THE PRESENT LABOR LAWS: THEIR IMPORTANCE TO THE NATIONAL INTEREST OF THE PHILIPPINES*

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When I received the invitation to take part in the Gregorio Araneta Memorial Lecture to speak on Labor, I was both curious and glad. Glad, and of course honored, to be offered the privilege of being part of the lineup of speakers of this prestigious lecture series. Glad, also, because, having been a Company or Management lawyer during my entire career in law, I can again speak on labor.

Curious, because I wanted to know if the "Communist" label tagged on me by big business and by the press still sticks. To Labor, they see me as a friend. To big business, it is altogether a different case.

In my ten-month stint as Labor Minister, during the initial months of the Aquino Administration, when people's consciousness bordered on delirium and reality, I did the best possible way to view the job from the standpoint of both Labor and Business. Labor being the most exploited, repressed and deprived sector of our society. Business then being in deep economic crisis. I received all kinds of colorful plaques and gained also all kinds of multicolored criticisms, from being Pro-Labor to Left-leaning to Leftist to Communist.

All that – – but the memory – – I hope is gone.

The theme for this lecture is "The Present Labor Laws: Their importance to the National Interest of the Philippines". Even though I am a product of the Benedictines, I will address the topic in a manner relevant to students and practitioners of Law along the Jesuit tradition of developing Christian lawyers who are "Men and Women for Others."

Let me start by pointing out, that the past years have brought to focus certain effective barriers to the passage of meaningful and responsive labor laws that can, in turn, provide the necessary push for the country's economic development.

First. The labor sector has not been able to put in Congress a representative who can voice their problems, demands, and needs. For decades, until the election last year of Senator Ernesto Herrera, the "labor jinx" was not broken. This is not to say that all the labor representatives who ran really and actually "lost".

Second. For years, our economy has remained stagnant, if not backward, a condition that continues to shackle the ability of labor to move. The economic mire, business at a vantage post, allowing its misfortune as a basis to influence the direction of government policies.

Parenthetically, the working men's well-being has not qualitatively improved. Laborers, like all of us here, have the right to a good life, dignity, and respect.

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They are a vital part in the production of the wealth of our nation.

Third. Present labor laws are largely borrowed from foreign countries with far developed economies and, hence, may not be squarely applicable to the Philippine labor setting.

Fourth. Philippine labor still suffers from the Marcos policy of attracting foreign investors by the promise of "cheap and docile labor, tax incentives, and tax holidays." To some the cheap labor package implies a *no union* clause.

The four barriers' I discussed are just some conditions that negate the establishment of a just environment for labor. There could be more.

THE LABOR SITUATION DURING THE MARCOS YEARS

The problems of labor that plague the Cory administration did not come only in February 1986. Some antedated Marcos. When Martial Law was imposed in 1972, however, the problems rose to anarchic perfection.

Among the first victims were the workers. The right to strike was taken away from them by General Order No. 5. The sweeping ban came under serious attack from the labor movement here and abroad, and it was modified by PD 823, later amended by PD 849 prohibiting strikes only in "vital industries."[1]

Infringing on the worker's right to strike, and other forms of concerted actions, clearly resulted in labor unrest. This contributed to economic instability.

Moreover, the Marcos Administration came up with the one-union-one-industry scheme.[2] This would restructure the labor movement by convening collective bargaining agents in each industry, forming an organizing committee from among these agents, and holding a restructuring and unification convention.

Instead of unifying the labor movement, this concept intensified the hostility among federations, since most of them engage in general unionism, that is, organizing across industries. No real restructuring took place because Labor opposed the move. What struck fear among many was the possibility of installing industry leaders who would cooperate only with the government.

Tripartism as a state policy was adopted,[3] it was, however not put to good use to guide labor relations. Labor participation was minimal and the leaders selected to tripartite bodies were chosen primarily on grounds of political considerations. The selection was limited to government-recognized labor federations and centers. The voices of other labor groups were virtually not heard.

Tripartism was used as a part of the crisis-management approach. Tripartite conferences were convened mainly to agree to predetermined wage adjustments. Labor was never called for a tripartite conference on national issues involving the economy, yet they were asked to participate in seeking ways of solving economic problems.

[1] Art. 263 (g), Title VIII, Chapt. I, Book V, Labor Code.
[2] Art. 211 (c), Labor Code (now repealed by EO 111).
[3] Art. 276, Labor Code.

After the lifting – on paper – of Martial Law in 1981, Batas Pambansa No. 130 (Labor Relations Law) and Batas Pambansa No. 227) (Anti-Scab and Picketing Law) came into effect. The ban on strikes in "vital industries" was lifted but restrictions on the right to strike took its place. Strikes could only be declared on grounds of collective bargaining deadlock and unfair labor practice.[4] But only after securing a 2/3 strike vote and complying with notice and cooling-off requirements.[5] Furthermore, government could intervene through the Minister, who could assume jurisdiction or certify it for compulsory arbitration in the name of "national interest."[6]

To this day, there still reverberates a strong clamor from labor and the public of the repeal of what they call repressive labor laws. The transition from dictatorship to democracy will not be complete until all remnants of tyrannical rule are totally eradicated. Labor continues to oppose the system that chains them to poverty and repression.

POST-MARCOS SCENARIO: THE LABOR SITUATION UNDER THE AQUINO GOVERNMENT

In her Labor Day speech in 1986, the President said, and I quote, "under this government there will be justice for the workers under the laws, and the laws will be just." On the same occasion she made a series of pronouncements:

– Promotion and protection of the rights of workers and employees to establish and form organizations and unions, with minimum government interference.

– Repeal of LOI No. 1458 that allows management to replace striking workers who defy return-to-work orders.

– Rejection of the "one-union-one-industry" concept.

– Right to unionize and bargain collectively of Security Guards and employees of government corporation organized under the corporation code.[7]

– Automatic certification elections during freedom period when the majority status of incumbent union is questioned. In non-unionized establishment petition for certification elections or to register a union to require only 20% of all employees is sufficient.[9]

– Abolition of 13th month pay ceiling.

– Apprenticeship period reduced to six months.

– 2/3 strike vote reduced to simple majority.

– No cooling-off period to strike in case of dismissal of union officers.

– Police forces to keep out of picket lines.

All these were later to become part of our laws.

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[4] Art. 264 (c), Labor Code.

[5] Art. 264 (f) (now amended by EO 111)

[6] Art. 263 (g), Labor Code.

[7] EO 111, Sec. 6 Dec. 24, 1986 (now Art. 245, Labor Code) EO 180, June 1, 1987.

[8] Art. 258 (EO 111, Sec. 7)

[9] EO 111, Sec. 4 (Art. 234 (c), Labor Code

The President further addressed the workers. "How can we be strong if you are weak? How can we be proud as a free nation if you will not stand up for your rights within your own sector? " Hence, on another occasion, the President made this promise: "I pledge to work for the repeal of repressive laws and for the dismantling of economic structures which keep workers in a state of quasi-slavery. ."

These statements and pronouncements express recognition of the pressing problems that besiege labor, the need to emancipate this vast sector from economic deprivation, and the imperative need for change in labor and social legislation.

During the first year of the Aquino Administration, there was a realization that the government must get the support of workers who, after all, were among those who suffered most during the repressive years of the dictatorship.

As the first Labor Minister of the Aquino Administration, I found extremely important then the need to restore the trust of workers in government. The Ministry was opened to all, primarily to this underprivileged sector even if it had to take the Minister's direct hand in preventing or amicably settling labor disputes. The job was not really simple and easy.

So there was this sensitive post – the Labor and Employment Ministry, on its first year after many years of repression under the Marcos rule. The new administration took over with so much expectation from the people, particularly from workers and their union. Like freed air from a punctured balloon, they ventilated their grievances and demands, openly, sometimes too militantly. The right to strike was exercised in a lively way, true, but little known to many, a considerable number of impending and actual disputes were prevented or settled at the bargaining table.

Concillation was adopted by the Ministry as a primary and preferred mode of settling disputes. This system, as of now, should be strengthened to effectively bring the parties to settle amicably.

The role of the Philippine labor force in the development of the economy needs government attention and support. Pope Leo XII in his *Rerum Navarum* (the encyclical on the condition of the working classes) stated in 1891 that Labor is an indispensible factor, partner of capital.

> ". . . It is only by the Labor of workingmen that states grow right. (Hence) capital cannot do without labor nor labor without capital. It is entirely false to ascribe the results of their combined efforts to either party deny the efficacy of the other side and seize all the profits."

We have learned from experiences under Marcos rule that anti-labor laws and measures fall to suppress worker's movement. The "National Interest" standard was widely abused and arbitrarily applied, in effect targetting economic stability at the workingman's expense. Labor reforms were initiated, then weakened, and eventually failed.

The great nationalist, Jose W. Diokno, himself a brilliant lawyer, said:

> ". . . We lawyers constantly use such concepts as imprecise, concepts, for example, like "public policy," "public interest" . . . Indeed, we are aware that often the utility of a concept lies in its very imprecision: For it allows its content to enlarge or contract according to the situation in which it is to be applied.

National interest lies in economic development to solve the problem of mass poverty and unemployment. And therefore to provide a major settlement to the country's economic, political and social problems.

What was imperative then and now is to address the basic issues that afflict the labor sector, set policy directions which take into account their welfare and rights, and work for legislation that will significantly change the existing labor laws.

I have seen the extent and magnitude of the labor sector's problems in my stint as Minister of labor. And just like what the President vowed to do when she was catapulted to power by the people, I saw no other way to handle the labor post but to give full play to the constitutional mandate of affording full protection to labor in recognition of the workers plight and their role in the economic development of the country. My controversial proposal on profit-sharing, which was deeply ensconced in the 1973 Constitution, is now enshrined in the 1985 Constitution, expressed in the terms "Recognition of right of labor to its just share, in the fruits of production."[10]

The President once talked about profit-sharing.

> ". . . I pledge to rid the statute books of oppressive labor laws and I shall create for the Filipino worker an economic atmosphere which will give him a just share of the fruits of his labor as well as opportunities for total human development.

And, by way of a simple response to my critics, profit-sharing is not a communist concept. From France, where this system started in the 1800s, it has been transported all over the world. Adopting it as a concept in 1973 was a little late, more so in 1986.

AN APPRAISAL OF PRESENT LABOR LAWS

We have all learned that one of the most important aspects, if not the most important aspect of labor law is labor relations. Authorities in Labor Laws define Labor relations as "essentially the social relations in production - the structure as well as the process of interaction among individuals and organizations involved in production." The bulk of labor disputes covers labor relations cases.

Labor laws directly address two forces of society which can propel economic recovery: labor and capital.

Labor laws must ensure industrial peace which may be achieved only if there is full employment under conditions that guarantee labor of security of tenure, of a salary that provides decent living, of fair share in the fruits of production, and respect for workers' basic constitutional right: the right to self-organization, to collective bargaining, to strike and other concerted activities, and to participate in the policy and decision-making process affecting their rights and benefits.

[10] Sec. 3, Art. XIII, Philippine Constitution (Social Justice and Human Rights).

Labor laws must be founded on social justice, an accepted definition of which is the Magsaysay phrase "those who have less in life should have more in law." If this axiom were to be applied concretely, it simply means that because of the uneven economic power between labor and capital, the state must afford full protection to labor in actual terms. As it is now, labor law provisions or lack of it, by oversight or by intention, tend to favor capital.

Two celebrated cases come to mind – Baxter Travenol[11] and Business Day.[11-A] In these two cases, the common denominator was that Management was intolerant of labor unions. When the Supreme Court and the Secretary of Labor issued a decision favorable to the union, Management deemed it best to close the establishment and cease operations rather than continue operating with a labor union.

In Baxter Travenol, "National Interest" and the economy of the country were not the company's concern. Much less was the plight of the workers who up to now, after three years, still man their picket lines.

In Business Day, management openly proclaimed its disdain for the Union. In the first editorial of Business World, it announced to the whole world that the new paper was a continuation of Business Day.

In both cases, the Constitutional rights of workers were in peril, but the government was powerless to protect labor. On the other hand, when a strike is declared illegal, the workers may be immediately terminated even before the decision becomes final, by the expediency of ordering the security guards to ban the employees concerned from entering the company premises.

A recent controversy arose on the question of right to ingress or egress provision of Batas Pambansa No. 227. No issue has elicited more passionate reaction from both management and union than the right of the employer to free ingress and egress strikes.

In a speech made before leading groups of businessmen on October 20, 1987, Mrs. Aquino announced her tough stand against erring workers who put blockades in front of company gates. After the President's speech, a respected journalist reported:

> 'Hours after the President spoke Tuesday (October 20, 1987) against 'The Abuses Of Labor," the Manila Police swamped down on 11 strike torn factories in the city and tore down blockades even without prior clearance from the Department of Labor and Employment. The guidelines on the crackdown were spelled out only on Thursday (October 22, 1987).
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> Even then, the police tore down the picket lines believing that Mrs. Aquino's speech was mandate enough (Malou Mangahas, "Inside Malacanang, the Chronicle, Sunday, October 25, 1987)

[11] Baxter Travenol Employees Union, et. al. vs. Carmelo C. Noriel, et. al.", Supreme Court, G.R. No. 68511, Nov. 5, 1984 (Decision).

[11-A] "Raul L. Locsin & Business Day Corp. vs. Hon. Franklin M. Drilon & Buklod – Manggagawa ng Business Day, G.R. No. 79330. "In Re: Labor Disputes at the Business Day Corporation", BLR Case No. N-S-2-04-87, Office of the Secretary of Department of Labor and Employment.

The President's October 20 speech was a watershed for the administration. Her stand was buttressed by the justice Department which declared that the barricades are a nuisance *per se*.[12]

I would like to think that the new government is a government of laws and not of men. Under the rule of law, the right to declare an action illegal is vested in the courts, not in the President, not in the military nor in the police. The unilateral declaration that blockades are illegal violates this doctrine.

Not all barricades are *ipso facto* illegal if they are in response to illegal acts of Management as in the case of an illegal lock-out. They are just and valid under the theory of self-defense. It is also an accepted jurisprudence that reasonable force may be used in the protection of a right.[13] Furthermore, the Labor Code states specific procedures to enjoin illegal acts and hence everyone, including the President, must abide by the law. The law provides that only the NLRC may enjoin illegal acts[14] and, therefore, is the proper body to look into the legality of these acts.

Workers resorting to barricades to block ingress and egress is not a recent phenomenon. One needs only to read the Supreme Court decisions on issues involving strikes and invariably one concludes that striking workers have always resorted to barricades as a weapon to protect their rights.[15]

The use of barricades to repel unlawful aggression and to justly protect rights was not limited to the confines of strikes in factory areas. Barricades were used by the people to topple the dictatorship that eventually put into power the government we now have.

It is ironic that the government which was brought to power through the barricades now condemns all kinds of barricades. But workers will always barricade the means to ingress or egress if only to insure protection of their rights.

I do not justify the indiscriminate use of barricades, but the government should understand why workers resort to them, and adjust the rules on how to deal with them.

The concept of strikes is withdrawal of support by labor from management to paralyze production, thereby affecting profit. This weapon of workers will be ineffectual and futile if management can hire replacements freely and scabs can enter the company premises freely because the means of ingress to and egress from are open.

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[12] Title VIII. – Nuisance, Civil Code. Remedies against nuisance are specific in Art. 699 which are: prosecution under the Penal Code or local ordinance, civil action or abatement without judicial proceedings. Determination of the best remedy is made by the district health officer under Art. 702. A civil action to abate a public nuisance is commenced by the City or Municipal Mayor, Art. 701. Extra Judicial abatement follow a four-step procedure, Art. 704.

[13] Revised Penal Code, Art. II (Justifying circumstances) (Art. 429, NCC – refers to protection of a *"thing"* so it can not be applied here.)

[14] Art. 218 (3), Labor Code, as amended by BP Blg. 227.

[15] Cebu Portland Cement Co. vs. Cement Workers Union, L-25032 and L-25037-38, October 14, 1968, 26 SCRA 504.

The present labor laws do not prohibit hiring of new employees to replace striking workers. Batas Pambansa No. 227, designated the *Anti-Scab and Picketing* Law, merely prohibits armed persons from escorting anyone who seeks to replace the strikers.[16]

There is, therefore, an explicit recognition that striking workers may be replaced as long as they are not escorted by armed personnel. Clearly, we can see that under the law, even the most legitimate strike can be busted by Management. Batas Pambansa No. 227 is unlike the original law RA 3600, because under the former law, management is prohibited from employing strike breakers.

The right of the union to block ingress or egress and of Management to a free ingress or egress will always be a focal point in strikes. Unless the rights and responsibilities of union and Management are regulated, violence may occur.

More than a year ago, I submitted to the President a proposal to regulate the use of ingress or egress during strikes. In the recent Triparte meetings, similar proposals were discussed. I hope such will get government approval.

The controversy of the right to ingress or egress exemplifies the problem on present labor laws which do not apply to Philippine Labor situation. In a developed economy such as that of the US, the means of ingress and egress to a factory are open even during strikes. It is difficult to hire new employees.

However, in our country where there is a high unemployment rate, new employees may be easily hired. Putting up blockades in front of company gates amounts to a defensive measure by workers to prevent newly hired workers from entering so as not to render the strike ineffectual or nugatory.

Another issue which is a source of tension, and which may become a full blown conflict, is agency hiring. Under the law, there are two types of agency hiring: one is job contracting, the other is "labor only contracting."[17] What is prescribed is the "cabo system" or labor-only contracting, where the contractor has no capital outlay and supplies labor-only for a fee.

Whether it is job contracting or labor-only contracting, the net effect is that the right to self-organization is weakened because, by this method of hiring, the number of employees that may be organized within a bargaining unit is effectively reduced. We have cases, especially in banks and financial institutions, where union members constitute a minority of total employees. Recently affected by the issue are Interbank and Citibank.

The oppressive nature of this system is that, often, agency workers receive only the mandated minimum wage, regardless of their years of service. More than this, minimum wage, in light of the sky-rocketting of prices of commodities, hardly sums up to the living and decent wage mandated by the Constitution.

Illegal dismissal is another prevalent cause of strikes. No immediate or expedient relief is available to an employee who is illegally dismissed.

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[16] Art. 264, Labor Code.

[17] Art. 1-6, Labor Code.