Dating Tubig sa Lumang Tapayan: Should Labor Relations Law Be Transformed?

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INTRODUCTION

A typical *bahay kubo*[1] had an earthen knee-tall jar used for storing water for washing, called a *tapayan.* The perennial sidekick of the bamboo ladder entrance and the ubiquitous inhabitant of the back porch (*batalân*),[2] this

1. *Bahay Kubo* (nipa hut) is a native Filipino structure made of dried leaves and light wooden sticks. These structures are commonly found in provincial areas where, historically speaking, rural life was modest and was reduced to its bare essentials.

2. *See* Penelope V. Flores, *The Multifunctional Palayók*, MANILA BULL. USA, July 13, 1995. Whenever you come up a house, polite manners necessitate that you wash your muddled feet. Ergo, the water jar and the "tabó" (water dipper) are just the right implements. In addition, the attached back-porch "*batalân*" serves as the out-bathhouse where there are several "*tapayans.*"

implement accommodated great amounts of water used to prepare for and maintain oneself in the pure and idyllic comforts of the rural Filipino home. Fetching water from the source and filling up *tapayans*, whether done by an able member of the household or a persevering suitor undergoing *paninilbihan*,[3] stood for devotion to the courted maiden and cooperation with the courted maiden's family. In this old-fashioned style of courtship, the *tapayan* itself became a "positive conduit"[4] for those virtues of devotion and cooperation.

The act of "filling up" the law also intimates legislation as a positive conduit for Filipino norms and moral values. The congressional duty to "make law" compartmentalizes Filipino life insofar as it may be divided into different facets, such as: civil relations, commercial transactions, and punishment of deviant behavior – allocated areas which are to be "filled" and encapsulated in laws that serve as a common understanding of rules in our ordered society.

Laws as vessels of rules are, of course, not immutable. As norms and values are shaped by internal and external changes, laws become vulnerable to reform or repeal. When developments hinder a proper understanding or enforcement of a law, calls for legislative review arise.

Such is the backdrop for recent calls to amend the Labor Code of the Philippines. A 2002 General Survey on Labor Organizations by the Bureau of Labor and Employment Statistics (BLES) indicates that respondents from 167 labor federations and 10 national labor centers clamor for amendments pertaining to labor-only contracting (49%); lesser mandatory requirements for union registration (29.3%); restriction on the authority of the Secretary of Labor and Employment to assume or certify labor disputes (29.3%); mandatory requirements for establishments to employ a large proportion of regular workers (27.2%); and granting cooperative members the right to self-organization (23.9%).[5]

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3. *Id.* "*Tapayans*" figured prominently in the old practice of "*paninilbihan,*" a form of courtship where the suitor works and labors in the household of the maiden. In this exercise, words are hardly spoken; actual labor functions as the desired trait. Filling up "*tapayans*" was the means towards the ultimate objective – winning the hand of the maiden.

4. *Id.*

5. Bureau of Labor and Employment Statistics, Highlights of the 2002 General Survey on Labor Organizations, April 2003. An unpublished report by the Bureau of Labor and Employment Statistics summarizing the general survey of 2002 (on file with the author).

On the other hand, Employers Confederation of the Philippines (ECOP) President Donald Dee[6] speaks of an "urgent need to amend (the Labor Code) because the business environment is now different."[7] A manifesto drawn by various business groups pointed out that many "concepts and features which were orthodoxy at the time of promulgation (of the Labor Code) three decades ago… have now become archaic, anachronistic, and rigid."[8] Hence, they call for more "flexibility to survive and compete in the global market with due regard to the promotion of decent work within the context of the Philippine labor market."[9]

Calls for amendments to the Labor Code have given rise to two proposed omnibus measures before the House of Representatives, namely House Bill Nos. 5996 and 6031. Insofar as these bills seek to amend the Book on Labor Relations in the Labor Code,[10] both measures submit line-by-line changes or modifications to existing provisions. Because of this detailed review approach, both measures substantially adhere to the basic framework of collective bargaining in Book V.

With the inclusion of Book V in the omnibus effort to review the Labor Code, the industrial relations system is the subject of scrutiny, rendering it important to consider socio-cultural, economic, political, and environmental factors.[11]

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6. The current president of ECOP is Atty. Rene Y. Soriano.

7. Max de Leon & Jonathan Vicente, *Labor Code in Need of Amendments, But…*, MANILA TIMES, *available at* www.manilatimes.net/others/special/2003/may/01/20030501spe1.html (last accessed Dec. 3, 2004).

8. *Manifesto of the Business Community on the Bills Establishing A New Labor Code*, *available at* http://www.ecop.org.ph/news/show_news.php?item=1065427672 (last accessed Dec. 2, 2004) [hereinafter Manifesto]. Signatories to the *Manifesto* include: the Employers' Confederation of the Philippines (ECOP), Philippine Chamber of Commerce and Industry (PCCI), Philippine Exporters Confederation, Federation of Philippine Industries, Federation of Filipino Chinese Chambers of Commerce and Industry, Makati Business Club, Chinese Filipino Business Club, American Chamber of Commerce and Industry, Management Association of the Philippines, and the Motor Vehicles Parts and Manufacturers of the Philippines.

9. *Id.*

10. A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice, Presidential Decree No. 442, (1974) [LABOR CODE], bk. V.

11. Maragtas A.V. Amante, Fundamental Framework of Industrial Relations System and Related Legislation in the ASEAN (Apr. 2, 2003) (unpublished discussion paper, on file with the author). This discussion paper was presented at a

This article presents the proposition that continued adherence to the primacy of collective bargaining in the "Labor Code for the 21st Century" sweeps the rug out of labor market and collective behavior assumptions that should form the basis of future labor-management relations. A detailed "line-by-line" review may mistake the forest for the trees, as it were, and miss the grand point of providing a truly reflective and responsive foundation for industrial peace.

Part I provides a "classical" framework of the institution of collective bargaining established under the Industrial Peace Act of 1953 and maintained in the Labor Code of 1974. Part II is a summary of proposed amendments to current labor relations law through House Bill Nos. 5996 and 6031. Part III presents an emergent dynamic framework for labor relations under the 1987 Constitution. Part IV presents basic empirical data on unions and administrative machinery, which maintain the institution of collective bargaining. Parts V and VI establish incongruities in affirming the primacy of collective bargaining under the classical framework vis-à-vis the emergent approach and basic empirical data. Part VII proposes a structural framework for the new Book on Labor Relations.

This endeavor is built around the premise that labor relations law should provide a positive conduit for the developmental aspirations of stakeholders in labor relations.

For purposes of this study, only portions seeking to amend Book V of the Labor Code in House of Representatives Bill Nos. 5996 and 6031 shall be discussed. Other matters involving overseas employment, working conditions, health and safety, and security of tenure are better addressed by pertinent agencies and the sectoral partners. The business community, for instance, has supported the provisions on apprenticeship and productivity gainsharing in House Bill No. 6031, also known as the COCLE bill.[12] There will no be attempt to undermine such expressions of principled support.

I. THE DREAM OF PRIMACY: REVISITING CLASSICAL FOUNDATIONS

A. Industrial Peace Act

Current State policy enunciated in Book V of the Labor Code proclaims the "*primacy* of collective bargaining" as a mode of settling disputes between

Regional Policy Workshop, ASEAN Programme on Industrial Relations, 2 April 2003, Tokyo, Japan. "Industrial relations" concerns work processes and results of the employment relationship at the level of the workplace, the industry and society as a whole.

12. Manifesto, *supra* note 8.

labor and management.[13] First introduced by the legislature in the Industrial Peace Act (IPA),[14] collective bargaining was meant to eliminate the causes of industrial unrest[15] and promote sound, stable industrial peace and the advancement of the general welfare, health and safety, and the best interests of employers and employees.[16]

Pascual[17] observed that the advent of collective bargaining was a clear departure from the governmental interventionist approach established under the Court of Industrial Relations Act,[18] where the Court of Industrial Relations (CIR) was clothed with the broad jurisdiction to compulsorily arbitrate questions or issues between labor and a labor union, between labor union and management, and between management and labor. With the enactment of the IPA, the power and authority of the CIR was diminished considerably and labor relations law in the Philippines moved into a period of autonomy.[19]

When the chief sponsor of then Senate Bill No. 423 took the floor to introduce his proposed measure, he proudly proclaimed that providing the "greatest freedom" to responsible labor unions and employers for resolution of their differences through collective bargaining was the fundamental basis of the IPA.[20] Sen. Manuel C. Briones of Cebu also noted that this was the experience in the United States and other parts of the world.[21]

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13. LABOR CODE, art. 211 (a).

14. An Act to Promote Industrial Peace and for Other Purposes, Republic Act No. 875 (1953).

15. R.A. No. 875, § 1 (a).

16. *Id.* § 1 (b).

17. CRISOLITO PASCUAL, LABOR AND TENANCY RELATIONS LAW 18 (1966).

18. Commonwealth Act No. 103 (1936).

19. PASCUAL, *supra* note 17, at 17.

20. RECORD OF THE SENATE 1184 (May 13, 1952) (The pertinent excerpt from Senator Briones' sponsorship speech reads: "*El principio fundamental de este proyecto, tal como lo propone el Comité ahora, es lo que llamamos 'collective bargaining'. Deja que las partes mismas sean las que resuelvan sus dificultades con la intervención minima possible del Tribunal Industrial. Se ha visto en la experience de los Estados Unidos y otras partes del mundo que, cuando se da mayor libertad a las sociedades obreras y a los patronos para resolver sus diferencias, lo consiguen más fácilmente que poniéndolas en manos de un tribunal. Otro principio encerrado en este proyecto es el de la organización de unions obreras responsables, al hacer completamente imposible la existencia de los llamados 'company union' que impiden la organización de unions obreras responables.*").

21. *Id.*

When the Conference Report from a joint congressional committee on disagreeing provisions returned to the Senate for consideration, Senator Primicias boldly declared that the measure[22] practically liberated labor from the status of subjugation, and that the promotion of "really free labor unions" and the interests of the laboring class were legislatively enshrined.[23]

Collective bargaining essentially meant a process for labor and management to settle issues respecting terms and conditions of employment.[24] Within the framework created under the IPA, this economic relationship could only exist between a duly-selected or designated labor union or association *dealing with*[25] the employer.[26] For this purpose, interference with the right to self-organization was considered an *unfair labor practice*, the prevention of which was placed under the jurisdiction of the CIR.[27] And through the enumerated rights and conditions of union membership,[28] the IPA leaned heavily towards the promotion of responsible unionism.

To eliminate the causes of industrial unrest and promote a sound and stable industrial peace, a ban on governmental intervention in union-management relations was necessary. If there had been no such ban, the IPA would have been inconsistent in recognizing unionization and collective bargaining.[29] As a general rule, therefore, courts, commissions, or boards did not have jurisdiction to issue any restraining order or injunction in any case involving or growing out of a labor dispute.[30] More important, no court had the power to set wages, rates of pay, and hours and conditions of employment, to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the employer and employee by means of an agreement freely entered into through collective bargaining.[31]

A regulatory regime was installed to provide a system of registration of labor organizations,[32] as well as an electoral mechanism to select an exclusive

22. The House of Representatives version was House Bill No. 825.

23. RECORD OF THE SENATE 733 (May 5, 1953).

24. R.A. No. 875, § 1 (b).

25. *Id.* § 2 (e).

26. PASCUAL, *supra* note 17, at 19.

27. R.A. No. 875, §§ 4-5.

28. *Id.* § 17.

29. *Id.*

30. *Id.* § 9 (a).

31. *Id.* § 7.

32. *Id.* § 23.

bargaining representative.[33] There was also a system of compulsory arbitration carried over from Commonwealth Act No. 103 through the CIR, though this was the dispute settlement machinery that supported the collective bargaining framework.

With the recognition of the workers' right to strike, a conciliation service,[34] the possibility of conducting labor-management conferences,[35] and the formation of an Advisory Labor-Management Council[36] were provided to promote industrial peace and voluntary adjustment of disputes.

Finally, governmental intervention was imposed in labor disputes in industries indispensable to the national interest, after the President certifies the same to the CIR.[37]

Several reasons were invoked to explain the adoption of collective bargaining as an industrial relations policy in 1953. For instance, it was mentioned that powerful unions thought they would get a better deal under a bilateral framework. Foreign employers supported the shift from compulsory arbitration because they began to realize the disadvantage of a foreign entity facing a Filipino labor union before a Filipino arbitrator.[38]

Other reasons, such as those cited by Calderon were: rising discontent, exposure of Filipino labor leaders to the concepts of collective bargaining, exposure of Filipino labor leaders to the concepts of collective bargaining, the International Labor Organization conventions and American influence.[39] A more general view was advanced by Wurfel when he broadly attributed the shift to the interaction of economic, political, and ideological forces:

> One of these forces is related to the rate of competing economic interests with the appearance of a sizeable group of entrepreneurial elite to challenge the predominant power position of the landed elite after the war. Since the elite maintained political and economic power, competition has also largely been limited among sub-groups of the elite. In this particular case, the landed elite, although somewhat disinterested in the type of industrial relations policy that should prevail, found it politically advantageous to support legislation designed to help urban workers. On the other hand, the

33. *Id.* § 12.

34. *Id.* § 18.

35. *Id.* § 20.

36. *Id.* § 21.

37. *Id.* § 10.

38. ELIAS RAMOS, DUALISTIC UNIONISM AND INDUSTRIAL RELATIONS 43 (1990).

39. *Id.*

> urban enterpriser seeks to dislocate the rural power base of his political rivals by means of agrarian reform.[40]

A sobering observation was made by another author, Ramos, with his reference to a Philippine labor market characterized by an abundant supply of common labor "whose bargaining power is *nil*."[41] He noted that under such circumstances trade unions did not possess the bargaining leverage to offset the apparent disadvantage of wage-setting under compulsory arbitration.[42]

B. The Labor Code of the Philippines

The enactment of Presidential Decree No. 442 in 1974 saw the codification of labor laws, with the essence of collective bargaining in the IPA transplanted to Book V of the Labor Code of the Philippines under the title "Labor Relations." Azucena defined *labor relations* as "the interaction between the employer and employees or their representatives, and the mechanism by which the standards and other terms and conditions of employment are negotiated, adjusted and enforced."[43] He further postulated that, as in political democracy, the crux of labor relations is the process, that is, how the rights and duties are exercised, how the agreements are reached, how differences are resolved, and how the relationship is enhanced."[44]

The Labor Relations policies of the State were outlined as follows:

> (a) To promote free collective bargaining, including voluntary arbitration, as a mode of settling labor or industrial disputes;
>
> (b) To promote free trade unionism as an agent of democracy, social justice and development;
>
> (c) To rationalize and restructure the labor movement in order to eradicate inter-union conflicts;
>
> (d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;
>
> (e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes; and

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40. *Id.* at 44.

41. *Id.*

42. *Id.*

43. CESARIO A. AZUCENA JR., THE LABOR CODE WITH COMMENTS AND CASES 8 (1999 ed.).

44. *Id.*

(f) To ensure a stable but dynamic and just industrial peace.[45]

Under Book V, free collective bargaining remained the centerpiece of the Philippine industrial relations system. Therefore, unions as they were known under the IPA remained under a framework that respected the workers' right to self-organization.[46] There are provisions on union registration,[47] rights and conditions of union membership,[48] unfair labor practices,[49] collective bargaining procedure,[50] and strikes and lockouts.[51]

For dispute settlement, the National Labor Relations Commission (NLRC), initially created under Presidential Decree No. 21[52] in 1972, was formally installed as the quasi-judicial compulsory arbitration arm[53] alongside the Bureau of Labor Relations.[54]

Book V went through a series of amendatory pieces of legislation, culminating in the Herrera-Veloso Law of 1989.[55] State labor relations policy was substantially amended to include two salient approaches: the declared "primacy" of collective bargaining, and the participation of workers in decision and policy-making processes affecting their rights, duties, and welfare. The latter concept of "workers' participation" could have been seen as a departure from the basic collective bargaining framework, but the legislature was serious in its insertion of the word "primacy" – indeed the

45. LABOR CODE, art. 211.

46. *Id.* bk V, tit.V.

47. *Id.* tit. IV, ch. I.

48. *Id.* tit. IV, ch. II.

49. *Id.* tit. VI.

50. *Id.* tit. VII.

51. *Id.* tit. VIII.

52. Creating a National Labor Relations Commissions and for Other Purposes, Presidential Decree No. 21 (1972), repealed by the LABOR CODE.

53. LABOR CODE, bk. V, tit. II.

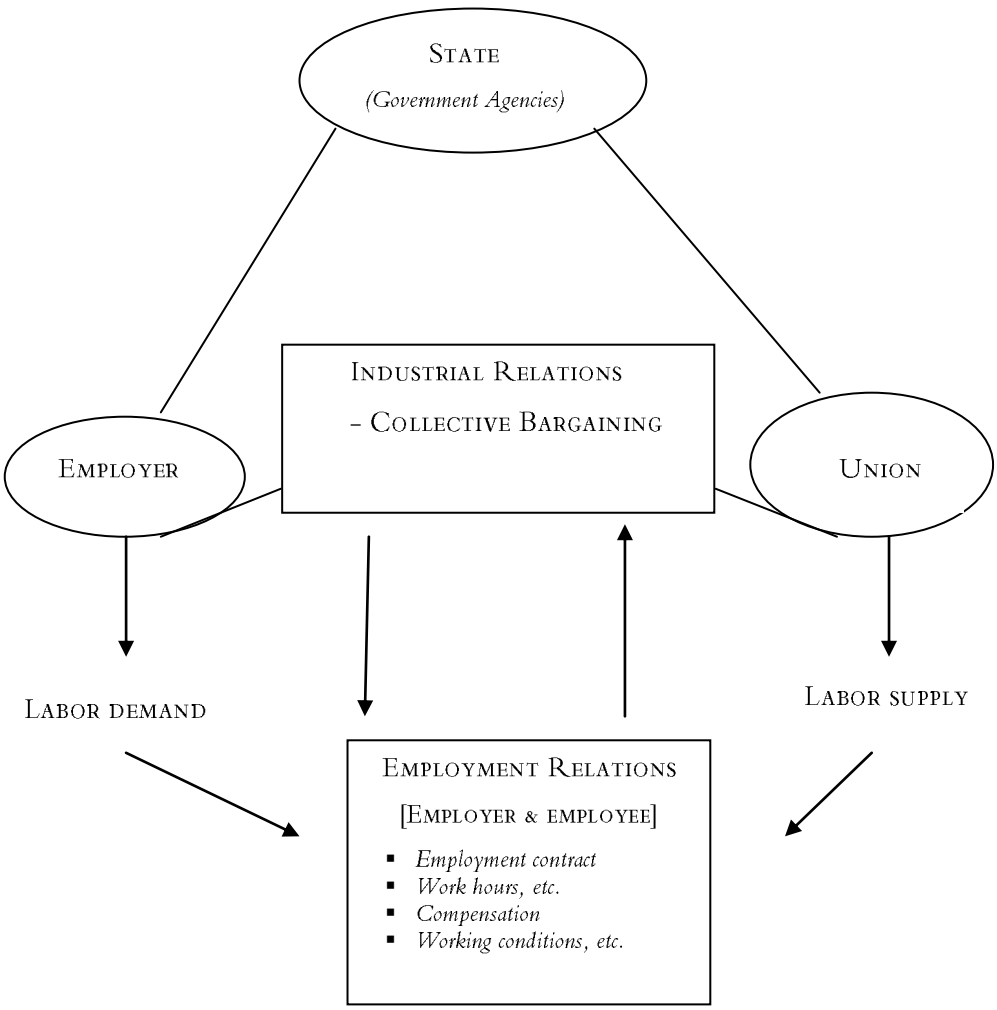
54. *Id.* tit. III.

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

amendments in 1989 even set to strengthen the institution of collective bargaining.[56]

Figure 1 illustrates the Philippine industrial relations model, which places collective bargaining in the center of the conceptualized system in relation to employment relations and the labor market.[57]

FIG. 1 – INDUSTRIAL RELATIONS AND THE EMPLOYMENT RELATIONSHIP



56. Item 1 (B), Briefing Paper on R.A. No. 6715 (1989).

57. Amante, *supra* note 11.

II. BILLS OF CHANGE

A. Background

As of writing, there are two proposed measures in the House of Representatives that seek to amend Book V in its entirety: House Bill Nos. 5996 and 6031, both filed with the 12th Congress. House Bill No. 5996 is principally authored by representatives from the party-list group *Bayan Muna*, namely Reps. Crispin Beltran, Satur Ocampo, and Liza Maza. House Bill No. 6031, on the other hand, is principally authored by the Chairman of the House Committee on Labor and Employment, Rep. Roseller F. Barinaga from Zamboanga del Norte.

The authors of House Bill No. 5996 have dubbed it as "an alternative labor code from the viewpoint of the workers." This measure includes provisions strengthening workers' trade union and democratic rights.[58]

Representative Barinaga explained that HB No. 6031 was based on policy recommendations by the 1998-2001 Congressional Commission on Labor (LABORCOM), as well as the results of technical consultation meetings with stakeholders conducted by another congressional body created from 2001-2003 which was labeled as the Congressional Oversight Committee on Labor and Employment (COCLE),[59] thus the bill being commonly known as the "COCLE Bill."[60]

Representative Barinaga noted that Book V amendments pertain to the area of labor relations, ensuring workers the fullest possible exercise of their constitutional rights to self-organization, collective bargaining, peaceful concerted activities, including the right to strike. It likewise seeks to provide speedy labor justice by strengthening the administrative machinery for the expeditious settlement of labor disputes.[61]

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58. House Committee of Labor and Employment, *Measures establishing new labor code discussed, at* http://www.congress.gov.ph (last accessed Aug. 13, 2003).

59. *Id.*

60. *Id.*

61. *Id.*

B. State Policy

Both HB Nos. 5996 and 6031 proclaim that the labor relations system for the 21st century shall continue to guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.[62]

While both measures likewise provide workers the opportunity to participate in policy and decision-making processes affecting their rights and benefits,[63] the labor relations systems maintained by HB Nos. 5996 and 6031 essentially adhere to collective bargaining as a primordial mode of settling disputes.

In resolving disputes between labor and management, both measures invoke the "principle of shared responsibility" in the 1987 Constitution,[64] but the *Bayan Muna* version proposes that "workers cannot be forced or coerced into settling disputes through mere conciliation when their just demands are not satisfactorily met."[65]

An innovation introduced by both bills is the inclusion of tripartism in the provisions on State policy.[66] Both empower the Secretary of Labor and Employment to call for national, regional, or industrial conferences of representatives from government, workers, and employers to adopt voluntary modes to promote industrial peace.

C. Salient Features

As stated, both proposed measures generally maintain the primacy of collective bargaining in labor relations, traversing provisions on registration and cancellation, rights and conditions of union membership, unfair labor practices, collective bargaining, representation issues, grievance machinery, and strikes and lockouts.

Figure 2 is a comparison of the COCLE (HB No. 6031) and *Bayan Muna* (HB No. 5996) bills. Substantial differences arise in the field of

62. H.B. No. 5996, art. 167 (a); *cf.* H.B. No. 6031, art. 213 (a), 12TH Cong. (2003).

63. H.B. No. 5996, art. 167 (b); *cf.* H.B. No. 6031, art. 213 (b).

64. PHIL. CONST. art. XIII, § 3, ¶ 3: The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

65. H.B. No. 5996, art. 167 (c). 12TH Cong. (2003).

66. H.B. No. 5996, art. 168-A; *cf.* House Bill No. 6031, art. 214, 12TH Cong. (2003).

eligibility of managerial employees to form unions, failure to submit reportorial requirements as a ground to cancel union registration, criminalization of unfair labor practices, nature of conciliation and grievance machinery proceedings, and procedures in strikes or lockouts. The *Bayan Muna* version generally favors greater union coverage, punitive anti-union measures, compulsory grievance and conciliation efforts, and a less-regulated exercise of the right to strike. The COCLE measure proposes a more qualified approach with respect to these matters.

Another interesting difference between the two bills is the treatment of the NLRC. The COCLE version is replete with provisions to strengthen the NLRC.[67] The *Bayan Muna* version, however, is silent on the matter, although there are numerous references to compulsory arbitration.

FIG. 2 – COCLE/BAYAN MUNA BILLS COMPARISON

Subject	*COCLE*	*Bayan Muna*
Coverage of Right to Self-Organization	▪ All employees have the right to self-organization, including employees of government-owned and controlled corporations organized under the Corporation Code. ▪ Managerial employees not eligible to join, form or assist any union	▪ Same as COCLE ▪ Managerial employees may join
Registration and Cancellation of Unions	▪ Registration of union of workers under a particular	▪ Same as COCLE

67. Among the proposed changes include an increase in Commission membership, non-confirmation by the Commission on Appointments, and jurisdiction over money claims arising from employer-employee relations involving an amount exceeding fifty thousand pesos (P50,000.00).

	employer, workers' associations, national or industry unions, federations, confederations or trade union centers ▪ Acquisition of legal personality upon compliance with requirements ▪ Requirements: 20% of employees in bargaining unit if independent union ▪ Cancellation of registration: failure to comply with reportorial requirements, acts of misrepresentation, false statement vitiating the consent or free choice of members, "cabo" system, substandard agreements, accepting attorney's or negotiation fees, checking off special assessments without written authorization, de facto or voluntary dissolution	▪ Upon submission of enumerated requirements ▪ 20% for unions whether independent or chartered local ▪ Same as COCLE, except failure to comply with reportorial requirements is not a ground to cancel; also only 30% of members of bargaining unit have the right to initiate action
Election of Union Officers	Intervals of not more than 3 years	Same as COCLE
Unfair Labor Practices	▪ Retain existing list, with criminalization only of union-busting and ULP of	▪ Retain existing list, criminalization with increased penalty

	labor organizations ▪ Include violation of duty of representation by entering into sub-standard CBAs	▪ Same as COCLE
Collective Bargaining	▪ Term of agreement – 3 yrs. ▪ Conciliation -- with National Conciliation and Mediation Board (NCMB) ▪ No contempt power in conciliation	▪ Same as COCLE ▪ Conciliation -- with BLR ▪ Contempt power in conciliation
Representation Issue	▪ Request for the conduct of a certification election ▪ BLR to conduct the certification election ▪ Appeal of PCE rulings to BLR	▪ Same as COCLE ▪ Department shall conduct certification election ▪ Same as COCLE
Grievance Machinery	▪ Grievances not settled to voluntary arbitration	▪ Grievances not settled to compulsory arbitration
Strikes and Lockouts	▪ Notice requirement prior to actual strike ▪ Assumption of jurisdiction in essential services	▪ No notice requirement ▪ Assumption of jurisdiction in disputes involving hospitals, schools or a public utility
Compulsory Arbitration	Strengthening of the NLRC	Silent on the NLRC, though bill makes references to compulsory arbitration

III. DYNAMIC FOUNDATIONS

A. "Afford Protection to Labor Plus" Clause

A critical look into House Bill Nos. 5996 and 6031 should begin with a reference to the supreme manifestation of the sovereign will of the Filipino people – the 1987 Constitution.

Section 3, Article XIII of the 1987 Constitution reads:

> The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

The "afford protection to labor" clause was transplanted from the 1935 and 1973 Constitutions. This mandate underscores the need to exercise the police power of the State and enact measures to protect the working class. But what is significant with the latest version of the clause is its elaboration on such protective measures. "Afford protection to labor plus" encompasses the collective bargaining framework for the organized workforce, as well as collective negotiation, enhancement of working conditions, and a participatory and representational framework in the unorganized segment. The Chair of the Committee on Social Justice in the 1986 Constitutional Commission, Commissioner Ma. Teresa F. Nieva, alluded to 21 million Filipinos then comprising the labor force, inclusive of unionized workers

estimated at 5.1 percent of the total number.[68] She emphasized that those in the non-unionized sector did not enjoy the rights of organized labor.[69]

B. Collective Bargaining and Negotiation and Participation in Policy and Decision-Making Processes

The immediate reference to collective bargaining and the rights to self-organization and peaceful concerted activities after the "afford protection to labor" clause are indicative of a recognition of collective bargaining as a mode of labor-management relations at the enterprise level. But to the term "collective bargaining" was appended the concept of "collective negotiations." Commissioner Nieva explained this innovation:

> We have also added a new concept in Section 4, not only of collective bargaining but also collective negotiations which would extend the right to bargain for the protection of the rights of the unorganized sector....[70]

During the Constitutional Commission deliberations on the proposed expanded "afforded protection to labor" clause, a healthy exchange transpired between Commissioners Nieva, Foz, and Aquino. The interchange resulted in the recognition of the innovativeness of the process of "collective negotiations."[71]

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68. II RECORD OF THE CONSTITUTIONAL COMMISSION 607 (1986).

69. *Id.*

70. *Id.*

71. *Id.* at 614-15. The interchange quoted in full provides:

> MR. FOZ. ... I have another question. Section 4, line 4 says: "collective bargaining and negotiations?" Do they amount to the same thing?
>
> MS. NIEVA. Yes. Collective negotiations are especially intended for the great majority of workers who are not covered by CBAs. We feel that there are different ways of negotiating for the protection of their rights. Generally, when we say collective bargaining, we refer to those that are unionized and covered by CBAs. As mentioned here, those constitute only about 3.1 percent of the total labor force of the country, so we felt that there was to be worked out some other way of negotiating for the rights of these greater majority of people who are not covered by CBAs.
>
> MR. FOZ. In other words, in a private firm for instance, the employees may group among themselves or organize an association short of calling their association a labor union?
>
> MS. NIEVA. Yes, there are different ways.

The second half of the equation is the phrase "participate in policy and decision-making processes affecting their rights and benefits as may be provided by law." When asked about the manner in which "participative rights" embodied in this more elaborate version of the "afford protection to labor" clause shall be carried out, Commissioner Nieva asserted that, aside form collective bargaining, other methods take various forms of labor-management cooperation as in other countries.[72] She added that specific modes shall be provided by the legislature, along with different companies who can work out different ways of using voluntary methods of negotiations.[73] As Commissioner Aquino summarized:

> MR. FOZ. They can negotiate with management as to terms and conditions of employment.
>
> MS. NIEVA. That is right.
>
> MR. FOZ. Short of organizing themselves into a formal labor union or organization.
>
> MS. NIEVA. These may be preliminary steps that they may take.
>
> MR. FOZ. I recall a provision under our existing Labor Code precisely encouraging, without making it mandatory, the formation of what it calls "employees committees." These are voluntary groups of employees to be set up within different companies. The only unfortunate thing about that provision is that it gives management the initiative to form such employees committees. But then, perhaps the law involving the matter could provide that the initiative should come from the employees themselves to avoid any management influence in the running of such committees.
>
> MS. NIEVA. That is right. This can be left again to the legislature to work out.
>
> MS. AQUINO. May I clarify the concept of collective negotiation. It is an innovative concept introduced to us by the Institute of Labor and Management Relations of U.P. The specific concern of this concept is, first to address the difficulties of the non-unionized employees and laborers and second, that of the government employees. These two groups would suffer the same difficulty in not having a specific collective bargaining agent to represent them. So the process of collective negotiation is to offset that disadvantage already. The idea is to recognize it and provide a constitutional mandate for the process of collective negotiation.
>
> MR. FOZ. Thank you.

72. *Id.* at 640.

73. *Id.*

> One may notice that on line 4, page 2, there is a provision for collective bargaining and negotiations. The concern here is to provide for unorganized workers. So, this is the forum within which we can contemplate statutory implementation of measures that would accommodate the need of ununionized workers in their collective negotiation with management.[74]

The basis of this constitutional participative approach was revealed in the following exchange:

> MR. GARCIA. If I may add, the reason why guaranteeing the rights of workers to self-organization is important is, one of its consequences is that once workers get organized, the possibility of participation becomes more real and effective. And I think that recognition is rather crucial in this entire arrangement.
>
> MR. ROMULO. Fine. So, the base is really the first part of the sentence; that is, self-organization.[75]

In the classical sense of labor relations under the collective bargaining framework, the right to self-organization was exercised to form unions for purposes of collective bargaining. Under the emergent participative approach, the right to self-organization is invoked to promote labor-management cooperation in non-unionized establishments.

But Commissioner Aquino appeared to have balked in further discussions on participation in policy and decision-making processes when issues on mandatory profit-sharing and worker representation in corporate boards of directors were raised. Initially, she clarified that there was no intention to provide for such mandatory profit-sharing.[76] To this, Commissioner Monsod commented that the participatory approach did not mean mandatory representation of workers in corporate boards of directors.[77]

Four days after Commissioner Monsod's clarification however, the matter on board representation was again raised by Commissioner Regalado.[78] Commissioner Ople responded by explaining the works councils framework in Europe. Commissioner Quesada elaborated on three corporate levels of decision-making where employees could participate. Commissioner Villegas pointed out the existence of employer-employee

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74. *Id.*

75. *Id.*

76. *Id.* at 609.

77. *Id.* at 615.

78. *Id.* at 757.

councils that discuss workers' issues in a "non-confrontational" manner.[79] Commissioner Romulo inquired as to whether "participation in policy and decision-making processes" shall be rendered compulsory in the Constitution. The response from the representative of the Committee on Social Justice was as follows:

> MS. AQUINO. First, we shall address the clarification of the position of the Committee on the matter of participation in policy- and decision-making. Some of the Commissioners may have perceived a measure of difference and conflict in the interpretation of the Committee, so this now will be our submission in interpreting the phrase 'participation in policy and decision-making processes affecting their interests.' What is it? What it is in terms of processes has been previously defined in response to the query of Commissioner Romulo. We were referring to the grievance procedures, conciliation proceedings, voluntary modes of settling labor disputes and negotiations in free collective bargaining agreement. *What it is*, pertaining to the scope and substance, would now be the rights and benefits of workers. In other words, the focus of participation is now introverted to the rights and benefits of the workers. *What it is not* refers to the practice in the industrialized nations in Europe and in Japan referring to codetermination which pertains to charting of corporate programs and policies.
>
> However, the other matters mentioned by Commissioner Quesada which she just read for purposes of informing the Commission are already rightfully covered in the negotiations of the collective bargaining agreement. So just to eliminate the confusion, these are the parameters contemplated by 'participation in policy and decision-making processes.'
>
> The Committee is proposing an amendment to delete the word 'interest' on the first page and substitute the words RIGHTS AND BENEFITS if only to clarify the intention of the Committee on this matter.[80]

Commissioner Aquino clarified once and for all that "codetermination" in the context of participation of workers in corporate planning, the charting of corporate management and acquisition of property was not in the mind of the Committee. "Participation in policy and decision-making processes" meant grievance procedures, conciliation proceedings, voluntary modes of settling labor disputes and negotiations in free collective bargaining.[81] This may have severely blunted the role of labor-management cooperation in the expanded "afford protection to labor " clause, but consider this subsequent exchange:

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79. *Id.* at 758.

80. *Id.* 759-60 (emphasis supplied).

81. *Id.*

> MR. FOZ. The Commissioner does not foresee the passage of a law under this provision which would allow workers to be represented in the board insofar as certain matters are involved?
>
> MS. AQUINO. We envision that as the evolution of a process but not arising from a compulsory mandate from the Constitution.
>
> MR. FOZ. But a law may be passed?
>
> MS. AQUINO. Congress has the inherent right to pass legislation.
>
> MR. FOZ. Thank you.[82]

Even prior to voting, Commissioner Foz raised the apprehension that curtailment of the participatory approach would "not provide for anything new," given Commissioner Aquino's restrictive analysis.[83] Bishop Bacani, however, reiterated the evolutionary nature of the workers' right to participation, leading towards mandatory workers' representation in corporate planning and management.[84]

What can certainly be gleaned from the above-stated excerpts are the following: (1) the balanced approach towards collective bargaining *and* negotiation; (2) concern over representation of employees in non-unionized enterprises; (3) a participatory and representational framework to be designed by the legislature, in view of the addition of the phrase "as may be provided by law"; and (4) expansion or evolution of the participatory and representational framework "as may be provided by law."

While the framers of the 1987 Constitution envisioned mandatory workers' representation in corporate planning and management as the pinnacle of participation and collective negotiation, has labor relations evolved from a participatory approach involving grievance machinery and other voluntary modes of settling disputes to a "middle ground" based on an institutionalized participatory and representational framework? Figure 3 illustrates the starting and finishing points of the framers' participatory and representational framework. If we have not arrived at a point where we can give the workers a mandatory right to be represented in boards of directors or corporate planning and management, is it possible to seek these middle grounds of workers' participation and representation?

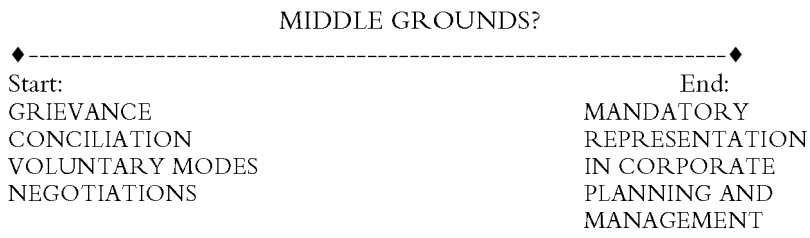
---

82. *Id.* at 760.

83. *Id.* at 769.

84. *Id.*

FIG. 3 – SPECTRUM OF PARTICIPATION AND REPRESENTATION AS DETERMINED BY THE CONSITUTIONAL FRAMERS



Another interpretation, and by no means lesser in nature, is to expand Commissioner Aquino's explanation of the participatory and representative framework. Hence, the areas of "grievance," "conciliation," "voluntary modes of settling labor disputes," and "negotiations in free collective bargaining" could be given a broader context to encompass all other methods of labor-management cooperation.

In all cases, the legislature must determine the occurrence of an evolutionary process, and calibrate the current scope of the constitutional participatory and representational framework. These constitute the dynamism of the foundations of our current labor relations system.

C. Legislative Response

As stated, Congress responded by including concepts of "collective bargaining and negotiation" and the participative approach -*i.e.*, participation of workers in policy and decision-making processes affecting their rights and benefits - in the enumeration of State policies in labor relations. Workplace cooperation in non-unionized establishments received attention through the inclusion of voluntary formation of labor-management committees.[85] Nevertheless, collective bargaining without a doubt still stood as the dominant statutory mode of labor-management relations.

85. R.A. No. 6715, § 33. (Paragraphs (a), (b), (c), (f), (h) and (i) of Article 277 of the same Code, as amended, is further amended to read as follows: ... (h) In establishments where no legitimate labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace. The Department of Labor and Employment shall endeavor to enlighten and educate the workers and employers on their rights and responsibilities through labor education with emphasis on the policy thrusts of this Code.)

IV. THE REALITY OF NON-PRIMACY

A. Union Density and CBA Coverage

The face of collective bargaining is shaped in terms of union density and coverage of collective bargaining agreements. Figure 4 shows the number of labor unions in the country.

FIG. 4 – LABOR ORGANIZATIONS
(AS OF SEPTEMBER 2003)

Kind	*Number*	*Membership*
Federations/Labor Centers	180	-
Private Sector Unions (Independent/Chartered Locals)	10,214	3,698,000
Total	10,394	-

(Source: Factbook on Labor and Employment, Bureau of Labor and Employment Statistics)

Figure 5 shows current CBA coverage:

FIG. 5 – CBA COVERAGE
(AS OF SEPTEMBER 2003)

Number of collective bargaining agreements	2,770
Workers covered by CBAs	549,000

(Source: Factbook on Labor and Employment, Bureau of Labor and Employment Statistics)

Union and CBA coverage appear to be paltry amounts, but when taken in the light of data on the Philippine labor force, a different picture emerges. Figure 6 is a menu of union density indicators:

FIG. 6 -- UNION DENSITY AND CBA COVERAGE INDICATORS

Density in terms of:	*Density (CBA coverage)*
Wage and salary workers	22.98 (3.41)
Non-agricultural labor force	17.86 (2.65)
Employed labor force	12.39 (1.84)
Labor force	10.81 (1.60)

(Source: Factbook on Labor and Employment, Bureau of Labor and Employment Statistics)

With wage and salary workers numbering 16,089,000,[86] union density is at 22.98% for the formal sector. With a labor force of 34,206,000,[87] union density is at 10.81%. With an employed labor force of 29,858,000,[88] union density is at 12.39%. With 20,701,000 members of the non-agricultural labor force,[89] union density is at 17.86%.

A *total* of 10,214 unions and 2,770 CBAs reveal a union to CBA ratio of 4:1,[90] 14.85% of union members are covered by a collective agreement. This means that only one of seven union members is covered by a CBA.[91] Bitonio surmised that these figures tend to reinforce two key inferences:

> One is that inactive and minority unions are accumulating. The other is that enterprise bargaining units are characterized by a multiplicity of

86. Bureau of Labor and Employment Statistics, Factbook on Labor and Employment, 3 (2003) [hereinafter Factbook]. This Factbook had updates until September 2003. Data on wage and salary workers were released by the National Statistics Office (NSO) in July 2003.

87. *Id.*

88. *Id.*

89. *Id.* The number was computed by subtracting the number of workers in the agriculture, hunting, and forestry industry (9,157,000) from the number of employed persons (29,858,000).

90. This figure has been rounded-off. The exact quotient is 3.6874.

91. This figure has been rounded-off. The exact quotient is 6.7359.

unions, giving rise to possible problems of multiple membership and inter-union rivalries.[92]

All told, a greater number of Filipino workers are not union members. An even greater number are not covered by any collective bargaining agreement. Approximately 26,160,000 working Filipino men and women are not covered by the collective bargaining framework under the Labor Code.

In addition, union organizing was also most prevalent in industries that do not have the greater share in the number of employed persons.

Figure 7 presents union density by industry group and the number of employed persons per industry:

FIG. 7 – UNION DENSITY BY INDUSTRY (AS OF APRIL 2003)

Industry	*Union Density Percent*	*Employed Persons Share*
Agriculture, Hunting and Forestry	4.89	30.7
Fishing	1.71	4.1
Mining and Quarrying	32.66	0.4
Manufacturing	35.06	10.1
Electricity, Gas and Water Supply	28.32	0.3
Construction	1.16	5.7
Wholesale and Retail Trade, Repair of Motor Vehicles, Motorcycles, and Personal and Household Goods	4.37	18.3
Hotel and Restaurant	7.28	2.6
Transport, Storage and Communication	14.90	7.9
Financial	15.21	1.0

92. Benedicto Ernesto R. 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 (2000).

Intermediation		
Real Estate, Renting and Business	8.88	2.4
Education	13.70	2.9
Health and Social Work	44.14	1.2
Other Community, Social and Personal Service	3.07	2.7

(Source: Bureau of Labor Relations and Current Labor Statistics [BLES] National Statistics Office [NSO])

The most highly unionized sectors are the health and social work, manufacturing, mining and quarrying, and electricity, gas and water supply industries. But unionizing is wanting in sectors where most Filipinos are employed, namely in the agricultural and wholesale and retail trade, repair of motor vehicles, motorcycles and personal and household goods sectors. This gains more significance in the light of the fact that employees in wholesale and retail trade represent one of the lowest-ranked sectors in terms of compensation per employee in the first quarters of 2002 and 2003.[93]

Be that as it may, union density in the Philippines remains one of the highest in Southeast Asia. Singapore with the highest per capita gross domestic product appears to be the most unionized country in the region.

Figure 8 shows union density numbers in selected ASEAN countries.

FIG. 8 – COMPARATIVE ASEAN UNION DENSITY

Country (Year)	*Union Density*
Cambodia (no year)	20-25%
Indonesia (no year)	9% labor force

93. Factbook, *supra* note 86, at 13.

	25% formal sector
Laos (no year)	4% employed persons
Philippines (2003)	10.81% labor force 12.39% employed persons 22.98% formal sector
Vietnam (no year)	9.82% employed persons
Malaysia (2001)	8.26% employed persons
Thailand (2000)	2-3% formal sector
Singapore (2002)	18% labor force

(Source: Available at http://www.fesspore.org [last accessed August 2003])

B. Union and CBA Coverage Growth

Growth rates in terms of unionization and CBA coverage reveal a bleaker collective bargaining picture. In terms of union and CBA coverage growth over the years, Figure 9 shows union growth rates over the last seven years:

FIG. 9 – UNION GROWTH RATES

Year	*Number*	*Growth Rate*	*Members (000)*	*Growth Rate*
1995	7882	8.36	3587	2.16
1996	8248	4.64	3611	0.67
1997	8822	6.96	3635	0.66
1998	9374	6.26	3687	1.43
1999	9850	5.08	3731	1.19
2000	10296	4.53	3788	1.53
2001	10924	6.10	3850	1.64
2002	11365	4.04	3917	1.74
2003 (JULY)	11601	2.08	3943	0.66

(Source: Bureau of Labor and Employment Statistics)

The number of unions have increased at an average of 6.78% per year from 1995 to July 2003. The number of members organized, however, only have an average eight-year growth rate of 1.30% per year.

As to number of registered unions per year, Figure 10 shows a list of averages from 1975 to June 2003.

FIG. 10 – AVERAGES OF REGISTERED UNIONS

Years	*Number*
1975-1979	173
1980-1984	167
1985-1989	428
1990-1994	578
1995-1999	409
2000-June 2003	378

(Source: Bureau of Labor and Employment Statistics)

There is a serious decline in unionization over the last eight years. The growth rates during this period hit an all-time post-Martial Law low. The last time union growth rates had been this dismal was between 1975-1979, when negative rates were registered under a regime that suppressed workers' political rights.

In the same manner, the average of 378 unions registered from 2000 to June 2003 is matched only by low numbers tallied during the Marcos era. Outside of Martial Law figures, the only other time when union registration went below 378 over a four- to five-year period was before the enactment of the Industrial Peace Act in 1953.[94]

The numbers are even more dismal in terms of members covered by unions registered. Seven of the last fourteen years have seen negative rates in terms of members under newly-registered unions. This indicates a patchy record relative to the number of workers organized on a yearly basis. Figure 11 illustrates this declining trend:

94. For more union registration data between 1946 to 1974, *see generally* LEOPOLDO J. DEJILLAS, TRADE UNION BEHAVIOR IN THE PHILIPPINES: 1946-1990 32 (1994).

FIG. 11 – WORKERS ORGANIZED PER YEAR

Year	*Number of Workers Organized*	*Percent Change*
1990	74,453	-4.44
1991	61,417	-17.51
1992	45,511	-25.90
1993	58,385	28.29
1994	69,862	19.66
1995	77,348	10.72
1996	33,738	-56.38
1997	28,671	-15.02
1998	34,919	21.79
1999	29,403	-15.80
2000	30,676	4.33
2001	55,533	81.03
2002	59,502	7.15
June 2003	19,524	-67.19

(Source: Bureau of Labor and Employment Statistics)

Bitonio maintained that the slackening growth rate in union membership may be due to persistent patterns in the Philippine labor market. He observed that the growth of the informal sector and members of the "atypical" labor force — part-time workers, workers covered by flexible employment arrangements, and workers employed in small enterprises with less than ten employees — have effectively excluded a great number of workers from collective bargaining.[95] Another viable explanation could be the number of workers kept out of the employed workforce altogether. As of July 2003, the army of the 4,348,000 unemployed[96] has hogtied the Philippines to a double-digit unemployment scenario (i.e., 12.7%), the highest in Asia with Sri Lanka a far second at 9.2%.[97]

95. Bitonio, *supra* note 92, at 135.

96. Factbook, *supra* note 86, at 2.

97. *Id.* at 23.

Unions also do not fare well in the "more reliable gauge" of their strength, namely the ability to conclude collective bargaining agreements and the number of workers covered by such agreements.[98]

Figure 12 shows CBA coverage growth rates from 1995 to June 2003:

FIG. 12 – CBA COVERAGE GROWTH RATES

Year	*Number*	*Growth Rate*	*Members (000)*	*Growth Rate*
1995	3264	-27.42	364	-31.58
1996	3398	4.11	411	12.91
1997	2987	-12.10	525	27.94
1998	3106	3.98	551	4.95
1999	2956	-4.83	529	-3.99
2000	2687	-9.10	484	-8.51
2001	2518	-6.29	462	-4.55
2002	2700	7.23	528	14.29
June 2003	2770	2.59	529	3.98

(Source: Bureau of Labor and Employment Statistics)

Growth rates in terms of CBAs registered from 1995 to June 2003 averaged -4.64% per year. In terms of membership coverage, average growth over the nine-year period was 1.71% per year.

The negative growth rate in CBA registration from 1995 to June 2003 is the lowest ever since the Labor Code was enacted in 1974. The same is true with the growth rate on CBA membership coverage.

Figure 13 indicates CBA registration from 1975 to June 2003.

FIG. 13 – AVERAGES OF REGISTERED CBAs

Years	*Number*
1975-1979	772
1980-1984	850

98. *Id.* at 132.

1985-1989	1396
1990-1994	1346
1995-1999	637
2000-June 2003	409

(Source: Bureau of Labor and Employment Statistics Bureau of Labor Relations)

Once again, raw numbers in terms of CBA registration have reached an all-time Labor Code low.

C. Subjects of Collective Bargaining: Wages and Security of Tenure

The law on collective bargaining defines the duty to bargain collectively as:

> [t]he performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment, including proposals for adjusting any grievances or questions arising under such agreement executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.[99]

The statutory subjects of bargaining are mainly wages, hours of work, and all other terms and conditions of employment, including proposals for adjusting grievances or questions arising under such an agreement. Azucena enumerates matters that are generally considered mandatory subjects of bargaining: (1) wages and other types of compensation; (2) working hours and working days, including work shifts; (3) vacations and holidays; (4) bonuses; (5) pensions and retirement plans; (6) seniority; (7) transfer; (8) layoffs; (9) employee workloads; (10) work rules and regulations; (11) rent of company houses; and (12) union security arrangements. [100]

A survey of 155 collective bargaining agreements conducted by Professor Divina Edralin of De La Salle University revealed that subjects of bargaining could commonly be divided into economic and political issues.[101] The economic issues are comprised of the following:

> (1) Salaries and wages, which includes provisions concerning across-the-board wage increase and premium payment for time worked like overtime, and night differential; (2) Job and wage scales, which includes the number

99. LABOR CODE, art. 252.

100. AZUCENA, *supra* note 43, at 275.

101. DIVINA M. EDRALIN, COLLECTIVE BARGAINING IN THE PHILIPPINES 185 (2003)

> of job levels, base rate of lowest level, and wage gaps; (3) Health and safety benefits, including provisions on medical and dental clinics, emergency, medical material or medicine, annual general check-up, group life and accident insurance, hospitalization, and sleeping quarters/washroom/lockers, etc.; (4) Leaves, including bereavement leave, birthday leave, emergency leave, maternity and paternity leaves, sick leaves, vacation leaves and special leaves; (5) Post employment benefits such as retirement, separation and disability pay; and (6) Other benefits, which are either monetary (*e.g.* Christmas/year-end bonus, mid-year bonus, service/longevity awards, no-absence incentives, service charge distribution, burial assistance, and signing bonus) non-monetary (*e.g.* rice subsidies, free uniforms, free meals, Christmas party, training and development of employees) benefits.[102]

On the other hand, the political issues in CBAs comprised of the following:

> (1) union recognition/scope and coverage; (2) union security; (3) union rights and privileges; (4) job security/security of tenure; (5) employee discipline; (6) promotions and transfers; (7) hours of work; (8) grievance machinery; (9) labor-management relationship, including provisions on Labor-Management Committee/Council and strikes/lockouts; and (10) other provisions concerning the effectivity, validity and implementation of the contract.[103]

It was observed that 94% of CBAs in the survey stipulated an across-the-board increase either on a daily (40%) or monthly (60%) basis for a period of two to three years.[104]

For daily wage increases, the lowest minimum increase was P0.67 in the hotel industry, with the highest minimum rate at P24.00 from the mining and quarrying sector. The least daily maximum increase was at P4.00 from construction, while the highest daily maximum wage increase is P70.00 from the manufacturing sector.[105]

As for monthly increases, the lowest minimum amount was P20.90 from the manufacturing sector. The highest minimum rate was P1,795.00 from the electricity, water, and utilities group. The least monthly maximum increase was P500.00 in wholesale and retail trade and transportation sectors. The highest monthly maximum wage increase was P2,600.00 from the communication industry.[106]

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102. *Id.*

103. *Id.* at 216.

104. *Id.* at 186.

105. *Id.*

106. *Id.*

Bitonio lamented that collective bargaining does not set the benchmark for wages at particular occupational categories:

> The 'wage leader' as far as most enterprises are concerned is the minimum wage fixing machinery of the State. The minimum entry-level pay for most enterprises is the minimum wage fixed by the wage boards. A common strategy is for unions to use minimum wage orders as leverage for their collective bargaining demands. Some wage orders in fact mandate higher increases than CBA anniversary increases distorting enterprise-level wage structures. In this sense, the results of minimum wage-fixing tend to overlap with, if not render academic, collective bargaining goals and outcomes.[107]

Federation and labor center respondents to the 2002 General Survey of Labor Organizations, however, continued to sustain collective bargaining as the best method of determining wages.[108]

Collective bargaining also has not been proven to be the venue for discussing pertinent concerns of the labor movement. In the 2002 General Survey of Labor Organizations, contractualization was the top issue raised by federation and labor center respondents.[109] A considerable percentage (i.e., 58%) felt that contractualization undermines workers' security of tenure.[110] Flexibility was the issue for 51.1% of the respondents, with more than half explaining that this phenomenon poses a threat to the security of tenure of workers.[111]

The survey conducted by Professor Edralin, however, reveals that only 68% of CBAs contained stipulations on job security. Only 21% squarely dealt with a prohibition against labor-only contracting.[112] Compared to usual political subjects of bargaining such as bargaining unit coverage and check-off provisions, security of tenure is not a major issue on the negotiating table. The Supreme Court has, in fact, ruled that the matter of whether to farm out certain aspects of company operations could not be stipulated in a CBA arbitral award, as it is within managerial prerogative and does not fall within the ambit of the "participate in policy- and decision-making processes" clause in the Constitution and the Labor Code.[113]

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107. Bitonio, *supra* note 92, at 140.

108. *See supra* note 5.

109. *Id.* The bulk (92.4%) signified strong opposition to contractualization.

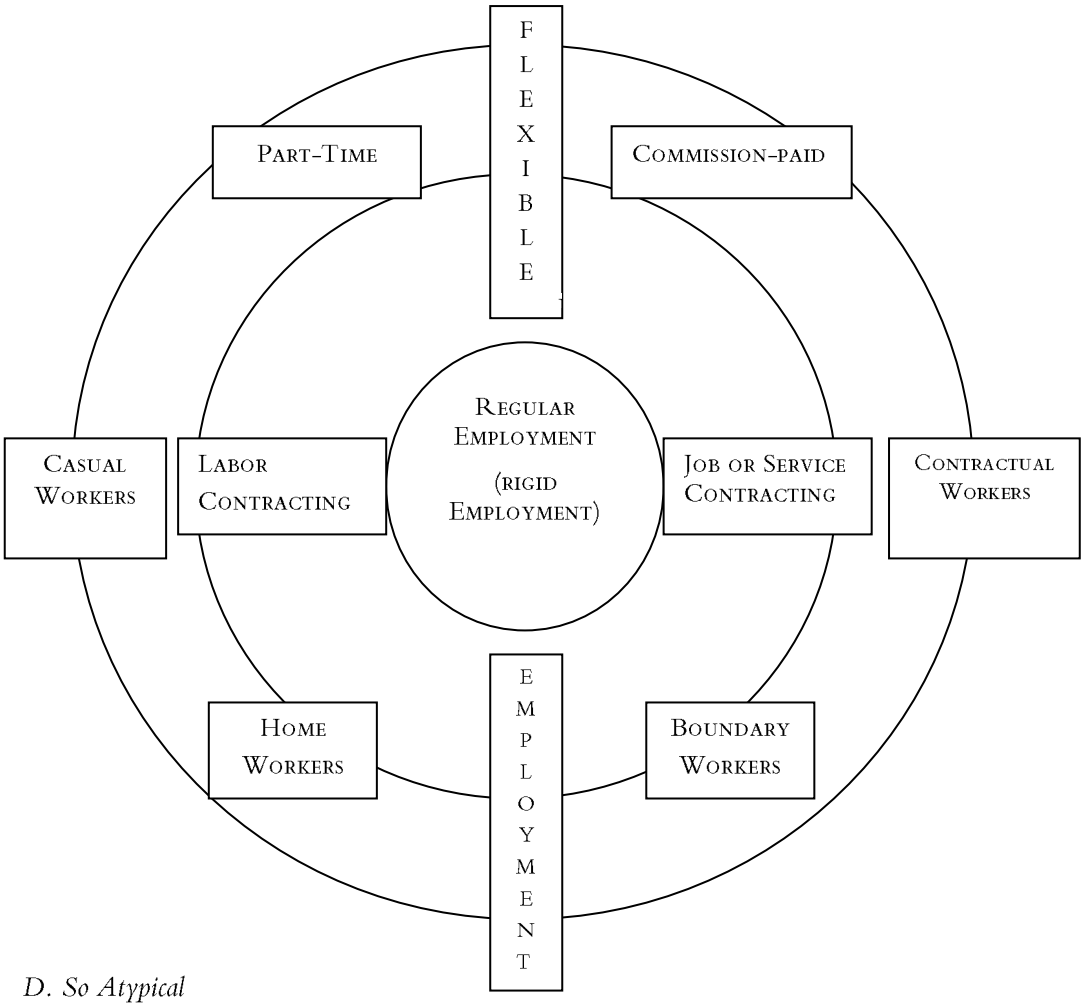
110. *Id.* Only five labor organizations responded favorably to the issue.

111. *Id.*

112. EDRALIN, *supra* note 101, at 217-18.

113. MERALCO v. Secretary of Labor, 302 SCRA 173 (1999).

FIG. 14 – NEW EMPLOYMENT RELATIONSHIP MODEL



D. So Atypical

A common provision with regard to union recognition or scope of coverage in collective bargaining agreements appears as follows:

> All regular rank-and-file employees excluding: temporary employees, supervisors, managers and other senior officers, executive secretaries performing highly technical and primarily confidential work.[114]

This presents a dilemma in terms of the economic plight of temporary, casual, contractual, and other contingent employees, dubbed by Macaraya as

114. EDRALIN, *supra* note 107, at 226.

"unprotected workers."[115] The traditional concept of regular employment defined as work undertaken by those whose functions are "usually necessary or desirable in the usual trade and business of the employer"[116] has given way to "atypical" or more flexible work arrangements utilized by domestic industries to cope with globalization.[117] A new employment relationship model has been put forward in Figure 14.

This model illustrates the dwindling number of regular employees, and the growth of flexible work arrangements, represented by contractual, part-time, casual, commission-paid, boundary, and home workers. With the decline in the number of regular workers, Macaraya concluded that "the effectiveness of collective bargaining as a mode to disperse wealth and to create demands in the market is now put in issue."[118]

Hyman explains that traditional trade unions were shaped by the existence of a "normal" employment relationship. This in turn shaped the trade union agenda such as better terms and conditions of employment, payment of a decent wage, and security of tenure.[119] But the emergence of atypical forms of employment has altered the terrain.

Traditional worker identities have been displaced and "transformatory ideals" have "lost their grip." Workers adopt a more practical approach towards unions, and this "makes practicable the new managerial efforts to capture workers' loyalties and displace identification with trade unionism."[120]

The shift from collectivism to individualism at the management level reflects "a serious moral and intellectual crisis" that unions must face. Unions must, therefore, mobilize "countervailing power resources." But they must bear in mind that:

> ...such resources consist in the ability to attract members, to inspire members and sympathizers to engage in action, and to win the support (at least neutrality) of the broader public. The struggle for trade union

115. Bach M. Macaraya, *The Labor Code and the Unprotected Workers, in* PHILIPPINE INDUSTRIAL RELATIONS FOR THE 21ST CENTURY: EMERGING ISSUES, CHALLENGES AND STRATEGIES 224 (2000).

116. LABOR CODE, bk. VI, art. 280.

117. Macaraya, *supra* note 115, at 224-25.

118. *Id.* at 231.

119. RICHARD HYMAN, AN EMERGING AGENDA FOR TRADE UNIONS? 2-3 (1999).

120. *Id.* at 4-5.

> organization is thus a struggle for the hearts and minds of people; in other words, a battle of ideas.[121]

In the United States, unions have "fashioned a variety of mechanisms to deal with the growth of the contingent workforce."[122] Innovative organizing techniques leading to the "Justice for Janitors" campaign in Silicon Valley proved successful. The Service Employment International Union (SEIU) organized building owners (instead of contractors), and used strong public pressure to ensure that they hired unionized janitorial contractors.[123]

Prof. Charles Heckscher of the Harvard Business School suggested a program of "associational unionism," *i.e.*, decentralized representative organizations forged around employees' common identity within a sector of work or profession, rather than around a single employer or a single contract.[124] This model of associational unionism is described as a mix between a political pressure group, service organization, and traditional confrontational union. Such associations would exhibit five defining characteristics: (1) a focus on principles, such as excellence in the profession or respect on the job; (2) heightened internal education and participation; (3) diversified forms of representation and service; (4) a wide variety of tactics to pressure employers besides the strike; and (5) "extended alliances" with outside organizations and local groups.[125]

On the other hand, Prof. Dorothy Sue Cobble of Rutgers University conducted a comprehensive study of waitress unionism in the first half of the century to develop a model for "occupational unionism," a form of craft unionism particularly adapted to the women workers' needs as waitresses. She proposed to "reinvigorate occupationally-based forms of organization particularly suited to women's experiences in the workforce." This holds tremendous potential for effective representation of the contingent workforce.[126]

Howard Wial of the United States Department of Labor proposed a "geographic associationalism" model, which unites workers in a region around loosely-defined common occupational interests, primarily seeking to impose a uniform wage and benefit structure on employers in that region.

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121. *Id.* at 5.

122. Jennifer Middleton, *Contingent Workers in a Changing Economy: Endure, Adapt or Organize?* 22 N.Y.U. REV. OF LAW AND SOCIAL CHANGE 557, 589 (1996)

123. *Id.* at 595.

124. CHARLES C. HECKSCHER, THE NEW UNIONISM: EMPLOYEE INVOLVEMENT IN THE CHANGING CORPORATION (1988).

125. Middleton, *supra* note 122, at 615.

126. *Id.* at 617.

This model, though, may not be an appropriate one for many contingent workers who work alongside permanent, full-time employees because it may not provide adequate representation of the former's interests.[127]

Kochan observed that unions "will need to develop new capacities to build coalitions and leverage the presence and legitimacy of these alternative worker advocacy groups to achieve their objectives in a more networked, fluid economy."[128] He added that research "must ask tougher and more fundamental questions about unions and examine the various experiments playing around the world where unions are trying new approaches."[129]

The success of these efforts in the Philippine setting remains to be seen. There have been attempts to speak for contingent employees in the wholesale and retail trade sector,[130] but by and large, organized labor finds it difficult to adjust its programs and institutional structure to the rapidly changing and diversified needs of formal sector workers,[131] leading Ofreneo to ask, "Do labor centers and federations have to come up with new forms of labor organizing that will fit the needs of various categories of workers?"[132]

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127. *Id.* at 618-20.

128. Thomas A. Kochan, *Collective Actors in Industrial Relations: What Future?, Track 4*, Rapporteur's Report, 13th World Congress of the International Industrial Relations Association, 8-12 Sept. 2003, Berlin, Germany (on file with the author).

129. *Id.* at 13.

130. Max de Leon & Jonathan Vicente, *Labor Code in Need of Amendments, But...*, MANILA TIMES, *available at available at* www.manilatimes.net/others/special/2003/may/01/20030501spe1.html (last accessed Dec. 3, 2004). It was discussed here that contractualization in Shoemart was assailed by the secretary-general of the Shoemart union.

131. INTERNATIONAL LABOUR OFFICE, WORLD LABOUR REPORT ON INDUSTRIAL RELATIONS, DEMOCRACY AND SOCIAL STABILITY (1997) [hereinafter WORLD LABOUR REPORT].

132. Rene E. Ofreneo, *Trade Union Movement: Meeting the Challenge of the Global Economy,* INTERSECT (April-May 1995) at 20. INTERSECT is a Publication of the Institute on Church and Social Issues (ICSI).

E. "The Logic of Mutual Aid"[133]

Pro. Elias Ramos already expressed the view that a considerable amount of workers expect their union to take care of mutual aid problems.[134] Indeed, the Philippine union movement essentially began with mutual benefit societies. Such organizations proliferated and by World War I a number had evolved into or had been superseded by unions skilled in the use of the strike.[135]

The Labor Code defines a labor organization as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment."[136] On the other hand, ambulant, intermittent and itinerant workers, self-employed people, rural workers, and those without any definite employers may form labor organizations for their mutual aid and protection.[137]

Is the Filipino worker's exercise of the right to self-organization limited to forming a union for purposes of collective bargaining? Deliberations of the 1986 Constitutional Commission already suggest that the foundation of labor relations is the right itself, and not collective bargaining. In the light of the definition of a labor organization as an entity existing in whole *or in part* for collective bargaining, purposes catering to mutual aid should be an acceptable basis for the exercise of the right to self-organization.

For this reason, the Secretary of the Department of Labor and Employment (DOLE) issued Department Order No. 9, series of 1997, to include *inter alia* the recognition of a workers' association, *i.e.*, "an association of workers organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining." The mechanism for registration of labor unions was made available to those who would want to form such a workers' association. This approach has been affirmed in the recent amendment to the rules implementing Book V, namely Department Order No. 40-03.

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133. Paul Jarley, Unions as Social Capital: Renewal Through a Return to the Logic of Mutual Aid? (Sept. 2003) (unpublished paper, on file with the author). This paper presented at the 13th International Industrial Relations Association, 8-12 September 2003, Berlin, Germany.

134. RAMOS, *supra* note 38, at 195.

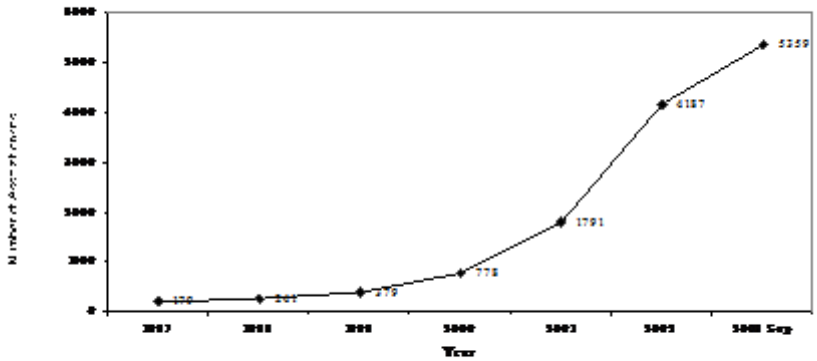
135. DANIEL F. DOEPPERS, MANILA 1900-1941, 4, 117 (1984).

136. LABOR CODE art. 212 (g).

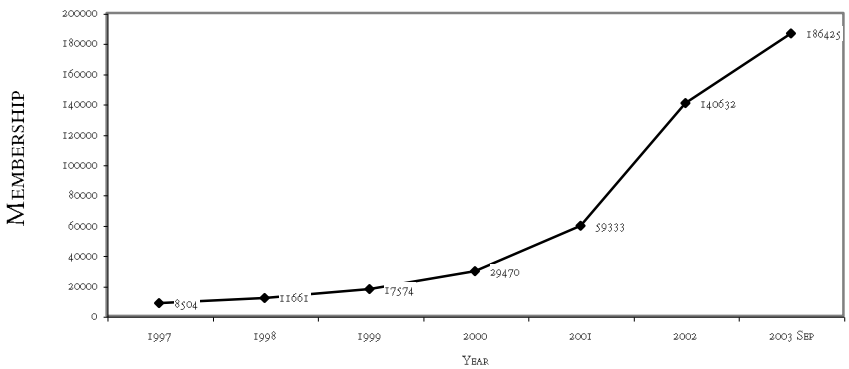
137. *Id.* art. 243.

The recognition of workers' associations could not have been more timely. Graph 1 illustrates the robust organizing activity involving workers' associations. Graph 2 indicates a growing membership for these associations.

GRAPH 1. ANNUAL DISTRIBUTION OF REGISTERED WORKERS' ASSOCIATIONS: PHILIPPINES, 1997-2003 SEPTEMBER



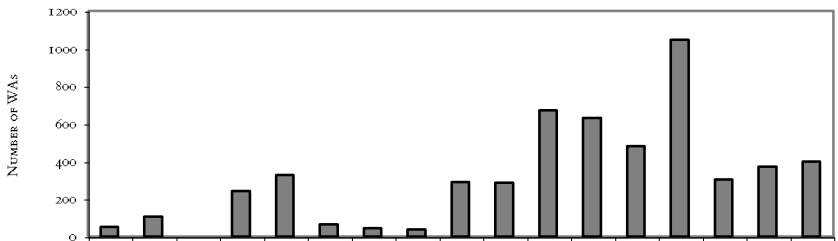
GRAPH 2. ANNUAL DISTRIBUTION OF MEMBERSHIP OF REGISTERED WORKERS' ASSOCIATIONS: PHILIPPINES, 1997-2003 SEPTEMBER



More than any other labor organization as of October 2003, workers' associations have experienced massive growth in terms of numbers (35.57%) and membership (41.05%). To acquaint itself with workers' associations registered by Labor Relations Divisions in DOLE Regional Offices

nationwide, the Bureau of Labor Relations undertook a study of workers' associations in Region VIII (Eastern Visayas).[138] Graphs 3 and 4 indicate that the region ranks third in the number and membership of workers' associations.

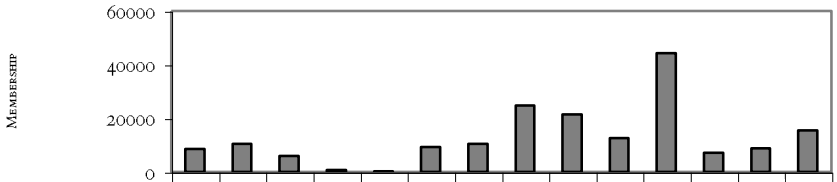
GRAPH 3. REGIONAL DISTRIBUTION OF REGISTERED WORKERS' ASSOCIATIONS: PHILIPPINES, AS OF SEPTERMBER 2003



	NCR	CAR	ARMM	I	II	III	IV-A	IV-B	V	VI	VII	VIII	IX	X	XI	XII	XIII
NUMBER OF WAS	51	107	1	242	326	65	46	38	291	288	672	632	481	1048	302	371	398

REGION

GRAPH 4. REGIONAL DISTRIBUTION OF MEMBERSHIP OF REGISTERED WORKERS' ASSOCIATIONS: PHILIPPINES, AS OF SEPTEMBER 2003



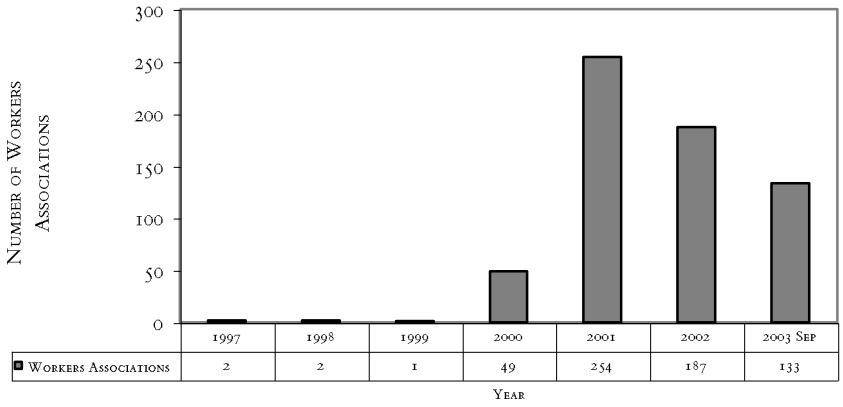
	I	II	III	IV-	IV-	V	VI	VII	VIII	IX	X	XI	XII	XIII
MEMBERSHIP	8602	1037	5981	713	127	9225	1049	2480	2148	1259	4440	7132	8764	1549

REGION

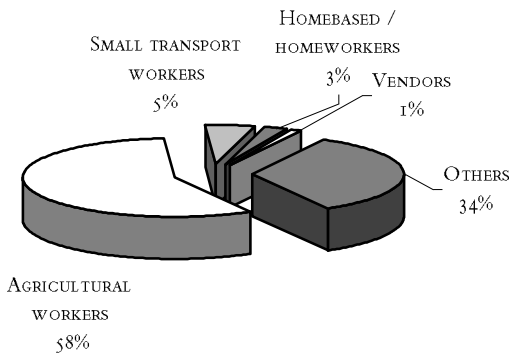
Graph 5 indicates the yearly registration of workers' associations in Region VIII. Graph 6 presents workers' associations in Eastern Visayas by occupation of its members.

138. The study began in March 2003 and ended October 2003. The team headed by Supervising Labor Enforcement Officer Alex Avila included Richie Dimailig, Marijo Cordova, Cocoi Marquez, Jay Ocampo, Cora Rojo, and the Labor Relations Division Staff of DOLE-Region VIII headed by Chief Enriqueta Eclipse.

GRAPH 5. YEARLY REGISTRATION OF WORKERS' ASSOCIATIONS IN REGION VIII: 1997-2003 SEPTEMBER



GRAPH 6. WORKERS' ASSOCIATIONS BY TYPE OF OCCUPATION OF MEMBERS: EASTERN VISAYAS, 2002



There is an appreciable decline in registration of workers' associations in Region VIII, from 254 in 2001 to 133 as of September 2003. But just the same the disparity in the number of workers' associations registered between third-ranked Region VIII (632) and fourth-ranked Region IX (481) remains significant.

Most workers' associations in Region VIII involve agricultural workers (58%), followed by a mixed bag of groups formed by women, youth, the disabled, sports-oriented individuals, and other civic groups (34%). Vendors have the fewest number of members (1%).

Case studies were conducted involving three workers' associations in Region VIII, namely: (a) Nena Abaca Craft Producers Association (NACPA), a women workers' association producing *sinamay* in the coastal barangay of Nena, San Julian, Eastern Samar; (b) Mohon Farmers Association (MFA), whose male and female members are engaged in placemat making in Barangay Mohon, Tabon-Tabon, Leyte; and (c) Lemon Dispatchers Association (LDA), an all-male group operating dispatching services and a passenger terminal in Barangay Lemon, Capoocan, Leyte.[139] Figure 15 is a comparative profile of respondents-associations:

FIG. 15 – COMPARATIVE PROFILE OF RESPONDENTS-ASSOCIATIONS IN EASTERN VISAYAS

WAS	*Date Registered with DOLE*	*Members* *Male* *Female* *(as of interview)*	*Income-Earning Project*	*Key Informants*	*Place of Operation*	*Classification*
NACPA	11 March 1997	2 17	*Sinamay* making	President Treasurer BOD	Nena,San Julian, E. Samar	successful
MFA	8 July 2003	11 7	Placemats making	President BOD.	Capooca nLeyte	In-between
LDA	24 July 1994	38 --	Dispatching services	Treasurer Bus. Mgr.	Tabon-tabon, Leyte	failure

(Source of data: Bureau of Labor Relations, DOLE-Region VIII, Interviews)

The case studies aimed to draw lessons from the experiences of the respondents in terms of their political and socio-economic activities. The

139. The associations were selected by the Workers' Amelioration and Welfare Division (WAWD) of DOLE-Region VIII.

findings of the BLR team provide an incisive look into the anatomy of mutual aid organizations.[140]

In terms of *organization and formation,* the NACPA and the LDA claimed they were already "organized" long before they registered as a workers' association, having been engaged in livelihood projects before availment of DOLE technical and financial assistance. The women workers of Bgy. Nena were into small-scale production of abaca-based *sinamay* when DOLE-Region VIII and other agencies provided them with skills training. In the same manner, the mostly unemployed male residents of Bgy. Lemon were already running the local terminal they decided to register in 1994. Only the MFA did not have any income-generating activity at the time of its formation, as it came into being on the basis of direct influence of external institutions.

NACPA members pay P100 upon admission. LDA collects membership dues, while MFA members pay five pesos monthly dues and were not required to pay membership fees.

In terms of their *reason for DOLE registration*, respondents stated that "legalization of operations" or "legitimization of existence" were the primary reasons for DOLE registration as a workers' association.

In terms of *financial assistance*, the study showed that DOLE Region-VIII has released financial grants to LDA (P174,000) and NACPA (P211,844). MFA has yet to receive financial assistance.

In terms of *assessing the role of DOLE regulations*, the study surprisingly revealed that none of the respondents were aware of the existence of Department Order Nos. 9 (1997) and 40 (2003).

In terms of *organizational activities*, the activities of respondents could be broadly classified as economic and political in nature. Economic activities relate to their livelihood or income-earning projects, while political activities can include representation in local councils, affiliation with political groups and personalities, mobilization and advocacy work.

Continued existence of respondents depended upon the viability of their income-earning projects. In turn, such viability rests on the organization's technical and administrative competence in managing livelihood projects. For this reason, DOLE-Region VIII sought to enhance their capabilities. The financial grants were in the form of training-*cum*-production sessions. The arrangement worked well with NACPA, but failed in the case of LDA. The latter's welding and vulcanizing project folded up due to a major

140. The findings were submitted through a written report by study team head Mr. Alex Avila. The findings as well as the study reports are on file with the author.

organizational problem. NACPA, on the other hand, put up a *bigasang bayan* from the proceeds of their abaca-weaving project, which is now one of their steady sources of internal funding. As for MFA, its small-scale production of placemats is greatly hampered by lack of operating capital and equipment. Also, the group could not command a good price for its products in a very limited product market.

The political activities of the respondents are almost inexistent. None of the three groups have any political affiliation, which they considered to be a significant limitation on their operations. MFA has established a working relationship with TCCD, the NGO instrumental for its creation. NACPA claims to be consulted on barangay matters by virtue of their representation in a barangay development council (BDC). NACPA members consider the BDC as a mechanism that gives them "voice" in the locality. They also claimed that their representation has enabled them to be of service to the community by way of sharing technical skills with their *ka-barangay*.

None of the three respondents have mobilized to push for any economic or political agenda within the locality.

The study concluded that all three respondents were not financially viable. Their livelihood projects cannot be expected to provide long-term financial stability and viability. The earnings of their projects are barely enough to cover administrative and operating costs. Profit margins are so low that without external funding assistance, the projects cannot grow and be revenue streams for the members and the community. Even a meager endeavor such as NACPA's *bigasang bayan* will not survive if no financial and technical assistance is forthcoming.

The three associations are yet to extend to their members a "voice" in the community, in the same way that unions provide formal sector workers enterprise representation. Since their members have no definite employers but themselves, whether they claim a "voice" through representation in the polity remains to be seen.

The "social legitimacy" of the respondents needs development and enhancement.[141] Workers' associations have to ensure meaningful and effective participation in community affairs. It cannot be denied that the importance of "social legitimacy" was not lost on the respondents, who

141. In the broadest sense, "social legitimacy" (of a group) can be construed as the manner by which the community or society accepts the presence of a group and judges its actions against the values system and norms of that community or society. The level or degree of a group's "social legitimacy" therefore may be gauged by the manner by which the community or society associates its interest with the interests of the group. The higher the level of the association, the higher the level of the group's "social legitimacy."

consider social standing a critical factor not only in the growth and development of their organizations, but also in their individual and organizational empowerment.

Social legitimacy also depends on the economic viability of respondents associations. They have to project an image of economic success, which includes the manner in which the association deploys its economic resources for the furtherance of communal interests.

Respondents also regarded networking as a critical factor not only in expanding economic opportunities but also in effective resource-sharing in terms of product development, product quality enhancement, and marketing. It must be emphasized, however, that all respondents thought it to be in their best interest to be "apolitical."

All told, the case studies showed that being organized *per se* does not guarantee political and economic empowerment. Formulation of rules allowing citizens to form mutual aid associations would not be enough. Other enabling mechanisms have to be present to sustain the viability of the workers' association. More than allowing workers' associations to grow in number and handing over financial assistance to them, government must ensure that such members of the informal sector have the economic and political means to have a lasting impact on their members and communities.

The 1997 International Labour Organization (ILO) World Labour Report on Industrial Relations discussed the place of the informal sector in the framework of industrial relations. To wit:

> Undoubtedly the major problem facing informal sector workers and their associations is their lack of defined interface with public authorities; this explains, to a great extent, their inability to gain access to the services they need to operate effectively and efficiently. The issue at stake is therefore the nature of their relationships with the government, social institutions, trade unions and the employers' organizations. Related to this is the question of the recognition of informal sector associations as legal entities – which is so necessary to give them access to government authorities and services.[142]

F. Union Reinvention

If necessity is the mother of invention, globalization will bring about union reinvention.

Hyman pointed out increasing difficulties both in the external trade union environment of union organization and action and in the nature of

142. WORLD LABOUR REPORT, *supra* note 131, at 209.

the constituencies which unions seek to mobilize.[143] The first external challenge comes from the economic environment, where global competition has put new pressures on national industrial relations regimes. In terms of the political environment, unions' representative status as "social partners" may have been eroded due to loss of membership. Finally, employers have developed a growing unwillingness to accept trade unions as collective representatives of employees. They have established new forms of direct communication with employees as individuals.[144]

There is also an internal challenge from within the movement itself with respect to the changes in the "constituencies" which unions seek to represent. As mentioned, the traditional normal relationship has been overwhelmed by the evolution of more atypical forms of employment. Hyman noted that atypical employment, to a substantial degree, is female employment, so this reality is connected to the increasing feminization of labor.[145]

The crisis of trade unionism is reflected not only in the more obvious indicators of loss of strength and efficacy, but also in the exhaustion of a traditional discourse and failure to respond to new ideological challenges.[146]

Ofreneo established the most important reasons for the weakness of the trade union movement in the Philippines:

> One, labor has been the object of repressive labor laws. In the 1900s, 1930s, 1950s and 1970s, organized labor had to bear the brunt of State repression. Laws recognizing unionism and other labor rights are more often than not products of uphill struggles conducted by workers operating under extremely difficult circumstances. And even during periods characterized by liberal democratic order tolerant of unionism, there are laws that tend to subvert labor rights. Of course, some recalcitrant employers who are well-connected within the political and military circles have time and again tried to bust various efforts towards unionism.
>
> Two, there is a long history of divisions plaguing the ranks of the trade union movement. There are around 145 labor federations[147] competing with one another, not to mention thousands of independent unions which refuse to be affiliated with any of the federations. The failure of labor restructuring along the one-industry-one-union line means these 145 federations are all rivals in the field of union organizing in all industries.

143. HYMAN, *supra* note 119, at 2.

144. *Id.*

145. *Id.* at 4.

146. *Id.* at 5.

147. Factbook, *supra* note 86, at 34. The number is estimated to be around 170 as of September 2003.

> The rivalry is deepened by ideological, political, economic, leadership and even family reasons.
>
> Three, the economy has not been favorable to the trade union environment. The failure of Philippine industrialization means a very limited universe for unionism as the organizable sector of the economy constitutes an enclave. Worse, the large informal sector and the slack labor market characterized by massive unemployment and underemployment mean employers have a huge reserve army of labor from which they can draw casuals and potential strike breakers.
>
> Four, the trade union groups, whether of the left or the right or even the centrist tendency, have failed to make the necessary organizational adjustments in keeping with the changes in the economic and political environment. Capitalism has been making adjustments since the time of Adam Smith, and yet trade unions seem to be operating like the trade unions of a century ago.[148]

Unions are faced with the daunting task of facing challenges that mainly involve: (a) strengthening the delivery of basic trade union services ("24 hour unions" to attend to numerous problems faced by workers on and off work); (b) going beyond the minimum wage advocacy; (c) maintaining protective institutions such as labor standards, social security, and the right to self-organization; (d) attending to needs of the atypical workforce; (e) addressing the needs of women workers; and (f) participating in the "accumulation debates" to come up with alternative policies that will hasten industrialization and economic development; (g) forging strategic alliances with management to ensure the firm's survival; (h) redefining solidarity work, to open up new "social fronts" for organized labor; (i) enhancing trade union democracy; and (j) redefining union's participation in the political process.[149]

In terms of opening "new social fronts" for unions, "social capital unionism" organizes around people and not around issues to build dense networks of strong ties.

> In the organizing context, social capital unionism seeks to borrow and extend the social capital of its most well connected members. Whether it involves an effort to organize a nonunion workplace or reinvigorate a moribund union through an internal organizing drive, union staff would work to identify those workers with the most extensive professional and social networks in the workplace … social capital unionism alters the

148. Ofreneo, *supra* note 132, at 5.

149. *Id.* at 20-21.

definition of union activism to include not just confrontation, but acts of mutual aid.[150]

In terms of coalition-building and network expansion, Professor Lowell Turner of Cornell University focused on an emerging "alternate vision" to match "market globalism." American unions and their coalitions have joined a social force advocating reforms in the name of global democracy.[151] Political opportunity was created by corporate scandals and the call for living wages and better terms and conditions of employment. Also, grassroots mobilization provides mobilized participatory politics needed to fuel coalition campaigns.[152]

Several trade unionists have dabbled in the area of alternative methods to organize workers.[153] Antonio Asper of the Federation of Free Workers (FFW) pointed out efforts by government agencies such as TESDA to help in the creation of guilds across various trades, such as electricians and metal workers. He also mentioned existing unions across various occupations in the construction industry. Informal sector workers need to be organized as well, towards the creation of associations, cooperatives, credit unions, homeowners associations, home-based workers' associations, and association of micro enterprises. He also emphasized the importance of a network of labor centers and federations to advocate for economic and social policies that mitigate the impact of globalization and ensure the social protection of the workers.[154]

Cedric Bagtas of the Trade Union Congress of the Philippines (TUCP) discussed methods to organize workers in highly unorganized industries in special economic zones. He underscored the importance of corporate codes of conduct to remind multinational corporations (MNC) of workers' organizational rights. Like Asper, he affirmed the need to maintain international solidarity networks, especially in countries where MNCs in the Philippines are originally based.[155]

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150. Jarley, *supra* note 133, at 13, 16.

151. Lowell Turner, Labor and Global Justice: Emerging Reform Coalitions in the World's Only Superpower (Sept. 12, 2003) (unpublished paper, on file with the author). This paper presented at the 13th International Industrial Relations Association, 8-12 September 2003, Berlin, Germany.

152. *Id.*

153. In the first semester of 2003, various interviews were conducted by the BLR Research Division headed by Chief Myrna Ramirez.

154. Interview with Antonio Asper, January 3, 2003.

155. Interview with Cedric Bagtas, January 7 2003.

Josua Mata of the Alliance of Progressive Labor (APL) narrated the APL's adoption of the "social movement unionism" concept. The general idea is for different forms of workers' associations to bond together and address not only workers' issues, but also social issues, so that unions will have a social character. This would include workers who are not in traditional employment relationships.[156]

Some "relative optimism" can be captured here. The crisis of unionization has "shaken the complacency of many sclerotic trade union movements." Hyman observed that unions are increasingly asking the right questions, which of course is a necessary precondition to finding the right answers.[157]

V. AN INTERFACIAL NECESSITY: HUMAN RESOURCES DEVELOPMENT AND INDUSTRIAL RELATIONS

A. The Break from Fundamentalism

Philippine industrial relations is at a crossroad. The current Book V model needs to confront its incongruities with reality. The right to self-organization as guaranteed by labor relations law primarily caters to the collective bargaining framework. But with fewer Filipino workers covered by collective agreements, workers' efforts at seeking a "voice" in the workplace, whether individual or collective, have been straitjacketed into a sense of "industrial relations fundamentalism." Workers' self-organizational and participatory freedoms have been drastically reduced to the option of unionization. There is hope offered by mutual aid and social capital unionism efforts, the creation of guilds, more aggressive and globally-linked organizing of unorganized sectors, or social movement approaches, but State policy under Book V could offer only the primacy of collective bargaining.

The naked reality is this — 30,508,000 Filipinos in the labor force are not governed by the Philippine law on labor relations. Hence, there is a primordial necessity to close the "representation gap" between the organized sector and the rest of the Philippine labor force. These unorganized segments can be divided along formal and informal sector lines.

156. Interview with Josua Mata, January 7, 2003.

157. Richard Hyman, *The Future of Unions,* 1 JUST LABOUR 7 (2002), *available at* http:// www.yorku.ca/julabour (last accessed Oct. 9, 2003).

B. A Marriage Proposal

Covering the unorganized formal sector in a new labor relations framework enters the realm of human resources development (HRD). These would include engagement of "primeval" conditions of the worker before or in the absence of union representation. At the onset of company operations, HR management personnel deal with manifestations of pro-social, defensive, and acquiescent "voice" [158] by employees.

Transcending individual "voice" behavior are various forms of employee involvement, in its "hard" variant when management of human resources is integrated with other elements of corporate strategy, possibly involving one-way communication channels; in its "soft" variant the emphasis on management of "resourceful" humans, and assumptions that employees represent an important asset to the organization and a potential source of competitive advantage.[159]

More participatory approaches highlight increased employee involvement in the workplace. In the United States, four common labels are applied to participatory management efforts, namely labor-management committees, quality of work life projects, quality control circles, and employee production teams.[160]

As far back as 1980, Gatchalian and Dia already emphasized the need to inject the concept of "worker participation" at the enterprise level. They predicted the emergence of a social order that was "egalitarian, participatory, self-reliant, and humane" going into the 21st century. But they also warned that workers' participation requires change and transition in all levels of industrial society.[161]

Needless to state, Filipino values of non-egocentric personalism and the "family centric" character of social organizations conjured a "management

158. Linn Van Dyne, et.al., *Conceptualizing Employee Silence and Employee Voice as Multidimensional Constructs,* 40 J. OF MANAGEMENT STUDIES 1359, 1369-74 (2003).

159. Mick Marchington, *Involvement and Participation*, HUMAN RESOURCE MANAGEMENT: A CRITICAL TEXT (John Storey, ed.) 280 (1995).

160. Note, *Participatory Management Under Sections 2(5) and 8(a) (2) of the National Labor Relations Act,* 83 MICH. L. REV. 1736, 1738 (1985).

161. Jose C. Gatchalian and Manuel A. Dia, *Workers' Participation in the Philippines: An Exploration of Issues and Prospects,* 5 PHIL. LAB. REV. 15, 31 (1980).

by culture" approach that enhances harmony, unity, and cooperation in the company.[162]

Enterprises that have transformed into "people-focused" organizations recognize that the information necessary to formulate strategy is with their frontline people who know what is actually going on.[163]

> In essence, (people-focused organizations) highlight the importance of the basic concepts of information sharing, consultation and two-way communication. The effectiveness of procedures and systems which are established for better information flow, understanding and, where possible, consensus-building, is critical today to the successful managing of enterprises and for achieving competitiveness. As such, the basic ingredients of sound enterprise level labour relations are inseparable from some of the essentials for managing an enterprise in today's global environment. These developments have had an impact on ways of motivating workers, and on the hierarchy of organizations. They are reducing layers of management thus facilitating improved communication. Management today is more an activity rather than a badge of status or class within an organization, and this change provides it with a wider professional base.[164]

"People-focused" approaches are reflective of the emergence of HRM over traditional personnel functions. HRM is pre-occupied with utilizing the human resource to achieve strategic management objectives. HRM emphasizes strategy and planning rather than problem-solving and mediation.[165]

HRM undoubtedly exists even in a unionized environment, where the collective bargaining model of industrial relations prevails. There are, of course, theoretical and practical differences between the HRM and industrial relations systems. Figure 16 presents these distinctions:[166]

FIG. 16 – IR/HR INTERFACE

Industrial Relations	*Human Resources Management*

162. F. LANDA JOCANO, TOWARDS DEVELOPING A FILIPINO CORPORATE CULTURE 166-174 (1999 ed.).

163. Sriyan de Silva, The Changing Focus of Industrial Relations and Human Resource Management (May 1997) (unpublished paper, on file with the author). This paper was presented at the ILO Workshop on Employers' Organizations in Asia-Pacific in the Twenty-First Century, 5-13 May 1997, Turin, Italy.

164. *Id.* at 12.

165. *Id.* at 22.

166. *Id.* at 25-27.

Collectivist/pluralist	Individualistic
Consists of large component of State rules	Deals with policies and practices
Assumes potential conflict	Unitarist, sees commonality of interests
Involves unions in standardization of wages, contracts, functions, working hours	Individualization of employment through equity and efficiency
At periphery of corporate planning	Integrated to corporate strategy
Adversarial employer-employee relations	Harnessing employee loyalty and commitment

To translate industrial relations strategy in the non-unionized formal sector into the realm of labor-management relations is the challenge that social partners in industrial relations must face. De Silva enumerates, as preconditions to this "marriage" or task of harmonization, changes in both management and union attitudes; acknowledgement of the link between employee development and enterprise growth; recognition that employer and employee interests are not only divergent but also common; both HRM and IR should be prepared to accommodate the other, without HRM viewing IR (and vice-versa) as its nemesis; unions would need to be more willing to involve themselves in HRM, and not over-emphasize their national agenda; changes in IR thinking, in terms of redesigning collective bargaining to accommodate workplace issues and less adversarial relations; IR needs to open its doors to other social disciplines; IR would have to recognize that communication in an enterprise need not necessarily be only effected collectively; managements should be wiling to involve unions in HRM initiatives; and a more strategic perspective of IR needs to be developed, going beyond traditional objectives such as distributive justice, and espousing productivity and competitiveness.[167]

This marriage of IR and HRM will develop a firm labor relations policy for the unorganized formal sector. Workers and employers shall have firm guidance from statutory law relative to strategies to pursue company objectives, uphold workers' rights, and compete in the global market.

167. *Id.* at 28-29.

C. Labor-Management Committees: Towards Workplace Democracy and Cooperation

1. Current Policy

Article 277 (h) of Book V states that in unorganized establishments, labor-management committees (LMC) may be formed voluntarily by workers and employers for purposes of promoting industrial peace. While the statute is silent on LMCs in organized establishments, the 1989 rules implementing Book V mandated the DOLE to promote the formation of LMCs in such entities. But no system of representation in LMCs for both unionized and non-unionized establishments was laid down in the issuance.[168]

In 1997, the rules implementing Book V were amended to provide for a process of representation in LMCs in both organized and unorganized establishments.[169] Such a rule of representation has been transplanted to the current issuance amending the Book V rules.[170]

2. History

There were already attempts to introduce workplace cooperative schemes as far back as 1976, in the penumbral set of issuances that supported the primary collective bargaining framework. Originally, Article 231 of Book V granted the Bureau of Labor Relations the authority to "certify collective bargaining agreements which comply with standards established by the Code...."[171]

In 1976, then Minister Ople of the Ministry of Labor and Employment clarified that labor-management cooperation schemes were "directory requirements" in the certification of CBAs.[172] A presidential instruction issued in 1978 subsequently requested government, employers, and trade unions to formulate a strategy for the promotion of labor-management cooperation programs at the workplace.[173]

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168. Omnibus Rules Implementing the Labor Code (as amended 24 May 1989), Bk. V, Rule XII, Section 1.

169. Omnibus Rules Implementing the Labor Code (as amended by Department Order No. 9, s.1997), Bk. V, Rule XXI.

170. Department of Labor and Employment, Department Order No. 40-03 s. 2003.

171. The certification requirement, of course, has given way to a mere registration procedure.

172. Ministry of Labor and Employment Policy Instruction No. 17 (1976).

173. Letter of Instruction No. 688 (1978). The LOI provides in full:

But in 1981, Cabinet Bill No. 45 sought to amend provisions in Book V and included, among others, Section 12 on workers' participation and labor-management cooperation:

> ART. 278. *Workers participation and Labor-Management Cooperation*. – (A) The Ministry shall promote and gradually develop, with the agreement of labor organizations and employers, industrial democracy and workers' participation in decision-making at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure a just and more democratic workplace and the improvement in working conditions and the quality of working life.
>
> (B) In establishments with thirty (30) or more workers, and where no labor organization exists, the Ministry shall promote the creation of labor-management committees without restricting the workers' right to self-organization and collective bargaining for purposes of dealing with matters affecting labor-management relations like the promulgation and implementation of company rules, the threshing out of grievances and other matters of mutual interest to labor and management.[174]

TO: The Secretary of Labor
The President, TUCP
The President, ECOP

You are hereby directed to devise a scheme which would promote systematically and on a sustained basis the establishment of an adequate machinery for positive cooperation between labor and management at appropriate levels of the enterprise. Such machinery should focus on matters of common interest to workers and employers but are not usually the subject of collective bargaining. The purpose is to broaden the base of labor-management cooperation and make them true partners in the pursuit of justice-based development.

You are further directed to submit to me, from time to time progress report on the implementation of the scheme, the benefits realized, the obstacles encountered and the over-all effect of the scheme in the labor relations system.

Done in the City of Manila, this 1st day if May, 1978.

FERDINAND E. MARCOS
President

174. Cabinet Bill No. 45, R.B. No. 96, 3rd Sess. (1981).

Initially, there was a proposal by Deputy Minister Amado Inciong of the Ministry of Labor and Employment to delete Section 12.[175] He opposed the provision because his experience as Deputy Minister proved that labor-management cooperation schemes became channels of unfair labor practices.[176] This point, however, was not pursued during the public hearing.

Another proposal that was discussed pertained to the fear that promotion of labor-management committees will operate as a coercive measure that will compel workers in non-unionized establishments to organize "State unions."[177] It was clarified, however, that the bill only mandated the Ministry to promote the formation of labor-management committees, and that actual formation of LMCs was left to both labor and management.[178]

To further emphasize the voluntary nature of such committees, the Committee on Labor, Employment, and Manpower Development agreed to insert the word "help" between the words "shall" and "promote" and the phrase "on a voluntary basis" between "promote" and "creation." The Chairman of the Committee clarified that LMCs is a "sort of umbrella for possibilities of innovative approaches to cooperation and harmony that will make use of the strike or lockout weapon less and less necessary."[179]

At the floor of the Batasan, Assemblyman Ople, the sponsor of the Bill, laid down the basis for the establishment of LMCs in unorganized establishments:

> The committee thought that because 90% of the organizable work force, that is to say about 8 million workers in the wage and salary system throughout the country, is not yet organized, how can schemes of labor-management cooperation flourish unless we provide for the creation of a vehicle of cooperation short of forming a union? And the answer was: through the creation of labor-management committees without restricting the workers' right to self-organization and collective bargaining for purposes of dealing with matters affecting labor-management relations, like the promulgation and implementation of company rules, the threshing out

175. Public Hearing on C.B. 45, Committee on Labor, Employment, and Manpower Development, Batasang Pambansa, Army Navy Club, Manila (May 28, 1981) (on file with the author).

176. *Id.*

177. Public Hearing on C.B. 45, Committee on Labor, Employment and Manpower Development VIP Lounge, Batasang Pambansa (July 29, 1981) (on file with the author).

178. *Id.*

179. *Id.*

> of grievances and other matters of mutual interest to labor and management.[180]

During the period of amendments, however, the recommended thirty-worker cut-off for establishment of LMCs was deleted.[181] Also, the role of the Ministry of Labor and Employment to promote the formation of LMCs in unorganized establishments was omitted.[182]

Thus, in its final form, Article 278 (g) and (h) of Batas Pambansa No. 130[183] read:

> The Ministry shall promote and gradually develop with the agreement of labor organizations and employers, labor-management cooperation programs at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure industrial peace and improvement in productivity, working conditions and the quality of working life.
>
> In establishments where no labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace.

The rules issued to implement Book V as amended by B.P. 130 mandated the employer to report to the DOLE the establishment of any labor-management committee within its enterprise as well as the activities undertaken by such committee from time to time and whenever required by the Department.[184]

After the ratification of the 1987 Constitution, separate bills in the House of Representatives[185] and the Senate[186] were filed to amend the provisions of Book V. In the original version of House Bill No. 11524, there were strong proposals relative to the implementation of the workers' right to participate in policy- and decision-making processes as guaranteed by the Constitution. There were original proposals to provide for workers' representation in the board of directors of a company with more than 100

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180. I RECORD OF THE BATASAN 148 (August 4, 1981).

181. I JOURNAL OF THE BATASAN 85 (4TH Reg. Sess., 1981-1982).

182. *Id.*

183. The law took effect on August 21, 1981.

184. Omnibus Rules Implementing the Labor Code, Book V, Rule XII (as amended 4 September 1981).

185. House Bill No. 11524, *available at* www.congress.gov.ph (last accessed Dec. 12, 2004).

186. Senate Bill No. 530.

employees.[187] Also a profit-sharing scheme was put forward.[188] Both proposals, however, did not materialize.

But commitments to pursue labor-management cooperation persisted. In place of workers' representation in company boards, two proposals were suggested. The first was to provide worker representation in the corporate executive committee. The second involved the voluntary creation of labor-management committees. A consensus favored the second proposal. At the Conference Committee level, the provision mandating the DOLE to "enlighten and educate the workers and employers on their rights and responsibilities through labor education with emphasis on the policy thrusts of [the] Code" was added in anticipation of objections from unions regarding discouragement of formation of unions in unorganized establishments.[189]

The present Book V provisions on labor-management cooperation as worded emerged from Republic Act No. 6715.

3. Work in Progress

Twenty-years after his prediction on the importance of participatory approaches in industrial relations, Gatchalian maintained that there is a "strongly felt need to further explore the area of employee representation in the Philippines."[190] He lamented that LMCs in the Philippines still largely function as consultative and advisory mechanisms, and that workers' representatives do not have substantial influence in managerial decision-making on more meaningful issues and concerns.[191] He might have referred to the broad spectrum of participatory modes ranging from information to consultation to co-decision and even full participation,[192] and how LMCs have failed to run through the gamut of levels of workers' participation.

An issuance by the Secretary of Labor and Employment clarified that labor-management cooperation could be: (a) undertaken as a tool for promoting non-adversarial and harmonious relationship between labor and management; (b) undertaken as a tool for both short term and long term

187. House Bill No. 11524, § 15.

188. House Bill No. 11524, § 18.

189. Bicameral Conference Committee on H.B. 11524 and S.B. 530 XIV-1 (Dec. 15, 1988).

190. Jose C. Gatchalian, *Employee Representation and Workplace Participation: Focus on Labor-Management Councils,* 19-20 PHIL. J. OF INDUS. REL. 41, 46 (1999-2000).

191. *Id.* at 49.

192. Gatchalian and Dia, *supra* note 161, at 19.

conflict prevention and resolution; (c) undertaken to complement or supplement, but not to supplant collective bargaining, the dispute settlement machinery in place (e.g., grievance machinery) or other mechanisms (e.g., safety committees); or (d) translated into programs mutually beneficial to labor and management such as schemes for enhancing enterprise and workers productivity, reducing wastage, improving the quality of goods and services, facilitating the acceptance of technological change, and opening channels or venues for free communication.[193]

Data from the National Conciliation and Mediation Board (NCMB) as of March 2002 reveals that there are a total of 639 LMCs existing in the country. This still represents a small number compared to the numerous unorganized establishments in the country.

A landmark study in 1994 revealed that most LMCs did not have sufficient support from the management of the respondent companies. A key advocate of labor-management cooperation asserted that company support is a crucial factor in the success of LMCs.[194] The study suggested greater focus on productivity and quality improvement that must be taken by companies in their LMCs to broaden the scope of the same beyond mere conflict resolution or industrial relations concerns.[195]

In the United States, various measures have been suggested to ensure worker protection against LMCs that manipulate employees' workplace governance choice. Several indicators for autonomous worker representation in these cooperative efforts have been mentioned, such as the selection of team leaders-facilitators by team members or by rotation from among team members, not appointed by upper management, and should be subject to recall; granting team members the right to meet for specified periods at specified intervals, with pay, without the presence of managerial or supervisory representatives; granting teams the right to meet, again at specified intervals and durations, with other teams, again without the presence of managerial or supervisory representatives; entitling individual team members, on a rotating or lottery basis, to attend, or receive full minutes of, any meetings held between team leaders-facilitators as a group and managerial representatives; and entitling teams to specified periods of training – from trainers selected from the Participation Centers' labor-oriented consultants and educators – in technological and organizational

193. Department of Labor and Employment, Department Order No. 21, s. 1988.

194. Lorenzo B. Ziga, LMCs in the Philippines: Issues and Prospects (Nov. 2002) (unpublished paper, on file with the author). This paper presented in the Conference on the Century of Labor Struggle in Asia and the Pacific, 28-29 November 2002, Quezon City.

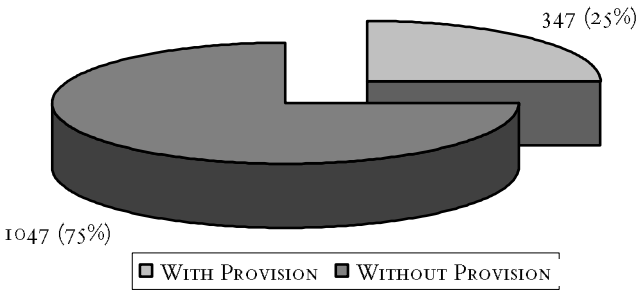
195. *Id.*

design, group-process and problem-solving skills, ergonomics, and health and safety standards.[196]

4. Cooperative Schemes in Collective Agreements[197]

There are 1,537 existing collective bargaining agreements (CBAs) registered with the Bureau of Labor Relations as of the third quarter of 2003. Of the 1,394 (91%) that were analyzed, Graph 7 indicates that only 347 (25%) contain labor-management cooperation arrangements.

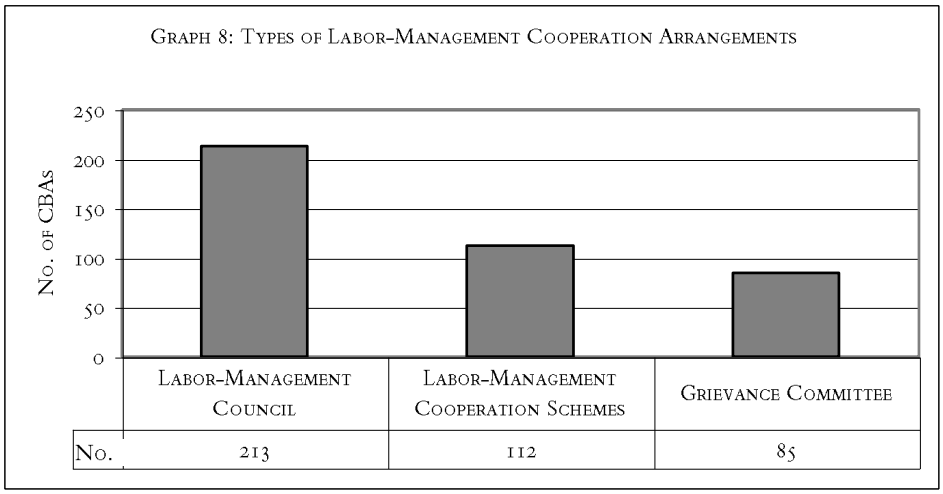
GRAPH 7: EXISTING CBAS WITH AND WITHOUT LABOR-MANAGEMENT COOPERATION ARRANGEMENT PROVISION



Graph 8 reveals that there are three identifiable types of labor-management cooperation arrangements found in the 347 CBAs. Most CBAs contain one of the three types of arrangements, while some have a combination of these types.

196. Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production,* 94 COLUM. L. REV. 758, 971 (1994).

197. The study on labor-management cooperation provisions in CBAs was written by Atty. Sherwin Lopez, BLR Med-Arbiter. He was assisted in data gathering by Suzanne Rodriguez.



a) Objectives

CBAs with LMCs have different objectives. Figure 17 reveals that many have enumerated more than one objective for the establishment of the LMC.

128 arrangements were created based on "other industrial relations issues." 47 (22%) CBAs stipulated that matters within the scope of the grievance machinery may be discussed in the LMC. In fact, six stated that it is a pre-condition that the grievance must first be raised before the LMC prior to elevation to the grievance machinery. On the other hand, 78 (37%) have expressly stated that the LMC does not have jurisdiction over issues within the jurisdiction of the grievance machinery.

Article 255 of the Labor Code provides that LMCs may be formed in connection with the right of workers to participate in policy- and decision-making processes. Only 13 (6%) have included this right of participation as one of the objectives of the LMCs. 83 (39%) of the CBAs have included information and communication as an LMC objective.

FIG. 17 – PURPOSES OF LMCS

Purpose	*No. of CBAs*	*Purpose*	*No. of CBAs*
Productivity	122	CBA-related matters	27

Occupational Health and Safety	45	Includes GM Subject Matters	47
Recreation	25	Complements GM	78
Family Planning	11	Policy and Decision Making	13
Education and Job Enrichment	31	Information and Communication	83
Company Rules	15	Other industrial relations issues	128

There are four objectives stated in the case of labor-management cooperation schemes, namely: productivity, education, recreation/reduction of monotony of work, and job enrichment. Figure 18 reveals that these objectives constitute 102 (91%), 70 (62%), 58 (52%) and 66 (59%), respectively. The rest of the objectives are skills training, family planning, working conditions, CBA-related matters, communication, and industrial peace.

FIG. 18 – PURPOSES OF LABOR-MANAGEMENT COOPERATION SCHEMES

Purpose	*No. of CBAs*	*Purpose*	*No. of CBAs*
Productivity	102	Working conditions	7
Education	70	CBA-related matters	2
Recreation/Reduction of Monotony of Work	58	Communication	1
Job Enrichment	66	Industrial peace	4
Skills Training	16	Family Planning	14

Article 260 of the Labor Code mandates the inclusion of grievance machinery provisions in the CBA. Although the Code does not specify the composition of the grievance machinery, 85 (24%) CBAs have indicated that the body would comprise representatives from labor and management. The statutory purpose of this body is to settle grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies.

b) Mechanics

In the CBAs studied containing LMC provisions, there were provisions that relate to the composition of the council, frequency of meetings, manner of selecting members, and the efficacy of decisions.

The study rated CBAs in terms of "potential efficacy." A CBA with "potential efficacy" is defined as one that contains at least one of the four above-stated LMC mechanics for creation. Having one or two mechanics for creation can serve as impetus for the establishment of the council, giving rise to an institutionalized venue for the attainment of the objectives of LMCs. LMCs without such mechanics have no institutional support to pursue the said objectives. Thus, the effectiveness of CBAs that do not contain any of the mechanics for creation shall be deemed uncertain. On the other hand, CBAs with three or more mechanics for creation shall be considered as having "good potential efficacy."

Figure 19 shows that 171 (49%) CBAs have adopted solely the LMC set-up. Based on Figure 20, 126 have "potential efficacy." On the other hand, 31 have "good potential efficacy." And, although the remaining 14 CBAs have stipulated the establishment of an LMC, these arrangements showed "uncertain potential" for efficacy.

FIG. 19 – NUMBER OF CBAS PER TYPE OF LABOR-MANAGEMENT COOPERATION ARRANGEMENT

Types of L-M Cooperation Arrangement	*No. of CBAs*	*Percentage*
LMCs	171	49.28%
LABOR-MANAGEMENT COOP. SCHEMES (SCHEMES)	88	25.36%
GRIEVANCE COMMITTEES (GM)	26	7.49%
LMCs and SCHEMES	3	0.86%
LMCs and GMs	38	10.95%
SCHEMES and GMs	20	5.76%
LMCs, SCHEMES and GMs	1	0.29%
TOTAL	347	100.00%

FIG. 20 – NUMBER OF CONDITIONS IN THE 171 CBAS WITH LMC PROVISIONS

	No. of Conditions Found in the LMC Provisions				
	Zero	One	Two	Three	Four
No. of CBAs	14	25	101	26	5

One of the major differences between the LMC and labor-management cooperation schemes is that the latter do not contain any of the four mechanics for LMC creation. For labor-management cooperation schemes, the agreement of the parties is merely to pursue such schemes. For this reason, the effectiveness of the 88 CBAs which contain solely the latter type of arrangement is considered uncertain.

In CBAs that combine labor-management cooperation schemes and LMCs, the effectiveness of the labor-management cooperation arrangements depends on the effectiveness of the LMCs. There are three CBAs which contain these two types of arrangements. Based on Figure 21, a review of these CBAs reveals that each of its LMC provisions have two mechanics for creation. Hence, the labor-management cooperation arrangements contained in these CBAs have "potential efficacy."

FIG. 21 – CBAS WITH LMC AND LABOR-MANAGEMENT COOPERATION SCHEMES

	No. of LMC Conditions				
	None	*One*	*Two*	*Three*	*Four*
No. of CBAs	0	0	3	0	0

All CBAs that adopted the grievance committee mode of labor-management cooperation have provided a detailed procedure of the grievance machinery, as well as the composition of the committee. The frequency of the meetings of the committee would depend on the existence of grievances presented before the committee. Hence, all grievance machineries have "good potential efficacy." The effectiveness is not limited to the 26 CBAs that contain only grievance committees, but extends as well to other CBAs that have combined grievance with either LMCs or labor-management cooperation schemes. Hence, the 38 CBAs which contain

LMC and grievance committee types and the 20 CBAs which contain labor-management cooperation schemes and grievance committee, and the lone CBA which contain all three types of arrangements, have "good potential efficacy."

c) Prospects for Cooperation in Unionized Establishments

There is hope for workplace cooperation in a unionized environment. 33.43% of cooperative arrangements have "good potential" for efficacy or realization. Together with those comprising "potential efficacy" (37.18%), there is an overwhelming 70.6% of CBAs with cooperative arrangements that have the capacity to be effective.

All told, there remain an astounding number of collective agreements (75% of CBAs in the study) that have no cooperative arrangements at all. Whether this is due to a continued skepticism on either side should be the subject of future research, or should form part of the DOLE's efforts to encourage labor-management cooperation in the workplace.

Like its counterpart in the non-unionized formal sector, labor-management cooperation in unionized establishments, too, is a work in progress.

FIG. 22 –EFFECTIVENESS OF EACH TYPE OF LABOR-MANAGEMENT COOPERATION ARRANGEMENT

Type of L-M Cooperation Arrangement	*Efficacy*			*Total*
	Uncertain	*Potential*	*Good Potential*	
LMCs	14	126	31	171
L-M COOPERATION SCHEMES	88			88
GRIEVANCE COMMITTEES			26	26
LMCs & L-M COOP. SCHEMES		3		3
LMCs & GRIEVANCE COMM.			38	38
L-M COOP			20	20

SCHEMES & GRIEVANCE COMMITTEES				
LMCs, L-M COOP SCHEMES & GRIEVANCE COMMITTEES			1	1
	102 (29.39%)	129 (37.18%)	116 (33.43%)	347

5. Foreign Models

In the realm of workplace democracy, participation, and cooperation, two industrial relations models stand out: (1) the German works council and (2) the Japanese consultation committee.

The German system deals with dual channels of employee representation. It is composed of unions and works councils, which occupy different spheres. The works council exists inside the firm and is concerned chiefly with firm-level issues. The union exists outside the firm and is concerned chiefly with industry-level and macroeconomic issues. Works councils consist of employees elected by workers regardless of union membership. The Works Constitution Act prescribes the number of works council members based on the size of the work force.[198]

Müller-Jentsch enumerates the characteristics of a works council as follows: (a) encompassing – the works council represents and is elected by all workers and salaried employees; (b) representative – the works council formulates its demands in the name of the employees; and (c) mandatory – the works council is a legal institution.[199] In general, a works council's participation rights are strong in social matters, less strong in personnel matters, and relatively weak in financial and economic matters.[200]

On the other hand, the Japanese system involves unions organized on a company basis, rendering it less centralized than the German model.

198. Janice R. Bellace, *The Role of the Law in Supporting Cooperative Employee Representation Systems,* 15 COMP. LAB. L.J. 441, 443, 445 (1994).

199. Walter Müller-Jentsch, *Re-assessing Co-determination,* THE CHANGING CONTOURS OF GERMAN INDUSTRIAL RELATIONS 39, 46 (2003).

200. *Id.* at 48.

Although not required by law, the practice in Japan is for one union to bargain with one company.[201] One major difference between the Japanese and the Philippine system is the development of a consultative process within the overall framework of collective bargaining. Joint consultation committees are very common in large Japanese companies.[202]

Japanese companies commonly disclose detailed and confidential information to union officials, and frequently discuss the direction of the enterprise with workers' representatives through such consultative committees.[203] The committees meet months prior to bargaining sessions, so that cooperative and adversarial approaches are chronologically separated. The union may designate different persons to sit on the consultative and bargaining committees, but there is no general pattern as to which members are seated. With this framework, Japan possesses one channel of employee representation that peforms both works council and collective bargaining functions.[204]

These arrangements need to be scrutinized as to nature, composition, purpose, and efficacy, with a view to improving our own workplace democracy and cooperation arrangements.

VI. THE PURSUIT OF INDUSTRIAL PEACE

A. Conciliation and Mediation

Book V's substantive provisions open with the State's compulsory arbitration machinery, administered by the NLRC and the BLR.[205] This bias towards compulsory arbitration was established as far back as 1936 with Commonwealth Act No. 103, supposedly restricted by collective bargaining through Republic Act No. 875, and discouraged by its omission in the dispute settlement policy in Section 3, Article XIII of the 1987 Constitution.

But compulsory arbitration remains the top dispute settlement option. In the first half of 2003, cases in the NLRC regional arbitration branches (RABs) totaled 29,640. Appealed cases to the Commission amounted to 9,711, bringing the total number of NLRC cases to a whopping 39,351. Of these,

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201. Bellace, *supra* note 198, at 450.

202. *Id.* at 451.

203. *Id.* at 452.

204. *Id.*

205. Book V opens with the declaration of state policies and definition of terms before proceeding to the NLRC and the BLR.

10,260 were disposed for a 26% disposition rate.[206] Concrete efforts by Chairman Roy Señeres to highlight conciliation and mediation at the preliminary conference level have relieved the caseload, but without a proper administrative conciliation and mediation machinery supporting the NLRC, cases will continue to hound its existence. Between the first half of 2002 and the first half of 2003, for instance, there were 809 more cases filed, projecting a 5% increase at year's end. Be that as it may, the NLRC has doubled the amount of benefits awarded to workers, from P2,762,600 in 2002 to 4,609,800 as of the first half of 2003.[207]

On the other hand, the main conciliation and mediation service of the DOLE, the NCMB, managed to maintain a 90.3% disposition rate pertaining to strike and lockout notices in 2002, and to keep strikes down to 36,[208] a twenty-five year low.[209] These numbers are astounding, considering there were only 40 assumed or certified cases for compulsory arbitration, and 570 settled through the efforts of NCMB conciliators.[210]

Success in conciliation efforts is not confined to the Philippines alone. Malaysia, for instance, has reported that 80% of disputes filed before its Industrial Relations Department are resolved through conciliation. Singapore also has a proud tradition of conciliating labor disputes.[211]

B. Tripartism

Tripartism allows workers and employers to be represented in decision and policy-making bodies of the government. The Secretary of Labor and Employment is also given the authority to call national, regional, or industrial tripartite conferences for the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with established priorities in economic and social development.[212]

During the Martial Law era, several tripartite conferences were called to discuss labor and employment issues. Tripartism was institutionalized when

206. Factbook, *supra* note 86, at 38.

207. *Id.*

208. *Id.* at 35.

209. DEJILLAS, *supra* note 100, at 34. There were 33 actual strikes in 1977.

210. Factbook, *supra* note 86, at 35.

211. This is based on the *Country Papers* presented at the Regional Policy Workshop on Fundamental Framework of Industrial Relations and Legislation, 8-9 July 2003, Tokyo, Japan (unpublished papers, on file with the author).

212. LABOR CODE, art. 275.

Pres. Corazon Aquino issued Executive Order No. 403, series of 1990, and created a Tripartite Industrial Peace Council (TIPC) with a three-fold purpose: (a) monitor full implementation with the provisions of the industrial peace accord (IPA); (b) assist in the preparation and conduct of national tripartite conferences; and (c) formulate tripartite views on labor and social concerns. The members of the Council were the Secretary of Labor and Employment as Chairman, and twelve representatives each from the labor and management sectors.

Two years later, Pres. Fidel Ramos issued Executive Order No. 25, series of 1992, which reconvened the TIPC and maintained its functions and membership. To carry out the provisions of E.O. No. 25, then Secretary of Labor and Employment Nieves R. Confesor issued Department Order No. 8, series of 1995, which laid down guidelines for the constitution and institutionalization of national industry councils, regional tripartite industrial peace councils, and regional or local industry tripartite councils under the national tripartite council.

President Ramos later amended E.O. No. 25 and issued Executive Order No. 383, series of 1996. Government representation in the TIPC included the Department of Trade and Industry (DTI), Department of Interior and Local Government (DILG), and the Director-General of the National Economic and Development Authority (NEDA). E.O. No. 383 also incorporated the industrial and regional tripartite council framework initially established by Secretary Confesor.

Under E.O. No. 383, the Council's functions included the following: (a) monitoring full implementation and sectoral compliance with the provisions of all international conventions, tripartite agreements and commitments; (b) assisting in the preparation and conduct of national, regional or industry-specific tripartite conferences; (c) reviewing existing labor, economic and social policies and to evaluate local and international developments affecting them; (d) formulation of tripartite views, recommendations and proposals on labor, economic and social concerns; (e) advise the Secretary of Labor and Employment in the formulation or implementation of major policies; and (f) serve as a joint communication channel and a mechanism for undertaking joint programs.

Pres. Joseph Estrada later issued Executive Order No. 49, series of 1998, which reconstituted and expanded the members of the TIPC to include more heads of executive departments or agencies, as well as increase the number of sectoral representatives to twenty each. The regional and industrial tripartite framework was maintained. On Labor Day five months later, President Estrada issued Executive Order No. 97, series of 1999, to include overseeing the medium-term comprehensive plan as a basic function of the TIPC.

In 2001, Pres.Gloria Macapagal-Arroyo reconvened the TIPC, which maintains its nature, functions and composition under E.O. Nos. 49 and 97. The National TIPC has been responsible for the enactment on various DOLE regulations on labor relations, contractualization, employment in security agencies, health and safety, child labor, and overseas employment.

Six industrial councils exist, representing the banking, construction, automotive assembly, sugar, hotels and restaurants, and garments sectors. There are regional tripartite councils all over the country, including several provincial councils created through local ordinance, such as the Laguna Labor Management Council, pursuant to Provincial Ordinance No. 822, series of 1998.

In an ILO study on tripartism in the Philippines, Fashoyin raised the possibility of bringing the decent work agenda to the TIPC. He also pointed out the need to effectively transmit national TIPC decisions at the relevant lower levels. He exhorted tripartite partners to include civil society representatives within the scope of TIPC representation and to keep tripartism relevant.[213]

VII. GENERALIZATIONS AND PROPOSALS: THE COURTSHIP RITUAL

With the advent of labor-management cooperative efforts and the re-emergence of mutual aid, not to mention the continuing growth of an unorganized and informal segment of the labor market, has Philippine industrial relations "evolved" enough to bring about the type of change envisioned by the framers of the Constitution? We need not delve into a debate on representation of workers in corporate boards of directors, but we may rethink the current industrial relations model through the lens of basic notions of workplace democracy and cooperation, notions that easily become relevant at the enterprise level even before thoughts of unionization emerge.

To rethink the current industrial relations model, the conceptualization may start with a metaphorical dream of a wedding – the marriage between human resources development and industrial relations.

In the marriage between human resources development and industrial relations, a courtship or *paninilbihan* must commence. Dr. Penelope Flores of San Francisco State University has emphasized the importance of "filling up the tapayan" in true Filipino *paninilbihan* tradition, where the *tapayan* stands as a positive conduit of communication. This fusion of HRD and IR in the

213. TAYO FASHOYIN, WORKING PAPER ON SOCIAL DIALOGUE AND LABOUR MARKET PERFORMANCE IN THE PHILIPPINES 49-52 (2003).

law "to be filled" must come with discourse and discussion in the free market of ideas to adequately create a Book V for the new millennium.

In this courtship dance, a proposal for consideration by all stakeholders in labor relations is hereby put forward. In view of the preservation of a strong collective bargaining flavor in House Bill Nos. 5996 and 6031, a new approach could be forthcoming. A possible configuration could be as follows:

a.) *Chapter One, State Policy*. Emphasizing not just a declared policy of collective bargaining to cover a small percentage of the Philippine labor force, but a framework of workplace democracy and cooperation that will promote harmonious relations between and among workers, and between workers and management. The foundation shall be the workers' right to self-organization, the method is workplace democracy and cooperation and collective bargaining, and the goal is industrial peace.

b.) *Chapter Two, Definition of Terms*. To include a definition of groups, teams, associations, or committees that function within the realm of workplace democracy and cooperation, as well as tripartism.

c.) *Chapter Three, Workplace Democracy and Cooperation*. Providing a framework for workplace relations prior to or in the absence of union representation, with guidelines to be observed in terms of nature, functions, composition, and other mechanics of institutional workplace cooperation. This shall also include mutual aid organizing to cover the expansion efforts of unions and workers across occupational, geographical, or "social movement" lines.

d.) *Chapter Four, Tripartism*. Enhancing efforts to forge policy and decision consensus among social partners in the regional, industrial, and national levels.

e.) *Chapter Five, Collective Bargaining*. Upholding the right to self-organization, prohibiting unfair labor practices. Continued pursuit of a fair and expeditious administrative machinery for union and CBA registration, determination of representation status, collective bargaining and strikes and lockouts.

f.) *Chapter Six, Special Provisions on Informal Sector and Rural Workers*. Dealing with organizational matters, as well as mechanisms to encourage self-enterpreneurship, uphold financial sustainability, and provide opportunity for political representation.

g.) *Chapter Seven, Dispute Settlement*. Establishing a primary conciliation and mediation machinery prior to adjudication or

arbitration, as well as administrative or jurisdictional amendments to address the caseload of the NLRC.

As intimated in the introduction of this article, laws, as vessels of rules, are, of course, not immutable. As norms and values are shaped by internal and external changes; laws become vulnerable to reform or repeal. When developments hinder a proper understanding or enforcement of a law, calls for legislative review arise. The proposed framework adheres to the view that the current system does not adequately cover all Filipino workers, and that the current system of collective bargaining could best be supported or complemented by less adversarial modes of workplace democracy and cooperation.