules and regulations.¹³ Thus far, no law has amended R.A. No. 9481, although the DOLE has promulgated Department Order (D.O.) No. 40-F-03,¹⁴ the Implementing Rules and Regulations of R.A. No. 9481.

B. Mixed Reactions

R.A. No. 9481 is not without controversy. The purpose of the law is to strengthen unionization and the workers’ constitutional right to self-organization and promote trade unionism.¹⁵ Nevertheless, some businesses viewed the law as unduly restricting management prerogatives in favor of labor, over-liberalizing the rules on unionization, and were distressed in the manner in which it was passed.¹⁶ Some even pointed out that employers

of 2006 before being appointed to the Supreme Court. See Tetch Torres & Leila Salaverria, (UPDATE) Labor chief takes oath as Supreme Court justice, PHIL. DAILY INQ., Mar. 17, 2008, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20080317-125198/Labor-chief-takes-oath-as-Supreme-Court-justice> (last accessed May 23, 2011).

8. GMA News.TV, *supra* note 2.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Department of Labor and Employment, Amending Rules III, V, VIII, IX, XI, XIV and XV of the Implementing Rules of Book V of the Labor Code of the Philippines [DOLE D.O. No. 40-F-03], DOLE Department Order No. 40-F-03 (Oct. 30, 2008).

15. R.A. No. 9481, tit.

16. See The Foreign Chambers of the Philippines, “Statement of the Joint Foreign Chambers of Commerce of the Philippines,” (Sep. 24, 2007).

were not given adequate opportunity to express their views on the law; President Arroyo even denied an appeal urging for the veto of the bill by the Employers Confederation of the Philippines.¹⁷

Nevertheless, the law, in part, succeeds in strengthening the workers' constitutional right to self-organization. It has progressed unionization by minimizing registration requirements and expediting chartering,¹⁸ removing several grounds to cancel union registration,¹⁹ diversifying union formation,²⁰ and insulating certification election proceedings.²¹ The law is also widely regarded as adopting the 2007 Report of the Committee of Experts on the Application of Conventions and Recommendations.²² Even so, in 2008, a year after R.A. No. 9481 lapsed into law, labor groups were

Incorporated on Sep. 10, 1975, the Employers Confederation of the Philippines is the umbrella corporation and the "single voice for the entire business community, on important national issues related to employment, industrial relations, labor issues and related social policies." Together with the Philippine government and the Trade Union Congress of the Philippines (TUCP), it "made tripartism a reality." See Employers Confederation of the Philippines, History, available at <http://ecop.org.ph/history.php> (last accessed May 23, 2011).

17. See The Foreign Chambers of the Philippines, *supra* note 16.

18. R.A. No. 9481, §§ 1 & 2.

19. *Id.* §§ 3, 5, 7, & 9.

20. *Id.* § 8.

21. *Id.* §§ 10-12.

22. Veronica Uy, Labor law not enforced — workers' groups, PHIL. DAILY INQ., Nov. 3, 2008, available at <http://newsinfo.inquirer.net/breakingnews/nation/view/20081103-169963/Labor-law-not-enforced--workers-group> (last accessed May 23, 2011).

The Committee of Experts on the Application of Conventions and Recommendations is a technical and advisory body of the International Labor Organization (ILO) which receives regular reports from countries which have ratified ILO Conventions, evaluates compliance, and directly proposes amendments to state legislations and labor policies. See International Labor Organization, Committee of Experts on the Application of Conventions and Recommendations, available at <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-en/index.htm> (last accessed May 23, 2011).

The Committee recommended the lowering of the minimum membership requirement for a labor union. See INTERNATIONAL LABOR ORGANIZATION, REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS 144 (2007). This is reflected in Section 2 of R.A. No. 9481. See R.A. No. 9481, § 2.

anxious for its implementation — delayed by the slow process of formulating the implementing rules and regulations.²³

Even before the promulgation of the rules and regulations, the Alliance of Progressive Labor²⁴ warned of a concerted effort by labor groups to resist any attempts to water down or restrict the provisions of R.A. No. 9481 through the implementing rules.²⁵ This was emphasized in the midst of increasing worry “that statements from top officials of both the [DOLE] and several powerful business groupings are pointing to one common direction: To ‘dilute’ if not covertly undermine the still unfinished [implementing rules and regulations] of [R.A. No. 9481], and thus to ‘mitigate’ its alleged ‘adverse effects.’”²⁶

C. DOLE D.O. No. 40-F-03

On 30 October 2008, the DOLE issued D.O. No. 40-F-03, the Implementing Rules and Regulations of R.A. No. 9481,²⁷ which amended the Implementing Rules of Book V of the Labor Code.²⁸ The subjects of this Note are two key provisions introduced by D.O. No. 40-F-03. These two provisions are areas for concern and are *void* for being contrary to and frustrating the intent and policy of R.A. No. 9481. Moreover, they extend and modify the statute.

Determining the rules’ validity is important because only valid rules will have the binding force and effect of law.²⁹ Furthermore, these rules will be

23. Uy, *supra* note 22.

24. The Alliance of Progressive Labor is a “national labor center” committed to the advancement of Social Movement Unionism — “a strategy directed at recognizing, organizing and mobilizing all types of workers and unions for engagements in different arenas of struggle” including, but not limited to, trade unionism. Social Movement Unionism was developed by the Alliance “precisely to respond to new work arrangements where employee-employer relationships do not exist or are not clear.” See Alliance of Progressive Labor, About, available at http://www.apl.org.ph/?page_id=2 (last accessed May 23, 2011).

25. Alliance of Progressive Labor, Unions to resist ‘restrictive’ IRR, amendments to ‘distort’ RA 9481, available at <http://www.apl.org.ph/?p=385> (last accessed May 23, 2011).

26. *Id.*

27. DOLE D.O. No. 40-F-03, § 1.

28. See generally Department of Labor and Employment, Amending the Implementing Rules of Book V of the Labor Code of the Philippines, DOLE Department Order No. 40-03, as Amended (Feb. 17, 2003).

29. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 79-80 (6th ed. 2010).

binding on those dealing with the DOLE³⁰ — primarily unions and employers. In Article 275 of the Labor Code, tripartism in labor relations is a declared state policy.³¹ It contemplates workers and employers represented in decision and policy-making with government.³² If industrial peace is to be attained, then D.O. No. 40-F-03 must be faithful to R.A. No. 9481.

D. Legal Issues

This Note examines D.O. No. 40-F-03 and explores the principles laid down in R.A. No. 9481. The discussion and analysis are limited to two areas particular to chartered locals or chapters, namely: (1) requiring a local/chapter's certificate of creation as a condition precedent before the conduct of a consent election or for participating in a certification election; and (2) the employee's right to intervene in petitions for certification election.

While the certificate of creation requirement affects both consent elections and certification elections, the discussion focuses more on certification elections as the rules expressly disqualify a local/chapter from being a contender in the election absent this requirement. These two provisions will be tested against labor principles like the Limited Legal Personality Principle, Non-Disclosure Rule, and Employer as Bystander Doctrine under R.A. No. 9481 and against Administrative Law principles.

II. DOLE DEPARTMENT ORDER NO. 40-F-03

Jurisprudentially, there has only been one, albeit tangential, application of R.A. No. 9481 by the Supreme Court.³³ The validity of the provisions of D.O. No. 40-F-03 also has not been tested in a court of law.

A. Requiring the Certificate of Creation of Chartered Locals as a Condition Precedent for Participating in a Consent or Certification Election

On the one hand, Section 10 of Rule VIII, the provision on consent elections, by express amendment of D.O. No. 40-F-03, states that “[t]o afford an individual employee-voter an informed choice where a local/chapter is the petitioning union, the local/chapter shall secure its certificate of creation at least five [5]

30. *Id.*

31. LABOR CODE, art. 275 (a).

32. *Id.* See also 2 CESARIO A. AZUCENA, JR., THE LABOR CODE WITH COMMENTS AND CASES 679 (7th ed. 2010).

33. See *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang*, 533 SCRA 125, 154 (2007). In this case, the Court applied Article 234-A, an amendment by R.A. No. 9481 to the Labor Code, to exclude a trade union center from creating a chartered local.

working days before the date of the consent election.”³⁴ On the other hand, Section 13 of Rule VIII mirrors the above for certification elections and goes further, that the Mediator-Arbiter shall, within 10 days after the last hearing for the petition for certification election, issue a formal ruling granting or denying the latter while also stating the following, among others —

- (e) to afford an individual employee-voter an informed choice where a local/chapter is one of the contending unions, *a directive to an unregistered local/chapter or a federation representing an unregistered local/chapter to personally submit to the election officer its certificate of creation at least five [5] working days before the actual conduct of the certification election.*

*Non-submission of this requirement as certified by the election officer shall disqualify the local/chapter from participating in the certification election;*³⁵

Whether in a consent election or certification election, D.O. No. 40-F-03 requires a local/chapter to submit its certificate of creation or a certified copy thereof to the election officer at least five (5) working days before the conduct of the election³⁶ to “*afford an individual employee-voter an informed choice.*”³⁷ This new requirement is a consequence of Article 234-A, where a local/chapter may directly file a petition for certification election under its limited legal personality.³⁸

In addition, for certification elections, non-submission of this requirement shall disqualify the local/chapter from participating in the certification election.³⁹

A 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.”⁴⁰ The difference between the two is that the former is “ordered by the [DOLE],” while the latter is “voluntarily agreed upon by the parties, with or without the intervention of the DOLE.”⁴¹ The electoral processes “[serve] as the official, reliable[,] and democratic basis for the [Bureau of Labor Relations] to determine and name (or ‘certify’) the

34. DOLE D.O. No. 40-F-03, rule VIII, § 10 (emphasis supplied).

35. *Id.* rule VIII, § 13 (emphasis supplied).

36. *Id.* rule VIII, §§ 10 & 13 (e).

37. *Id.* (emphasis supplied).

38. LABOR CODE, art. 234-A.

39. DOLE D.O. No. 40-F-03, rule VIII, § 13 (e).

40. *Id.* rule I, § 1 (h).

41. *Id.*

union that shall represent the employees in bargaining with the employer.”⁴² It is a democratic election for the bargaining unit’s representative which will negotiate with the employer and defend and promote their interests.⁴³

Previous versions of the Rule, however, do not contain the new requirement. Section 10 of Rule VIII before D.O. No. 40-F-03 for consent elections merely requires the immediate calling of a pre-election conference once the conditions are met and before the conduct of the consent election.⁴⁴ In the same vein, the new requirement for certification election is also absent in the old Rule.⁴⁵ This is also the case under D.O. No. 9.⁴⁶

B. Granting the Employee a Right to Intervene in Certification Election Proceedings

D.O. No. 40-F-03 amended Section 1 of Rule VIII on Certification Elections containing parties who may file a petition for certification election in D.O. No. 40-03 and additionally provided that “[a]ny employee has the right to intervene for the protection of his individual right.”⁴⁷

The amendments referenced changes made by R.A. No. 9481 to the Labor Code. Aside from a legitimate labor organization, a national union or federation that has issued a charter certificate to its local or chapter may file on behalf of the latter, and the local or chapter itself may file the petition.⁴⁸ The amended Section 1 also referenced the Non-Disclosure Rule in Articles 256 and 257 that in case the petition was filed by the national union or federation on behalf of its local or chapter, the petition shall not be required to disclose the names of the local or chapter officers and members, but shall attach to the petition the charter certificate issued to the local or chapter.⁴⁹

42. CESARIO A. AZUCENA, JR., *EVERYONE’S LABOR CODE* 269 (5th ed. 2010) [hereinafter AZUCENA, JR., *EVERYONE’S*].

43. As mentioned earlier, this Note, specifically the succeeding Chapter, will focus more on the certification election process as the rule explicitly disqualifies a contending local/chapter from participating absent its certificate of creation before the certification election. There is still, however, a possible violation of R.A. No. 9481 with the certificate of creation requirement as will be explained later.

44. DOLE D.O. No. 40-03, rule VIII, § 10.

45. *Id.* § 13.

46. Department of Labor and Employment, Amending the Rules Implementing Book V of the Labor Code, as Amended [DOLE D.O. No. 9], DOLE Department Order No. 9, rule XI, § 4 (May 1, 1997).

47. DOLE D.O. 40-03, rule VIII, § 1 (emphasis supplied).

48. *Id.*

49. *Id.* See also LABOR CODE, arts. 256 & 257.

The Employer as Bystander Doctrine is also incorporated. In all petitions for certification election, whether filed by an employer, a legitimate labor organization, a national union or federation on behalf of its local or chapter, or the local or chapter itself, the employer's participation in the proceedings is limited to (1) being notified or informed of the petition, and (2) submitting the roster of employees during the pre-election conference should the petition be granted.⁵⁰

Finally, a new provision is added in the Rule where “[a]ny employee has the right to intervene for the protection of his individual right.”⁵¹

A review of the previous versions of the Rule reveals that the employee's right to intervene in a certification election was only added by D.O. No. 40-F-03. Under D.O. No. 9, the Provision simply read that “[s]ubject to the provisions of this Rule, any legitimate labor organization or any employer, when requested to bargain collectively and the status of the union is in doubt, may file a petition for certification election.”⁵² At the time, only a registered union or the employer may file the petition.⁵³ There was no employee's right to intervene in the petition. In 2003, when the Implementing Rules of Book V were further amended by D.O. No. 40-03, a legitimate labor organization and the employer may file the petition, but there still was no employee's right to intervene.⁵⁴

III. UNDERMINING THE CERTIFICATION ELECTION PROCESS

The infirm provisions introduced by D.O. No. 40-F-03 undermine the certification election proceeding by requiring a local/chapter's certification of creation as a *condition precedent* for participating in a certification election and providing for an employee's right to intervene in the petition for certification election. The electoral procedure determines the exclusive bargaining representative in an enterprise.⁵⁵ It is properly called “certification election” because “it serves as the official, reliable[,] and democratic basis ... to determine and name (or ‘certify’) the union that shall represent the employees in bargaining with the employer.”⁵⁶ The Labor Code outlines the procedure in Articles 256-259 of the Labor Code.⁵⁷

50. DOLE D.O. No. 40-03, rule VIII, § 1. *See also* LABOR CODE, art. 258-A.

51. DOLE D.O. No. 40-03, rule VIII, § 1.

52. DOLE D.O. No. 9, rule XI, § 1.

53. *Id.*

54. DOLE D.O. No. 40-03, rule VIII, § 1.

55. AZUCENA, JR., *EVERYONE'S*, *supra* note 42, at 269.

56. *Id.*

57. *See generally* LABOR CODE, arts. 256-259.

Moreover, the provisions in D.O. No. 40-F-03 violate the legal principles enshrined in R.A. No. 9481 which was precisely designed to strengthen and protect workers' constitutional right to self-organization and promote trade unionism. The Limited Legal Personality Principle, Non-Disclosure Rule, and Employer as Bystander Doctrine codified by R.A. No. 9481 into the Labor Code all promote and expedite the constitutional right to self-organization procedurally during the certification election proceeding. This Chapter will move through the steps of the electoral process and explain how the certificate of creation requirement and the employee's right to intervene frustrates the intent of R.A. No. 9481 through these legal principles.

A. The Limited Legal Personality Principle

Before a local/chapter may participate in a certification election, it must first submit its certificate of creation at least five days before the election.⁵⁸ The Implementing Rules of Book V or the Labor Code provide that a "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.*"⁵⁹

For federations, national unions or industry or trade union centers, or independent unions, the requirements for registration are outlined in Article 234.⁶⁰ These labor organizations shall only acquire legal personality, and therefore be entitled to the rights of legitimate labor organization,⁶¹ upon the submission of the required documents and consequently upon issuance of the certificate of registration.⁶² Once the certificate of registration is secured, the union is entitled to the right to be "certified as the exclusive representative of all employees in an appropriate collective bargaining unit for purposes of collective bargaining"⁶³ and to "act as the representative of its members for the purpose of collective bargaining."⁶⁴

For chartered locals of national unions or federations, the road to unionization is different, thanks to R.A. No. 9481. Article 234-A allows a duly registered federation or national union to directly create a local chapter by issuing a charter certificate.⁶⁵

58. DOLE D.O. No. 40-03, rule VIII, § 13 (e).

59. *Id.* rule IV, § 8 (emphasis supplied).

60. LABOR CODE, art. 234 (a)-(e).

61. *Id.* art. 242.

62. *Id.* art. 234.

63. *Id.* art. 242 (b).

64. *Id.* art. 242 (a).

65. *Id.* art. 234-A.

It must be remembered that a charter certificate is different from a certificate of creation. The former is issued by the parent union or federation to the local/chapter and bestows limited legal personality to the local only for purposes of filing a petition for certification election by virtue of R.A. No. 9481.⁶⁶ The latter is a government document issued by the Bureau of Labor Relations and bestows legal personality entitling the local or chapter to the rest of the rights of legitimate labor organizations⁶⁷ once the required documents in Article 234-A are submitted along with the charter certificate.⁶⁸

There is, therefore, a two-step process on the road to unionization for locals/chapters: limited legal personality and complete legal personality. Limited legal personality gives a chartered local its soul, giving it limited existence to file a petition for certification election and the opportunity to be immediately chosen as the exclusive bargaining representative, though unregistered.⁶⁹ Submitting the required documents enumerated in Article 234-A gives it its body and complete legal personality, entitling the chartered local to all rights and privileges of a legitimate labor organization under Article 242.

The problem lies with requiring the certificate of creation before the local or chapter may participate in the certification election. The certificate of creation of a chartered local is only issued after the submission of the required documents in Article 234-A.⁷⁰

The DOLE's interpretation of Article 234-A appears to be that limited legal personality is limited only up to the filing of the petition for certification election, and not up to the actual conduct of the certification election. While it is indeed stated in the law that limited legal personality is "only for purposes of filing a petition for certification election," a literal interpretation of the text would result in undermining the purposes of R.A.

66. LABOR CODE, art. 234-A.

67. *See* LABOR CODE, art. 242 (a)-(f).

68. LABOR CODE, art. 234-A (a) & (b).

69. *See* DOLE D.O. No. 40-03, rule IV, § 8.

70. Section 2 (E) of Rule III states that the chartered local will only be entitled to "all other rights and privileges of a legitimate labor organization" upon submission of the enumerated documents. Section 8 of Rule IV states that the chartered local shall only be deemed registered and vested with legal personality upon issuance of its certificate of creation of chartered local.

Article 234-A only vests limited legal personality for purposes of filing a petition for certification election. Complete legal personality only comes after the issuance of the certificate of creation of chartered local.

Cf. LABOR CODE, art. 234-A; DOLE D.O. No. 40-03, rule III, § 2 (E); DOLE D.O. No. 40-03, rule IV, § 8.

No. 9481. Instead, the contrary is argued for a reasonable interpretation of the law. Limited legal personality, for purposes of filing a petition for certification election, must extend to the actual conduct of the certification election. To construe Article 234-A otherwise would delay the electoral process. Limited legal personality would be rendered inutile since petitioning for certification election is interwoven with acquiring full legal personality and securing the certificate of creation. Furthermore, it is contrary to the intent of the law to grant a local chapter legal existence, albeit a limited one. The expedited process of chartering would be useless. A certification election can and should proceed on the sole basis of a charter certificate — there is no need to wait for the certificate of creation.

B. The Non-Disclosure Rule

Not only does the Rule have the effect of disregarding the differences between limited and complete legal personality, it also contravenes the Non-Disclosure Rule. The Non-Disclosure Rule states that where locals/chapters, or their parent unions on their behalf, file a petition for certification election, they are not required to disclose the names of their officers and members, both in organized and unorganized establishments.⁷¹

71. LABOR CODE, arts. 256 & 257.

ART. 256. *Representation Issue in Organized Establishments.* — In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed by any legitimate labor organization including a national union or federation which has *already issued a charter certificate to its local chapter participating in the certification election or a local chapter which has been issued a charter certificate* by the national union or federation before the Department of Labor and Employment within the sixty-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the appropriate bargaining unit.

To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes shall be certified as the exclusive bargaining agent of all the workers in the unit.

When an election which provides for three or more choices results in the choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: *Provided, That the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapters' officers and members.*

The Non-Disclosure Rule as manifested in R.A. No. 9481 is not new to the Implementing Rules of Book V. When the original D.O. No. 40-03 was first issued on 17 February 2003, this Rule was implicit in Section 2 (E) of Rule III covering Registration of Labor Organizations.⁷² The requirements then for registering a chartered local merely stated: “The 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.”⁷³ Once the local/chapter has been registered, it may already file its petition for certification election.⁷⁴ The original D.O. No. 40-03 did not require the submission of the names local/chapter’s officers, addresses, and the principal office of the chartered local.⁷⁵

On 16 February 2004, however, the DOLE promulgated D.O. No. 40-B-03⁷⁶ amending D.O. No. 40-03 with regard to chartered locals. Section 2 (E) of Rule III was amended to state that a “duly registered federation or national union may directly create a chartered local”⁷⁷ by submitting, aside from the charter certificate, the “names of the local/chapter’s officers, their addresses, and the principal office of the local/chapter.”⁷⁸

With R.A. No. 9481 and D.O. No. 40-F-03, the Non-Disclosure Rule was again incorporated into the provisions of D.O. No. 40-03. Section 2 (E)

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification is filed.

ART. 257. *Petitions in Unorganized Establishments.* — In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbitrator upon the filing of a petition by any legitimate labor organization, including a national union or federation which has already issued a charter certificate to its local / chapter participating in the certification election or a local / chapter which has been issued a charter certificate by the national union or federation. In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter’s officers and members.

Id. (emphasis supplied).

72. DOLE D.O. No. 40-03, rule III, § 2 (E) (superseded 2004).

73. *Id.*

74. *Id.* rule VIII, § 1.

75. *Id.* rule III, § 2 (E).

76. Department of Labor and Employment, Amending the Implementing Rules of Book V of the Labor Code of the Philippines, DOLE D.O. No. 40-B-03 (Feb. 16, 2004).

77. *Id.*

78. *Id.* § 3.

of Rule III now embodies the Limited Legal Personality Principle; the local/chapter is only required to submit the names and addresses of its officers and its principal address to complete its legal personality.⁷⁹ The Non-Disclosure Rule is enunciated in Section 1 of Rule VIII, providing that petitions for certification elections are not required to disclose the names of the officers and members of chartered locals.⁸⁰

Requiring the submission of the certificate of creation as a condition precedent to participate in a certification election would mean disclosing the names of the local/chapter's officers or members at a stage when it is not required. As argued above, Article 234-A only requires the charter certificate (and nothing else), by virtue of limited legal personality, for filing a petition for certification election⁸¹ and the conduct thereof. Article 234-A further states that the local/chapter shall be entitled to "all other rights and privileges of a legitimate labor organization," to complete its legal personality, upon submission of the enumerated documents, which include the names of local/chapter's officers or members.⁸² The counterpart provision of Article 234-A in the Implementing Rules is Section 2 (E) of Rule III which replicates the former.⁸³ Section 8 of Rule IV of D.O. No. 40-03 states that a chartered local shall only be deemed registered and vested with (complete) legal personality upon the issuance of its certificate of creation of chartered local.⁸⁴

In sum, Article 234-A vests limited legal personality for filing a petition for certification election and the conduct thereof by virtue of a charter certificate. Complete legal personality, which entitles the chartered local to all the rights and privileges of a legitimate labor organization, comes upon the issuance of the certificate of creation of chartered local by virtue of the Implementing Rules, and one of the requirements for complete legal personality under Article 234-A is the submission of the names of the local/chapter's officers or members.

As was stated, requiring the submission of the certificate of creation as a condition precedent to participate in a certification election, as required by Section 13 of Rule VIII, would violate the Non-Disclosure Rule. The names of the local/chapter's officers or members are not required to be disclosed before and during the conduct of the certification election. That much is granted by limited legal personality under Article 234-A. It is only

79. DOLE D.O. No. 40-03, rule III, § 2 (E).

80. *Id.* rule VIII, § 1.

81. LABOR CODE, art. 234-A.

82. *Id.*

83. DOLE D.O. No. 40-03, rule III, § 2 (E).

84. *Id.* rule IV, § 8.

after the certification election, when the chartered local would complete its legal personality under Article 234-A that the names are required to be disclosed and submitted.

In a statement by the Trade Union Congress of the Philippines (TUCP),⁸⁵ this discrepancy was emphasized: “A chartered local still has to submit the charter certificate and supporting documents; and therefore its officers still risk undue harassment from employers.”⁸⁶ The Non-Disclosure Rule is meant to safeguard the identity of the officers and members of a local chapter.⁸⁷ The absence of this rule would open the “floodgates for possible interference with restraint or coercion of employees in the exercise of their right to self-organization.”⁸⁸ Moreover, the Rule guards against the *temptation* of the employer to “interfere with, restrain[,] or coerce” the local chapter’s officers and members in exercising their constitutional right to self-organization and collective bargaining.⁸⁹ While it may seem counterintuitive to hold an election without knowing exactly who the personalities are, the policy of the law is to insulate the certification election proceeding from possible outside pressures. This is precisely why there is anonymity where there should be transparency.

C. *The Employer as Bystander Doctrine*

That there is a need to insulate the certification electoral proceeding is highlighted by R.A. No. 9481 where it is clarified that the role of the

85. The TUCP is the largest confederation of labor federations in the Philippines. It was established on Dec. 14, 1975 and now stands as the “most representative labor center in the country,” composed of members from multiple sectors and industries, including government employees, overseas Filipino workers, informal sectors, drivers, urban poor, youth groups, cooperatives, alliances, coalitions, and other civil society groups. Trade Union Congress of the Philippines, About Us, *available at* <http://www.tucp.org.ph/about-us> (last accessed May 23, 2011).

The TUCP is committed to “developing critical cooperation with the government, advocating for an economic policy which promotes national interest and international competitiveness, and further strengthening internal and international solidarity and cohesiveness among the union[s] of the world.”
Id.

86. Trade Union Congress of the Philippines, TUCP Statement before the ILO Mission, September 2009, *available at* <http://www.tucp.org.ph/news/index.php/2009/09/tucp-statement-before-the-ilo-mission-september-2009/> (last accessed May 23, 2011) [hereinafter TUCP Statement].

87. 2 JOSELITO G. CHAN, THE LABOR CODE OF THE PHILIPPINES ANNOTATED 470 (4th ed. 2009).

88. *Id.*

89. *Id.* at 492.

employer is that of a mere bystander.⁹⁰ The decisions of the Supreme Court in *Toyota Motor Phils. Corp. Workers' Association (TMPCWA) v. Court of Appeals*,⁹¹ *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*,⁹² and *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment (DOLE)*⁹³ highlight the importance of Article 258-A.

In *Toyota Motor*, the Supreme Court reversed the Court of Appeals' grant of injunctive relief to Toyota Motor Phils. Corporation (the Company) — the employer.⁹⁴ While the focal point of the decision was the merits of the injunctive writ, the *ratio* reveals that resolving such was intricately linked with the merits of the parties' arguments.⁹⁵ In a certification election ordered by the DOLE, the Toyota Motor Phils. Corporation Workers' Association (TMPCWA) claimed victory as the exclusive bargaining representative over the Company's Bicutan and Sta. Rosa Plants.⁹⁶ The TMPCWA's success in part came from the ineligibility of 105 employees, who were considered by the Supreme Court in *Toyota Motor Phils. Corporation v. Toyota Motor Phils. Corporation Labor Union*⁹⁷ as supervisory and not rank-and-file employees.⁹⁸ The Company filed a handwritten manifestation to the Mediator-Arbitrator challenging the results of the election and urging her to consider the 105 challenged votes.⁹⁹ In the end, the Mediator-Arbitrator certified TMPCWA as the exclusive bargaining agent and excluded the questioned votes, holding that these employees were supervisory employees.¹⁰⁰

The Company's attempts to reverse the result of the certification election passed through the administrative machinery of the DOLE, which

90. See LABOR CODE, art. 258-A.

91. *Toyota Motor Phils. Corp. Workers' Association (TMPCWA) v. Court of Appeals*, 412 SCRA 69 (2003).

92. *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*, 428 SCRA 524 (2004).

93. *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment (DOLE)*, 457 SCRA 730 (2005).

94. *Toyota Motor*, 412 SCRA at 89-90.

95. *Id.* at 87.

96. *Id.* at 72.

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

98. *Toyota Motor*, 412 SCRA at 72-73.

99. *Id.* at 73-74.

100. *Id.* at 75-76.

consistently ruled in favor of TMPCWA.¹⁰¹ Finding no relief at the administrative level, the Company filed a petition for certiorari under Rule 65 before the Court of Appeals, with a plea for injunction.¹⁰² The Court of Appeals granted the injunction and ordered the parties from enforcing the rulings of the administrative bodies.¹⁰³ The Supreme Court ruled that

[b]y granting the [Company's] plea for a writ of preliminary injunction, the [Court of Appeals], in effect, ruled that the [Company] is the real party-in-interest, and not merely a bystander in the certification election; hence, has a material and substantial right sought to be protected. Thus, through the issuance of the writ, the CA may be perceived as having prejudged the principal issue before it.¹⁰⁴

In short, the Court upheld TMPCWA in maintaining that the Company, or the employer, is merely a bystander in certification election proceedings.

In *SMC Quarry*, Titan Megabags Industrial Corporation, the employer, opposed the petition for certification election filed by SMC Quarry 2 Workers Union–February Six Movement (FSM) claiming absence of employee–employer relationship.¹⁰⁵ According to Titan Megabags, the employees claimed to be represented by FSM were under the employ of Stitches Multi-Purposes Cooperative (SMC), an independent contractor hired by Titan Megabags to sew multi-purpose industrial bags.¹⁰⁶ Notwithstanding this claim, the Mediator–Arbiter and the DOLE Secretary both authorized the certification election.¹⁰⁷ Also, the DOLE Secretary denied Titan Megabags' motion for reconsideration for being filed seven days late.¹⁰⁸

Titan Megabags had more success when it brought its case to the Court of Appeals, setting aside the order for the conduct of the certification election.¹⁰⁹ Nevertheless, the Supreme Court reversed the ruling of the Court of Appeals and held that the order of the DOLE Secretary has become final since Titan Megabags failed to seasonably interpose its motion for reconsideration — a jurisdictional flaw fatal to its cause.¹¹⁰ Relying on

101. *Id.* at 77–81.

102. *Id.* at 81.

103. *Id.* at 83.

104. *Toyota Motor*, 412 SCRA at 88.

105. *SMC Quarry*, 428 SCRA at 526.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 527.

National Federation of Labor v. Laguesma,¹¹¹ the Court ruled that “the remedy of an aggrieved party in a Decision or Resolution of the Secretary of the DOLE is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for certiorari.”¹¹²

The Court, however, went on to say that even if Titan Megabags filed its motion for reconsideration on time, the Appellate Court should not have entertained its appeal based on the Employer as Bystander Doctrine.¹¹³ Once a petition for certification election is filed, “it is good policy of the employer not to have any participation or partisan interest in the choice of the bargaining representative.”¹¹⁴ The Court also recognized that “[w]hile employers may rightfully be notified or informed of petitions of such nature, they should not, however, be considered parties thereto with an *inalienable right to oppose it*.”¹¹⁵ That Titan Megabags’ appeal should fail even if it was seasonably interposed merely because it is an employer opposing a certification election proceeding seems to suggest that even a special civil action for certiorari will not grant an employer relief. This seems to negate the Court’s earlier pronouncement in *National Federation of Labor*.¹¹⁶

In *Laguna Autoparts*, Laguna Autoparts Manufacturing Corporation (Laguna Autoparts) challenged the legal personality of the Laguna Autoparts Manufacturing Corporation Obrero Pilipino-Lamcor Chapter, thereby derailing its petition for certification election.¹¹⁷ The local/chapter was accused of not complying with documentary requirements.¹¹⁸ While the Mediator-Arbitrator initially dismissed the petition for certification election, the Secretary of Labor reversed her subordinate’s decision.¹¹⁹ This was subsequently upheld by the Court of Appeals and the Supreme Court.¹²⁰

Because *Laguna Autoparts* was decided before R.A. No. 9481, the High Court held, under the rules then in effect, that the local/chapter possessed full legal personality entitling it to the certification election.¹²¹ As to the issue of Laguna Autoparts’ standing to oppose the certification election, the Court

111. *National Federation of Labor v. Laguesma*, 304 SCRA 405, 419-20 (1999).

112. *SMC Quarry*, 428 SCRA at 527.

113. *Id.* at 527-28 (citing *Toyota Motor*, 412 SCRA at 87).

114. *Id.* at 528.

115. *Id.* (emphasis supplied).

116. *See Laguesma*, 304 SCRA at 419-20.

117. *Laguna Autoparts*, 457 SCRA at 733.

118. *Id.*

119. *Id.* at 734-35.

120. *Id.* at 735 & 743.

121. *Id.* at 739-41.

cited *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*¹²² and reiterated its pronouncement, thus —

[T]his Court notes that it is petitioner, the employer, which has offered the most tenacious resistance to the holding of a certification election ... This must not be so, for the choice of a collective bargaining agent is the sole concern of the employees. The only exception to this rule is where the employer has to file the petition for certification election pursuant to Article 258 of the Labor Code because it was requested to bargain collectively, which exception finds no application in the case before us. Its role in a certification election has aptly been described in *Trade Unions of the Philippines and Allied Services (TUPAS) v. Trajano*, as that of a mere bystander. It has no legal standing in a certification election as it cannot oppose the petition or appeal the Med-Arbiter's orders related thereto.¹²³

An examination of these three cases reveal that even before the enactment of R.A. No. 9481, the Court has recognized and maintained that the employer is a mere bystander in a petition for certification election. The employer is relegated to a position of a facilitator or even a clerk in aiding the Med-Arbiter in the conduct of the electoral proceedings. It is exactly this long-standing rule that is threatened by the right of an employee to intervene in a petition for certification election. The legislative intent of insulating the certification election process from outside pressures may be circumvented and the electoral process undermined.

As the employer may no longer interfere directly with the certification election process, he may do so indirectly through an employee. An employee may be coerced or paid by his employer to make use of this right and derail or delay the certification election process. Furthermore, employees themselves may maliciously do the same even without the coercion or influence of the employer. Employee-members of losing or minority unions competing for the role of exclusive bargaining representative may do exactly just that. With just this provision, the Med-Arbiter may be swamped with complaints from several employees, which would take time to distinguish valid claims from spurious ones.

The TUCP statement pointed to this provision as “contrary to law,” saying this provision “enables any employee, with implicit influence or coercion from employers, to disrupt Petition for Certification of election proceedings, and therefore counters the principle of ‘Employer as Bystander’ as stipulated under [Article 258-A] of [R.A. No.] 9481.”¹²⁴

122. *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*, 263 SCRA 68, 81-82 (1996).

123. *Id.* (citing *Trade Unions of the Philippines and Allied Services v. Trajano*, 120 SCRA 64, 65-66 (1983)).

124. TUCP Statement, *supra* note 86.

The right to intervene is granted by D.O. No. 40-F-03 to the employee “for the protection of his individual right.”¹²⁵ This begs the question as to what right of the employee is endangered by a petition for certification election. The Supreme Court has, however, expounded on the nature of a certification election. Recently, in *Samahan ng Mga Manggagawa sa Samma-Lakas sa Industriya ng Kapatirang Haligi ng Alyansa (Samma-Likha) v. Samma Corp.*,¹²⁶ where the respondent Corporation moved to dismiss the petitioner union’s petition for certification election for failure to attach a certificate of non-forum shopping, the Court ruled that “a certificate of non-forum shopping refers to complaints, counter-claims, cross-claims, petitions[,] or applications where contending parties litigate their respective positions regarding the claim for relief of the complainant, claimant, petitioner[,] or applicant.”¹²⁷ The certification election proceeding, however, “even though initiated by a ‘petition,’ is not litigation but an investigation of a non-adversarial and fact-finding character.”¹²⁸ The Court further stated that

[s]uch proceedings are *not predicated upon an allegation of misconduct requiring relief, but, rather, are merely of an inquisitorial nature.* The [Med-Arbiters] functions are not judicial in nature, but are merely of an investigative character. The object of the proceedings is not the decision of any alleged commission of wrongs nor asserted deprivation of rights but is merely the determination of proper bargaining units and the ascertainment of the will and choice of the employees in respect of the selection of a bargaining representative. The determination of the proceedings does not entail the entry of remedial orders to redress rights, but culminates solely in an official designation of bargaining units and an affirmation of the employees’ expressed choice of bargaining agent.¹²⁹

As stated by the Court above, there are no litigants or claimants with opposing rights to a certification election. It can even be argued that the entire process is for the benefit of every employee since the exclusive bargaining agent is chosen through a democratic process, with or without the intervention of the DOLE. There is, therefore, no real right of the employee to protect in a petition for certification election. There is also no opponent from whom a right is protected. Perhaps, the only possible danger which the employee risks in the process is disenfranchisement,¹³⁰ but that

125. DOLE D.O. No. 40-03, rule VIII, § 1.

126. *Samahan ng Mga Manggagawa sa Samma-Lakas sa Industriya ng Kapatirang Haligi ng Alyansa (Samma-Likha) v. Samma Corp.*, 581 SCRA 211 (2009).

127. *Id.* at 216.

128. *Id.*

129. *Id.* (citing *Bulakeña Restaurant & Caterer v. Court of Industrial Relations*, 45 SCRA 87, 95 (1972)) (emphasis supplied).

130. *See National Federation of Labor v. The Secretary of Labor*, 287 SCRA 599 (1998).

comes during the election proper and not during the filing of the petition. What is accomplished by this Provision in the Rules, inserted by D.O. No. 40-F-03, is not the protection of any employee's right, but the opening of the certification election proceedings to possible delay.

IV. ADMINISTRATIVE LAW PRINCIPLES APPLIED

The DOLE is the “primary policy-making, programming, coordinating[,] and administrative entity of the Executive Branch of the government in the field of labor and employment.”¹³¹ Its roles in government include the “maintenance of industrial peace by promoting harmonious, equitable, and stable employment relations that assure equal protection for the rights of all concerned parties.”¹³² To this end, the Secretary of Labor and Employment is authorized to “[f]ormulate policies, guidelines, rules and regulations[,] and other issuances necessary to carry out [DOLE] policies, plans, programs[,] and projects”¹³³ and “[i]ssue orders, directives, rules and regulations[,] and other issuances to carry out labor and employment policies, plans, programs[,] and projects.”¹³⁴ The Labor Code also mandates the DOLE to “promulgate the necessary implementing rules and regulations.”¹³⁵

Nevertheless, administrative rules and regulations designed to implement a public policy must pass the test of validity. They must be “germane to the objects and purposes of the law; that the regulations be not in contradiction with, but conforms to, the standards that the law prescribes; and that they be for the sole purposes of carrying into effect the general provisions of the law.”¹³⁶ The administrative regulations also neither can extend nor restrict the provisions of the statute.¹³⁷ Finally, it must always be remembered that the statute is superior to an administrative regulation — that in case of conflict, the former prevails over the latter and the latter cannot amend or repeal the former.¹³⁸ It is by these standards that the provisions requiring local/chapters' certificate of creation as a condition precedent for participating in certification election and providing for an employee's right to intervene in certification election proceedings are void.

131. DE LEON & DE LEON, JR., *supra* note 29, at 50-51.

132. Reorganizing the Ministry of Labor and Employment and for Other Purposes [Reorganization Act of the Ministry of Labor and Employment], Executive Order No. 126, § 4 (c) (1987).

133. *Id.* § 6 (b).

134. *Id.* § 6 (c).

135. LABOR CODE, art. 5.

136. RUBEN E. AGPALO, STATUTORY CONSTRUCTION 42 (6th ed. 2009).

137. *Id.*

138. *Id.* at 42-43.

A. The Rule Extends or Modifies the Statute

Requiring the certificate of creation of a local/chapter before allowing it to participate in a certification election is not in R.A. No. 9481. Also, the employee's right to intervene in certification election proceedings is neither in the previous versions of the Implementing Rules nor in R.A. No. 9481. Article 234-A only requires the charter certificate for limited legal personality.¹³⁹ Disclosing the names of the local chapter's officers and members is only required by the Labor Code for acquiring other rights and privileges of legitimate labor organizations — not for filing a petition for certification election and the conduct thereof.¹⁴⁰

It is axiomatic in Administrative Law that a rule will be deemed void if it extends or modifies a statute.¹⁴¹ The DOLE “may not make a rule or regulation that alters, restricts or enlarges the terms of a legislative enactment, or engrafts additional requirements on the statute which were not contemplated by the legislature.”¹⁴² Moreover, the rule must be a mode of carrying the purpose of the law into effect, and not an addition or extension to it.¹⁴³

By requiring a local/chapter to submit its certificate of creation as a condition precedent for participating in a certification election and providing for an employee's right to intervene in petitions for certification election, the DOLE has effectively extended or modified R.A. No. 9481, adding an extra step to a process set by the statute and granting employees a right not given by the law. Even worse, this new right has the effect of undermining the certification election process and circumventing the intent of the law. The insulation encased into the firmament of the process was sliced off by this administrative legislation.

B. What Cannot be Done Directly Cannot be Done Indirectly

The local chapter is forced to disclose the names of its members and officers for it to participate in a certification election. This is prohibited before and during the certification election process. It is only after the results, presumably when the local chapter will complete its legal personality, when the names are required to be disclosed. Disclosure is meant for the protection of the local chapter, its officers, and members. Requiring the certificate of creation before the conduct of the certification election would reveal what the law prohibits from forceful disclosure.

139. LABOR CODE, art. 234-A.

140. *Id.*

141. DE LEON & DE LEON, JR., *supra* note 29, at 101.

142. *Id.*

143. *Id.* at 101.

Article 258-A of the Labor Code now makes it explicit that the employer is prohibited from opposing or even intervening in a petition for certification election.¹⁴⁴ The employer is limited to being notified of such a petition and assisting the Mediator-Arbiter by submitting the list of employees on the payroll.¹⁴⁵ As upheld in a long line of decisions,¹⁴⁶ the Supreme Court has made it clear even before R.A. No. 9481 that the employer has no inherent and inalienable right to oppose a petition for certification election. Allowing the rule in question to persist would be opening a way around a guarded gate. The fears of the TUCP would become actualized, and the Employer as Bystander Doctrine would only exist in paper.

It is axiomatic in Statutory Construction¹⁴⁷ that “what cannot, by law be done directly cannot be done indirectly.”¹⁴⁸ *Quando aliquid prohibetur ex directo, prohibetur et per obliquum.*¹⁴⁹ Where the law prohibits doing a certain thing, all acts indirectly promoting said illegal act cannot be countenanced, for to do so would render the law ineffective and nugatory.¹⁵⁰

C. The Rule is Contrary to the Spirit and Intent of the Law

As pointed out before, R.A. No. 9481 takes great pains to insulate and expedite the certification election process. Hence, the law grants limited legal personality,¹⁵¹ implements a non-disclosure policy,¹⁵² and relegates the

144. LABOR CODE, art. 258-A.

145. *Id.*

146. *See, e.g., Laguna Autoparts*, 457 SCRA 730; *Samahan ng mga Mangagawa sa Filsystems v. Secretary of Labor and Employment*, 290 SCRA 680 (1998); *San Miguel Foods, Inc.*, 263 SCRA 68; *Barbizon Philippines, Inc. v. Nagkakaisang Supervisor ng Barbizon Philippines, Inc.-NAFLU*, 261 SCRA 738 (1996); *Philippine Scouts Veterans Security and Investigation Agency v. Torres*, 224 SCRA 682 (1993); *Phil. Telegraph and Telephone Corp. v. Laguesma*, 223 SCRA 453 (1993); *Hercules Industries, Inc. v. Secretary of Labor*, 214 SCRA 129 (1992); *California Manufacturing Corporation v. Laguesma*, 209 SCRA 606 (1992); *Rizal Workers Union v. Ferrer-Calleja*, 186 SCRA 431 (1990); *Belyca Corporation v. Ferrer-Calleja*, 168 SCRA 184 (1988); *Consolidated Farms, Inc. v. Noriel*, 84 SCRA 469 (1978).

147. Construction is the “art or process of discovering and expounding the meaning and intention of the authors of the law, where that intention is rendered doubtful by reason of the ambiguity in its language or of the fact that the given case is not explicitly provided for in the law.” *See* AGPALO, *supra* note 136, at 48.

148. *Id.* at 176.

149. *Id.*

150. *Id.*

151. LABOR CODE, art. 234-A.

employer as a bystander.¹⁵³ That a petition for cancellation of union registration does not suspend or prevent the filing of a petition for certification election reinforces this insulated and expedited process.¹⁵⁴ Forcing the disclosure of names before the certification election and granting employees a right to intervene which may confound the certification election process does nothing to further the ends of R.A. No. 9481.

A rule will be held “invalid if it conflicts with the governing statute.”¹⁵⁵ The requirement of the certificate of creation and the employee’s right to intervene clearly comes into conflict with R.A. No. 9481, for arguments already put forth above.

The aforementioned provisions introduced by D.O. No. 40-F-03 confound the purpose and intent of R.A. No. 9481. The Limited Legal Personality Principle, Non-Disclosure Rule, and Employer as Bystander Doctrine work not only to insulate and expedite the certification election procedure, but also to protect union officers and members from undue pressures from employers or competing unions. By requiring the certificate of creation before the certification election, the DOLE creates a situation inimical to unionization. By granting the employee a right to intervene, the DOLE creates a situation of circumvention. As stated before, a rule will be held invalid if it conflicts with the governing statute.¹⁵⁶ This also modifies the statute in that it confuses limited legal personality with full legal personality — that in itself is also invalid.¹⁵⁷

V. CONCLUSION & RECOMMENDATION

R.A. No. 9481 sought to strengthen workers’ constitutional right to self-organization, expedite unionization, insulate the certification electoral process, and promote trade unionism. This Note concludes that there are provisions which need to be amended, changed, or clarified. The two areas for concern pointed out by this Note illuminate how R.A. No. 9481 is frustrated by D.O. No. 40-F-03.

The requirement imposed by the rules for local chapters to submit their certificates of creation before they can participate in the certification election is contrary to principles established by R.A. No. 9481. Under the law, limited legal personality is conferred on the local or chapter upon being issued a charter certificate by its parent national union or federation. This

152. *Id.* arts. 256 & 257.

153. *Id.* art. 258-A.

154. *Id.* art. 238-A.

155. DE LEON & DE LEON, JR., *supra* note 29, at 101.

156. *Id.*

157. *Id.* at 100.

limited personality is not only for purposes of filing a petition for certification election, but also extends to the actual conduct of the certification election. A literal interpretation of the law that undermines legislative intent must give way to a reasonable interpretation. To hold otherwise would unnecessarily delay the process and betray the expeditious nature of the law. It will also violate the Non-Disclosure Rule.

The Non-Disclosure Rule makes it unnecessary and immaterial to disclose a local chapter's officers or members for purposes of filing the petition for certification election. For a certificate of creation to be issued, the local or chapter would have to reveal and file the names of their officers or members. If the Rule prevails accordingly, the locals or chapters would risk disclosure in order to proceed with the election, when the very purpose of the Non-Disclosure Rule is to insulate them from undue risks and pressures, and that their labor organization may proceed with the election in the most expeditious way possible.

The employee's right to intervene granted by the Rules has the potential to circumvent the Employer as Bystander Doctrine — the doctrine which states that employers have no inherent right to intervene or oppose a petition for certification election, and therefore, employers are not real parties in interest. The right is granted by the Rules in order to protect the individual right of the employee. Nevertheless, a certification election is a non-adversarial proceeding, more akin to an investigation and fact-finding mission. There are no opposing rights, no divergent claims, and no right of the employee to protect.

There have been at least two efforts to amend Article 234-A. Article 234-A provides for the two-step processes of limited legal personality and complete legal personality for chartered locals.¹⁵⁸ TUCP Party-List Rep. Raymond C. Mendoza filed H.B. No. 6965¹⁵⁹ and H.B. No. 7018¹⁶⁰ during the 14th Congress to amend Article 234-A, which essentially resolves this Note's first area of concern regarding the certificate of creation requirement. In fact, H.B. 7018 states that it would serve to "void the unconscionable current practice of authorizing any employee the right to intervene in a certification election and requiring a local/chapter to submit to the DOLE

158. LABOR CODE, art. 234-A.

159. An Act Establishing an Efficient System to Strengthen Workers' Right to Self-Organization and Collective Bargaining, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, H.B. No. 6965, 14th Cong., 3d Sess. (Nov. 5, 2009).

160. An Act Strengthening Union Organization and Disallowing Cancellation of Union Registration, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, H.B. No. 7018, 14th Cong., 3d Sess. (Nov. 26, 2009).

its certificate of creation at least five (5) working days before the date of certification election.”¹⁶¹ The two bills remove the documentary requirements for chartering and automatically grant a chartered local legal personality to file a petition for certification election *and* legal personality to enjoy all rights and privileges of legitimate labor organizations by merely presenting its charter certificate.¹⁶²

The Author, however, does not propose such a radical solution. Moreover, TUCP Rep. Mendoza’s propositions seem to allow too much freedom in chartering, which is contrary to public policy.¹⁶³ It is recommended that the entire provisions of Sections 10 and 13 (e) in Rule VIII be deleted entirely, thus removing the requirement of a local/chapter’s certificate of creation as a condition precedent for participating in a consent or certification election. The Limited Legal Personality Principle and the

161. *Id.* explan. n.

162. H.B. No. 6965, § 3 & H.B. No. 7018, § 4. Section 3 of H.B. No. 6965 is entitled “Removing the Documentary Requirements for Registration of Local Chapters.” Section 4 of H.B. No. 7018 is entitled “Removing the Documentary Requirements for Chartering and Creation of Local Chapters.” Both Bills amend Article 234-A by providing —

Article 234-A. Chartering and Creation of Local Chapter. — A duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality from the date it was issued a charter certificate *and shall be entitled to the rights and privileges of a legitimate labor organization upon submission of its charter certificate to the Department of Labor and Employment.*

Id. (emphasis supplied).

163. In *San Miguel Corporation Employees Union*, the Supreme Court recognized the public policy to “foster the free and voluntary organization of a strong and united labor movement.” Nevertheless,

[t]he mandate of the Labor Code in ensuring strict compliance with the procedural requirements for registration is not without reason. It has been observed that the formation of a local or chapter becomes a handy tool for the circumvention of union registration requirements. Absent the institution of safeguards, it becomes a convenient device for a small group of employees to foist a not-so-desirable federation or union on unsuspecting co-workers and pare the need for wholehearted voluntariness, which is basic to free unionism. As a legitimate labor organization is entitled to specific rights under the Labor Code and involved in activities directly affecting public interest, it is necessary that the law afford utmost protection to the parties affected.

San Miguel Corporation Employees Union, 533 SCRA at 153 (citing *Progressive Development Corporation v. Secretary, Department of Labor and Employment*, 205 SCRA 802, 813 (1992)).

Non-Disclosure Rule in R.A. No. 9481 and D.O. No. 40-03 must be given effect. For the second area of concern, it is recommended that the last paragraph of Section 1 in Rule VIII, which provides for an employee's right to intervene in a petition for certification election, be removed altogether. It does nothing but cause concern for labor groups and potentially delay the certification election process.

The beauty of administrative rule-making is that rules are easily amended than black letter law.¹⁶⁴ Mistakes and adjustments in guidelines and policy may simply be adjusted with corresponding notices and publications. The heads of administrative agencies need not wait for a court resolution declaring a provision void or unconstitutional; they may immediately remedy infirm or invalid rules. It is hoped that the two areas of concern outlined by this Note will undergo simple amendments in order to give effect to the purpose and intent of R.A. No. 9481 and the public policy to foster "free and voluntary organization of a strong and united labor movement."¹⁶⁵

164. DE LEON & DE LEON, JR., *supra* note 29, at 96.

165. *San Miguel Corporation Employees Union*, 533 SCRA at 153.