

LABOR II - LABOR RELATIONS

CLASS NOTES AND CASE SUMMARIES

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Labor Standards - We define labor standards law as that which provides the **least terms and conditions of employment that employers must comply with and to which employees are entitled as a matter of legal right**. Labor standards, as defined more specifically by jurisprudence, are the minimum requirements prescribed by existing laws, rules and regulations relating to wages, hours of work, cost-of-living allowance, and other monetary and welfare benefits, including occupational, safety, and health standards. (Maternity Children's Hospital vs. Secretary of Labor, G.R. No. 78909, June 30, 1989)

Labor Relations - defines the **status, rights and duties, and the institutional mechanisms** that govern the individual and collective interactions of employers, employees or their representatives.

I. RIGHT TO SELF ORGANIZATION

A. STATE POLICY

1987 Constitution

Article II

Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Article III

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes **not contrary to law** shall not be abridged.

Article XII

Section 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in

both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Section 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

Section 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

Article XIII

Social Justice and Human Rights

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Labor

Section 3. 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.

Article 3. Declaration of basic policy.
The State shall afford protection to labor, promote full

employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. **The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.**

B. PURPOSES OF SELF ORGANIZATION

The right to self-organization is not limited to unionism. Workers may also form or join an association for **mutual aid and protection** and for other legitimate purposes.

Samahan ng Manggagawa sa Hanjin Shipyard v. Bureau of Labor Relations

Facts: SAMAHAN wanted to form a worker's association for the Hanjin employees. However, Hanjin opposed on the ground that **not all members of the association are their employees**. Hanjin also posits that the members of SAMAHAN have definite employers, hence, they should have formed a union instead of a workers' association.

Issues: Whether SAMAHAN can form a worker's association for the purpose of collective bargaining.

Ruling: No. There is no provision in the Labor Code that states that employees with definite employers may form, join or assist unions only which means that employers with definite employers may form a worker's association. However, in this case, SAMAHAN's registration was cancelled not because its members were prohibited from forming a workers' association but because they cannot organize for the purpose of collective bargaining. As defined, a worker's association is an organization of workers formed for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

Right to self-organization includes right to form a union, workers' association and labor management councils

The right to form a union or association or to self-organization comprehends two notions, to wit:

- (a) the liberty or freedom, that is, the absence of restraint which guarantees that the employee may act for himself without being prevented by law; and
- (b) the power, by virtue of which an employee may, as he pleases, join or refrain from joining an association

The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising the said right. It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. Also inherent in the right to self-organization is the right to choose whether to form a union for purposes of collective bargaining or a workers' association for purposes of providing mutual aid and protection.

Aside from a union, what are other forms of self-organization?

Union - any labor organization in the private sector organized for collective bargaining and for other legitimate purposes

Workers' association - is an organization of workers formed for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

Labor Management Councils - represents employees in policy and decision-making processes of the employer (which affect employee rights, benefits, welfare)

Many associations or groups of employees, or even combinations of only several persons, may qualify as a **labor organization** yet fall short of constituting a labor union. While every labor union is a labor organization, not every labor organization is a labor union. The difference is one of organization, composition and operation.

Collective bargaining is just one of the forms of employee participation. Despite so much interest in and the promotion of collective bargaining, it is incorrect to say that it is the device and no other, which secures industrial democracy. It is equally misleading to say that collective bargaining is the end-goal of employee representation. Rather, the real aim is **employee participation** in whatever form it may appear, bargaining or no bargaining, union or no union. Any labor organization which may or may not be a union may deal with the employer. This explains why a workers' association or organization does not always have to be a labor union and why **employer employee collective interactions are not always collective bargaining**.

A: Worker's association and labor management councils

The right to self-organization extends to those who actually don't have clear and cut employers or those

who are self-employed.

The fact that you are a worker already entitles you to the right to self-organize. However, in this case, the court admitted that **they can organize but they cannot organize for the purpose of collective bargaining because not all the workers who are self-organizing are employees of Hanjin**.

If only the members were all Hanjin employees, SC would have allowed them to form a union as part of their right to self-organization. **Unionism is usually associated with collective bargaining**. However, as discussed in this case, **there are other forms of self-organization that don't entail negotiation or collective bargaining such as labor management councils and worker's association** which are formed by employees just to help each other out and not for the purpose of collective bargaining.

TN: The right to self-organization is not limited to unionism. Workers may also form or join an association for mutual aid and protection and for other legitimate purposes.

C. COVERAGE AND LIMITATIONS

Article 243. Coverage and employees' right to self-organization.

All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. 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. (As amended by Batas Pambansa Bilang 70, May 1, 1980)

DO 40-03, s. 2003

RULE II

COVERAGE OF THE RIGHT TO SELF-ORGANIZATION

Section 1. Policy. – It is the policy of the State to promote the free and responsible exercise of the right to self-organization through the establishment of a simplified mechanism for the speedy registration of labor unions and workers associations, determination of representation status and resolution of inter/intra-union and other related labor relations disputes. Only legitimate or registered labor unions shall have the right to represent their members for collective

bargaining and other purposes. Workers' associations shall have the right to represent their members for purposes other than collective bargaining.

Section 2. Who may join labor unions and workers' associations. – All persons employed in commercial, industrial and agricultural enterprises, including employees of government owned or controlled corporations without original charters established under the Corporation Code, as well as employees of religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join or assist labor unions for purposes of collective bargaining: provided, however, that supervisory employees shall not be eligible for membership in a labor union of the rank-and-file employees but may form, join or assist separate labor unions of their own. Managerial employees shall not be eligible to form, join or assist any labor unions for purposes of collective bargaining. Alien employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor unions for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs, or which has ratified either ILO Convention No. 87 and ILO Convention No. 98.

For purposes of this section, any employee, whether employed for a definite period or not, shall beginning on the first day of his/her service, be eligible for membership in any labor organization. All other workers, including ambulant, intermittent and other workers, the self-employed, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection and other legitimate purposes except collective bargaining."

a. Private sector vs. Public sector

(Right to Self Organization vs. Right to Unionize and Collectively Bargain, for Furtherance of their Interests)

Article 244. Right of employees in the public service.

Employees of government corporations established under the Corporation Code shall have the **right to organize and to bargain collectively with their respective employers**. All other employees in the civil service shall have the right to form associations for purposes not contrary to law. (As amended by Executive Order No. 111, December 24, 1986)

1987 Constitution

Sec 2 (1) and (5), Art. IX (B)

Section 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

Section 2. (5) The right to self-organization shall not be denied to government employees."

GOVERNMENT EMPLOYEES	PRIVATE EMPLOYEES
<ul style="list-style-type: none"> only for furtherance and protection of their interests (mutual aid and protection) CANNOT negotiate terms and conditions of employment that are fixed by law right to engage in concerted activities must be exercised in accordance with the Civil Service Law and Rules CANNOT STRIKE for the purpose of securing changes in terms and conditions of employment 	<ul style="list-style-type: none"> includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment may engage in concerted activities for the attainment of their objectives (e.g. strikes, picketing, boycotts)
<i>Resolution of complaints</i>	
<ul style="list-style-type: none"> must follow Civil Service Law if dispute remains unresolved, it must be referred to the Public Sector Labor Management Council for appropriate action 	<ul style="list-style-type: none"> grievances, and cases may be left to collective bargaining or other concerted activities

The right to self-organization shall not be denied to workers. The constitution does not distinguish between the public and the private sector. Government employees have the right to self-organize but with limitations: they cannot self-organize for collective bargaining

Arizala v. Court of Appeals

Facts: During this time, GSIS executed a collective bargaining agreement with the GSIS Employees Association which contained a maintenance-of-membership clause. (all employees who, at the time of the execution of the agreement, were members of the union or became members thereafter, were obliged to maintain their union membership for the duration of the

agreement as a condition for their continued employment in GSIS). Petitioners were demanded to resign from the GSIS Employees Association but they refused to do so. Hence, criminal cases were lodged against them.

Issues: Whether government employees may engage in collective bargaining

Ruling: No. The concept of the government employees' right of self organization differs significantly from that of employees in the private sector.

The private sector's right of self-organization, i.e., "to form, join or assist labor organizations for purposes of collective bargaining," admittedly includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment and also, to engage in concerted activities for the attainment of their objectives, such as strikes, picketing, boycotts. But the **right of government employees to "form, join or assist employees organizations of their own choosing"** under Executive Order No. 180 is **not regarded as existing or available for "purposes of collective bargaining,"** but simply "**for the furtherance and protection of their interests.**"

In other words, the right of Government employees to deal and negotiate with their respective employers is not quite as extensive as that of private employees. Excluded from negotiation by government employees are the **"terms and conditions of employment . . . that are fixed by law,"** it being only those terms and conditions not otherwise fixed by law that "may be subject of negotiation between the duly recognized employees' organizations and appropriate government authorities." And while EO No. 180 concedes to government employees, like their counterparts in the private sector, the **right to engage in concerted activities, including the right to strike,** the executive order is quick to add that those activities must be **exercised in accordance with law**, i.e., are subject both to "Civil Service Law and rules" and "any legislation that may be enacted by Congress," that "the resolution of complaints, grievances and cases involving government employees" is not ordinarily left to collective bargaining or other related concerted activities, but to "Civil Service Law and labor laws and procedures whenever applicable;" and that in case "any dispute remains unresolved after exhausting all available remedies under existing laws and procedures, the parties may jointly refer the dispute to the (Public Sector Labor-Management) Council for appropriate action."

What is more, the Rules and Regulations implementing Executive Order No. 180 explicitly provide that since the **"terms and conditions of employment in the**

government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law, the employees therein shall not strike for the purpose of securing changes thereof."

What is the limitation of the government employees' right to self-organize?

A: Government employees have **limited rights when it comes to collective bargaining or negotiating for better benefits.** The benefits and salaries of government employees are provided for by law. The recourse of government employees is to petition the Congress to amend or pass a new law providing for better benefits.

Government employees cannot strike or cease work because their employer is the government and the government must always function. **Government employees' right to self organize is just for mutual aid and protection.**

Association of Court of Appeals Employees v. Ferrer-Calleja

Facts: Petitioner Association of Court of Appeals Employees (ACAE) is an association of government employees duly accredited as the exclusive representative of the rank-and-file employees of the Court of Appeals.

Issues: Whether or not government employees may organize.

Ruling: Yes. No less than the Bill of Rights specifically identifies government employees as having the right of self organization.

GSIS Family Bank Employees Union, v. Villanueva

Facts: For GSIS Family Bank's refusal to negotiate a new collective bargaining agreement, the GSIS Union filed a Complaint. GSIS Family Bank stresses that they merely followed the Governance Commission's directive forbidding them from negotiating the economic terms of a collective bargaining agreement with GSIS Union.

Issues: Whether or not GSIS Family Bank, a non-chartered government-owned or controlled corporation, can enter into a collective bargaining agreement with its employees.

Ruling: No. The terms and conditions of employment of government workers are fixed by the legislature. Instead of a collective bargaining agreement or negotiation, government employees must course their petitions for a change in the terms and conditions of their employment through the Congress for the issuance of new laws, rules, or regulations

to that effect.

b. Rank-and-File Employees

Sec. 1 (oo), Rule I, DO 40-03, s. 2003

"**Rank-and-File Employee**" refers to an employee whose functions are neither managerial nor supervisory in nature.

c. Managerial Employees

Article 212. Definitions.
"**Managerial employee**" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.

Article 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees.

Managerial employees are not eligible to join, assist or form any labor organization. (As amended by Section 18, Republic Act No. 6715, March 21, 1989)

Rationale of prohibition and definition of "Managerial employee"

Bulletin Publishing Corporation v. Sanchez

Facts: 5 out of 48 supervisors in the Bulletin Publishing Corporation formed a labor union, calling themselves members of the "Bulletin Publishing Corporation Supervisors Union" or BSU. The Bulletin Publishing Corporation filed a petition seeking cancellation of the registration of the BSU on the ground that supervisors are prohibited from forming labor organizations.

Issues: Whether or not supervisory employees can exercise the right to self-organization.

Ruling: No. Article 246 of the Labor Code explicitly excludes managerial employees from the right of self-organization, the right to form, join and assist labor organizations. It follows as a logical conclusion that the members of the Bulletin Supervisory Union, wholly composed of supervisors employed by petitioner corporation, are not qualified to organize a Labor Union of their own. The rationale for this inhibition has been stated to be, because if these managerial employees

would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.

In this case, respondents are managers, purchasing officers, personnel officers, property officers, supervisors, cashiers, heads of various sections, and the like. Hence, they hold managerial functions. **Managerial employees** are those vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions.

The status of respondents as "managerial employees" is readily reflected by their long years of acquiescence to their exclusion: (a) from the rank-and-file unit of employees and from membership in the Bulletin Publishing Corporation Employees Union; and (b) from their coverage in the current and past Collective Bargaining Agreements.

Are there groups of employees who are definitely not entitled to self-organize?

A: Not all are entitled to self-organize such as managerial employees

Why are managerial employees prohibited from the right of self-organization, the right to form, join and assist labor organizations?

A: The Union might not be assured of the managerial employees' loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.

TN: One key feature of managerial employees is they exercise discretion. Managerial employees are those vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions.

Constitutionality of the prohibiting managerial employees from forming or joining labor organizations

United Pepsi-Cola Supervisory Union v. Lagunesma

Facts: Petitioner, a union of route managers, filed a petition for certification election. Med-Arbiter denied the petition and affirmed by SOLE on the ground that route

managers are managerial employees disqualified from union membership.

Issues:

- a. Whether or not route managers are managerial employees?
- b. Whether or not Article 245 of the Labor Code is unconstitutional as it prohibits managerial employees from forming, joining or assisting labor unions?

Ruling:

- a. Yes. They are responsible for the success of the company's main line of business through management of their respective sales team. Such management necessarily involves the planning, direction, operation and evaluation of their individual teams and areas which the work of supervisors do not entail.
- b. No. There is a rational basis for prohibiting managerial employees from forming or joining labor organizations. By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations.

TN: One key feature of managerial employees is they exercise discretion. They exercise a degree of independence. They are executives who receive from their employers information that is not confidential but also is not generally available to the public.

d. Supervisory Employees

Article 212. Definitions.
Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.

Article 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees.

Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own. (As amended by Section 18, Republic Act No. 6715, March 21, 1989)

Department Order No. 40-03, S. 2003

(aaa) "Supervisory Employee" refers to an employee who, in the interest of the employer, effectively recommends managerial actions and the exercise of such authority is not merely routinary or clerical but requires the use of independent judgment.

The Heritage Hotel Manila v. Secretary of Labor and Employment

Facts: Respondent National Union of Workers in Hotel Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHMSC) filed a petition for election, seeking to represent all the supervisory employees of Heritage Hotel Manila.

Petitioner Heritage Hotel Manila because it sought the exclusion of some employees for they occupy either confidential or managerial positions. Filed a petition for the cancellation of petitioner's registration as a labor union.

DOLE Secretary declared that mixture or co-mingling of employees in a union was not a ground for dismissing a petition for the certification election. It held that the appropriate remedy was to exclude the ineligible employees from the bargaining unit during the inclusion-exclusion proceedings.

The Court of Appeals: In *Toyota Motor and Dunlop*, it was held that Art 245 prohibits managerial employees from joining any labor union and permit supervisory employees to form a separate union of their own. Labor organization cannot carry a mixture of supervisory and rank and file employees

In *Tagaytay Highlands International Golf Club v Tagaytay Highlands Union-PTGWO (Tagaytay)*: while Art 245 prohibits supervisory employees from joining a rank-and-file union, it does not provide the effect if rank-and-file union takes in supervisory employees as members, or vice versa.

Issues: Whether or not mixture or co-mingling of rank-and-file employees and supervisory employees in one labor organization affects the legitimacy of a registered labor union

Ruling: No. Mixture or co-mingling of rank-and-file employees and supervisory employees have no bearing on the legitimacy of a registered labor organization.

The mixed membership does not result in the illegitimacy of the registered labor union unless the same was done through misrepresentation, false statement or fraud according to Article 239 of the

Labor Code.

The actual functions of an employee, not his job designation, determined whether the employee occupied a managerial, supervisory or rank-and-file position. 42 As to confidential employees who were excluded from the right to self-organization, they must (1) assist or act in a confidential capacity, in regard (2) to persons who formulated, determined, and effectuated management policies in the field of labor relations. In that regard, mere allegations sans substance would not be enough, most especially because the constitutional right of workers to self-organization would be compromised.

Co-mingling of rank-and-file employees and supervisory employees was the main issue of questioning the validity of the union and the certification of election.

What was SC ruling?

A: The mixed membership does not result in the illegitimacy of the registered labor union unless the same was done through misrepresentation, false statement or fraud according to Article 239 of the Labor Code.

Are Supervisory employees allowed to unionize to self-organize? Are there limitations for supervisory employees?

A: In this case the SC highlighted that the **Supervisory employees are allowed to self-organize and form unions**, the only caveat being that they **cannot mix in the same union as rank-and-file employees**.

If they want to self organize, they have to organize a purely supervisory (employee) union.

In this case, how did they determine that the employees were supervisor employees?

A: They're **actual functions**. In order for the SC to determine if an employee is a supervisory employee or not, you have to look at their **actual functions and not simply their designation**.

Art. 212, LC

Managerial employee	Supervisory employees
One who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer,	Those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely

suspend, lay-off, recall, discharge, assign or discipline employees.	routinary or clerical in nature but requires the use of independent judgment.
A managerial employee is involved in laying down and executing policies.	A Supervisory employee is limited to effectively recommending actions. They do not exercise the powers of execution.
the managerial can choose what course of action to take. The Managerial employee exercises a lot more discretion than the supervisory employee.	They can recommend, supervise or look after the performance of other employees and they can suggest to the employer what they observed and can suggest.
Exercises independent judgment	Discretion is only up to recommendations
Cannot unionize	Can unionize but cannot comingle with rank-and-file employees

Co-mingling of supervisory and rank-and-file employees

Holy Child Catholic School v. Sto. Tomas

Facts: Pinag-Isang Tinig at Lakas ng Anakpawis — Holy Child Catholic School Teachers and Employees Labor Union (HCCS-TELU-PIGLAS) filed a petition for certification, alleging that it is a legitimate labor organization duly registered with the DOLE. Holy Child Catholic School (HCCS) argued that private respondent is an illegitimate labor organization lacking in personality to file a petition for certification election. One of the arguments presented was that the HCCS's petition for certification election shall be dismissed by mere allegation of "mixture of employees". But then, interestingly, the Med-Arbiter denied the petition for certification election on the ground that the unit which the private respondent sought to represent is inappropriate. SOLE, however, reversed the Med-Arbiter's decision, and directed the conduct of two certification elections. As to the purported commingling of managerial, supervisory, and rank-and-file employees in private respondent's membership, it held that the Toyota ruling is inapplicable because the vice-principals, department head, and coordinators are neither supervisory nor managerial employees.

Ruling: No. It was the Rules and Regulations Implementing R.A. No. 6715 (1989 Amended Omnibus

Rules) which supplied the deficiency by introducing the following amendment to Rule II (Registration of Unions):

Sec. 1. Who may join unions . — . . . Supervisory employees and security guards shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own; Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit .

This time, given the altered legal milieu, the Court abandoned the view in Toyota and Dunlop and reverted to its pronouncement in Lopez that while there is a prohibition against the mingling of supervisory and rank-and-file employees in one labor organization, the Labor Code does not provide for the effects thereof. Thus, the Court held that after a labor organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code.

The SC reiterated that the alleged inclusion of supervisory employees in a labor organization seeking to represent the bargaining unit of rank-and-file employees does not divest it of its status as a legitimate labor organization.

The gist of this case is that supervisory employees are allowed to organize but they cannot organize with rank-and-file employees. However, if there is co-mingling, this does not affect the validity of the organization that they have set-up. **The effect really is the ouster of the supervisory employees.**

In a lot of these cases, it talks about certification elections. For context: The employees can have multiple unions usually based on shared interests, but an Employer can only deal with one bargaining agent. Meaning, out of all the unions under that Employer, there can only be one union who can represent and negotiate with the employer – that is why we have what is called a certification election. The purpose of the certification election is to choose which among the different unions and labor organizations of the employer, will represent all the employees. This will determine the exclusive bargaining agent, which of the groups or labor organizations will negotiate directly with the employer. So that is why the cases always talk about certification elections – basically the employees

want to choose who is going to represent all of them.

Effect of comingling of supervisory and rank-and-file employees

Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms v. Charter Chemical and Coating Corporation

Facts: Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms (petitioner union) filed a petition for certification election among the regular rank-and-file employees of Charter Chemical and Coating Corporation (respondent company) with the Mediation Arbitration Unit of the DOLE.

Respondent company filed a Motion to Dismiss on the ground that petitioner union is not a legitimate labor organization because of (1) failure to comply with the documentation requirements set by law, and (2) the inclusion of supervisory employees within petitioner union.

The Med-Arbiter held that the list of membership of petitioner union consisted of 12 batchman, mill operator and leadman who performed supervisory functions. Under Article 245 of the Labor Code, said supervisory employees are prohibited from joining petitioner union which seeks to represent the rank-and-file employees of respondent company. As a result, not being a legitimate labor organization, petitioner union has no right to file a petition for certification election for the purpose of collective bargaining.

Issue: Whether or not the mixture of rank-and-file and supervisory employees of petitioner union's membership is a ground for the cancellation of petitioner union's legal personality and dismissal of the petition for certification election.

Ruling: No. The job descriptions indicate that the employees exercise recommendatory managerial actions which are not merely routinary but require the use of independent judgment, hence, falling within the definition of supervisory employees under Article 212 (m) of the Labor Code. For this reason, the petitioner union consisted of both rank-and-file and supervisory employees.

Nonetheless, the inclusion of the aforesaid supervisory employees in petitioner union does not divest it of its status as a legitimate labor organization.

In Tagaytay Highlands Int'l. Golf Club, Inc. v. Tagaytay

Highlands Employees Union-PGTWO, the Court held that after a labor organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code.

As a result, petitioner union was not divested of its status as a legitimate labor organization even if some of its members were supervisory employees; it had the right to file the subject petition for certification election.

Effect of votes cast by supervisory employees in a certification election among rank-and-file employees

National Union of Workers in Hotels, Restaurants and Allied Industries - Manila Pavilion Hotel Chapter v. Secretary of Labor and Employment

Facts: A certification election was conducted among the rank-and-file employees of respondent Holiday Inn Manila Pavilion Hotel (the Hotel). HIMPHLU (Holiday Inn Manila Pavilion Hotel Labor Union) obtained the highest number of votes. Petitioner NUWHRAIN-MPHC appealed to the SOLE arguing among others that the votes cast by the six alleged supervisory employees should not be counted. SOLE ruled that the supervisory employees' votes should be counted since their promotion took effect months after the issuance of the Order of the Med-Arbiter (granting the certification election), hence, they were still considered as rank-and-file. CA affirmed SOLE's ruling.

Issue: Whether HIMPHLU should be certified as the exclusive bargaining agent.

Ruling: No. It is well-settled that under the so-called "double majority rule", for there to be a valid certification election, majority of the bargaining unit must have voted AND the winning union must have garnered majority of the valid votes cast.

In a certification election, all rank-and-file employees in the appropriate bargaining unit, whether probationary or permanent, are entitled to vote. But while the Court rules that the votes of all the probationary employees should be included, under the particular circumstances of this case and the period of time which it took for the appeal to be decided, the votes of the six supervisory employees must be excluded because at the time the certification elections was conducted, they had ceased to be part of the rank and file, their promotion having taken effect two months **before** the election.

Preceding from the Court's ruling that all the probationary employees' votes should be deemed valid votes while that of the supervisory employees should be excluded, it follows that the number of valid votes cast would increase — from 321 to 337. Under Art. 256 of the Labor Code, the union obtaining the majority of the valid votes cast by the eligible voters shall be certified as the sole and exclusive bargaining agent of all the workers in the appropriate bargaining unit. This majority is 50% + 1. Hence, 50% of 337 is 168.5 + 1 or at least 170.

HIMPHLU obtained 169 while petitioner received 151 votes. Clearly, HIMPHLU was not able to obtain a majority vote.

e. Confidential Employees

Confidential employees

You will notice that these confidential employees are actually not mentioned in the Labor Code. The labor code does not actually say "confidential employees shall not have the right to self-organization" but for some reasons, in jurisprudence, the Supreme Court has held that these confidential employees should also not enjoy the right to self-organization. Is the Supreme Court amending the Constitution? Is the SC amending the Labor Code? That is why I am going to dive next into these cases. >>>

Rationale for inhibition

Philips Industrial Development, Inc. v. NLRC, G.R. No. 88957, 25 June 1992, citing Bulletin Publishing Co., Inc. v. Sanchez and Golden Farms, Inc. v. Ferrer-Calleja

Facts: PIDI is a domestic corporation engaged in the manufacturing and marketing of electronic products. Since 1971, it had a total of six (6) collective bargaining agreements (CBAs) with private respondent Philips Employees Organization-FFW (PEO-FFW), registered labor union and the certified bargaining agent of all the rank and file employees of PIDI.

In the first CBA, the supervisors, confidential employees, security guards, temporary employees and sales representatives were excluded from the bargaining unit. In the second to the fifth CBAs, the sales force, confidential employees and heads of small units, together with the managerial employees, temporary employees and security personnel, were

specifically excluded from the bargaining unit.

In the sixth CBA, it was agreed that the subject of inclusion or exclusion of service engineers, sales personnel and confidential employees in the coverage of the bargaining unit would be submitted for arbitration.

The LA declared that the Division Secretaries and all Staff of general management, personnel and industrial relations department, secretaries of audit, EDP, financial system are confidential employees and as such are hereby deemed excluded in the bargaining unit.

The NLRC declared respondent company's Service Engineers, Sales Force, division secretaries, all Staff of General Management, Personnel and Industrial Relations Department, Secretaries of Audit, EDP and Financial Systems are included within the rank and file bargaining unit.

Issue: W/N the service engineers, sales representatives and confidential employees (division secretaries, staff of general management, personnel and industrial relations department, secretaries of audit, EDP and financial system) are qualified to be included in the existing bargaining unit.

Ruling: No, they are not qualified to be included in the existing bargaining unit. All these employees, with the exception of the service engineers and the sales force personnel, are confidential employees.

The five (5) previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them.

The rationale for this inhibition has been stated to be, because if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.

This rationale holds true also for confidential employees such as accounting personnel, radio and telegraph operators, who having access to confidential information, may become the source of undue advantage. Said employee(s) may act as a spy

or spies of either party to a collective bargaining agreement.

Confidential employees must be excluded from the bargaining unit. **The Labor Code did not expressly state that confidential employees are excluded so what was the reason why the SC said that they should be excluded?**

A: The case did not actually use the “**doctrine of necessary implication**”; it is from a different case, but the SC held that managerial employees are explicitly excluded under the law from the right to self-organization. They held in this case that it must necessarily include confidential employees because the rationale behind them is similar. Confidential employees like managerial employees have access to or a privy to very sensitive information so they may use this information as bargaining chip, as a source of undue advantage against the employer if they were allowed to join a union - they can use this information and manipulate, force, or blackmail the employer to give in to the demands of the union of the bargaining unit. It is a similar case with managerial employees, who also have access to sensitive information which can be used as a leverage against the employer.

Confidential employees are excluded because of the risk of them acting as secret agents or spy for either the employer or the union.

Ruling: The Court ruled that said employees do not fall within the term "confidential employees" who may be prohibited from joining a union.

Confidential employees are those who (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations. The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations.

In the case at bar, the supervisors are not considered confidential employees because the information that they handle are properly classifiable as technical and internal business operations data which, which has no relevance to negotiations and settlement of grievances wherein the interests of a union and the management are invariably adversarial. The "confidential data" that they handle must first be strictly classified as pertaining to labor relations for them to fall under said restrictions.

What is the criteria to determine whether the employee is a confidential employee or not?

A: Confidential employees are those who (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations. The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations.

This element is very important → “in the field of labor relations”. The information that they had to keep confidential has to be in relation to the field of labor relations. The management policies that they are involved in are in the field of labor relations.

How did the SC rule in this case?

A: In this case, the supervisory employees did handle confidential matters but these confidential matters, like marketing, sales, operational matters, etc, did not meet the second criteria which means that the management policies that they are involved in must pertain to labor relations. In this case, it wasn't about labor relations, the confidential information that they handled was about sales, marketing, and operations, etc.

TN: Just because a confidential employee handles confidential information, does not automatically mean

Elements of a confidential employee

San Miguel Corporation Supervisors and Exempt Union v. Lagunesma.

Facts: A Petition for Direct Certification or Certification Election among the supervisors and exempt employees of the SMC Magnolia Poultry Products Plants of Cabuyao.

Med-Arbiter ordered the conduct of certification election among the supervisors and exempt employees as one bargaining unit.

Respondent San Miguel Corporation appealed saying that it was an error for the Med- Arbitrator to group together all 3 separate plants, Otis, Cabuyao and San Fernando, into one bargaining unit, and in including supervisory levels 3 and above whose positions are confidential in nature.

Issue: WON the Supervisory employees of the company are considered confidential employees, hence ineligible from joining a union.

that they are confidential employees in the sense that they do not have the right to self-organize. In order to be excluded from the right to self-organize, the confidential information that they handle must be in relation to management policies pertaining to labor relations. Not all confidential employees are immediately excluded from the right to self-organize.

Sugbuhanon Rural Bank, Inc. v. Laguesma

Facts: APSOTEU filed a petition for certification election which was opposed by Sugbuhanon Rural Bank, Inc. (SRBI) on the ground that the union is composed of managerial or confidential employees. Among those alleged to be confidential employees are the cashiers, accountant, and acting chief of the loan department. SRBI submitted detailed job descriptions to support its contention, and vehemently argued that the functions and responsibilities of the employees involved constitute the "very core of the bank's business, lending of money to clients and borrowers, evaluating their capacity to pay, approving the loan and its amount, scheduling the terms of repayment, and endorsing delinquent accounts to counsel for collection." Hence, they must be deemed managerial employees.

Issues: WON the alleged members of respondent union are confidential employees thus, legal disqualification of managerial employees from joining any labor organization equally apply to them.

Ruling: No. To reiterate, Confidential employees are those who (1) assist or act in a confidential capacity, in regard (2) to persons who formulate, determine, and effectuate management policies [specifically in the field of labor relations]. The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his superior officer; and that officer must handle the prescribed responsibilities relating to labor relations. The SC finds that the cashiers, accountant, and acting chief of the loans department of the petitioner did not possess managerial powers and duties, hence, they are not managerial employees. The SC also finds that petitioner's explanation does not state who among the employees has access to information specifically relating to its labor relations policies. While petitioner's explanation confirms the regular duties of the concerned employees, it shows nothing about any duties specifically connected to labor relations.

TN: Doctrine of necessary implication: When it comes to prohibition of confidential employees from engaging in union activities, the doctrine of necessary implication is applied such that the disqualification of

managerial employees equally applies to confidential employees. The confidential-employee rule justifies exclusion of confidential employees because in the normal course of their duties, they become aware of management policies relating to labor relations. It must be stressed, however, that when the employee does not have access to confidential labor relations information, there is no legal prohibition against confidential employees from forming, assisting, or joining a union.

Even if you handle confidential information like client loan details, personal details of clients, you cannot be considered as an employee who does not have a right to organize because the confidential information you have does not relate to labor relations.

The requirements for a confidential employee are cumulative. Absence of one element will immediately negate the fact that you are a confidential employee.

Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery vs. Asia Brewery, Inc.

Facts: Asia Brewery entered into a Collective Bargaining Agreement with BLMA, the exclusive bargaining representative of Asia Brewery rank-and-file employees. Those employees explicitly excluded in the CBA are, among others, confidential and executive secretaries and purchasing and quality control staff.

A dispute arose when Asia Brewery management stopped deducting union dues from 81 employees, believing that their membership in the union violated the CBA. These employees were Sampling Inspectors, Machine Gauge Technician, both part of the Quality Control Staff, checkers assigned to different departments, and secretaries and clerks directly under the respective division managers.

Issue: WON the 81 employees may be validly excluded from the bargaining unit.

Ruling: No. Confidential employees are defined as those who (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations. The two (2) criteria are cumulative, and both must be met if an employee is to be considered a confidential employee, that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations.

Objective of the confidential employee rule:

The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the "confidential employee rule."

There is no showing in this case that the secretaries/clerks and checkers assisted or acted in a confidential capacity to managerial employees and obtained confidential information relating to labor relations policies. And even assuming that they had exposure to internal business operations of the company, respondent claimed, this is not per se ground for their exclusion in the bargaining unit of the daily-paid rank-and-file employees.

Let's say the company has a janitor (not contracted but actually an employee of the company) and he cleans the offices every evening. Because of that, he has seen confidential information relating to labor relations like negotiations with the unions. Would you consider him a confidential employee given the fact that he had access to confidential information in labor relations?

A: The janitor is not considered as a confidential employee. His access is only incidental. Although he had access, they were obtained illegally or without any supervisory consultation from a managerial employee.

Q: *What if a supervisor has documents containing confidential labor relations stuff and asked a staff member (clerk) to photocopy the said documents. Since he can read the contents while photocopying, he became privy to the information. Do you think the clerk is already considered a confidential employee?*

A: If you go to the full text of the case and even the previous cases, the phrasing is interesting because they say that **the prescribed responsibilities of the employee must pertain to labor relations. Meaning, they have access to labor relations as part of their work.** Meaning, necessary jud sa ilang trabaho ang access to that kind of information. **In those examples of the janitor and clerk who were asked to photocopy, that is not part of their prescribed functions to handle that kind of information. Their access is merely incidental.** For them to be considered confidential employees, it must really be part of their work. Trabaho jud na nila that they have to handle and process confidential information pertaining to labor relations. If not, they are not confidential employees at least in so far as excluding them from the right to self-organization.

Dela Salle University vs. Dela Salle University Employees Association

Facts: Dela Salle University and Dela Salle University Employees Association — National Federation of Teachers and Employees Union entered into a collective bargaining agreement with a life span of 3 years. 60 days before the expiration of the said collective bargaining agreement, the Union initiated negotiations with the University for a new collective bargaining agreement which, however, turned out to be unsuccessful. Among the 6 unresolved issues pertained to the scope of the bargaining unit.

Issue: Whether the computer operators assigned at the University's Computer Services Center and the University's discipline officers may be considered as confidential employees and should therefore be excluded from the bargaining unit which is composed of rank-and-file employees of the University.

Ruling: No, the computer operators assigned at the University's Computer Services Center and the University's discipline officers are NOT confidential employees.

The service record of a computer operator reveals that his duties are basically clerical and non-confidential in nature. As to the discipline officers, the SC agrees with the voluntary arbitrator that based on the nature of their duties, they are not confidential employees and should therefore be included in the bargaining unit of rank-and-file employees.

The express exclusion of the computer operators and discipline officers from the bargaining unit of rank-and-file employees in the 1986 collective bargaining agreement does not bar any re-negotiation for the future inclusion of the said employees in the bargaining unit. During the freedom period, the parties may not only renew the existing collective bargaining agreement but may also propose and discuss modifications or amendments thereto.

Similar to the other cases where they were not declared as confidential employees because it was not proven that they had access to information related to labor relations. They are discipline officers and such. Even if they have access to information, it would pertain to students but definitely no among the labor relations.

f. Security Guards (formerly excluded)

Sec. 1, Rule II, IRR of Labor Code

RULE II Registration of Unions

Section 1. Who may join unions. — All persons employed in commercial, industrial and agricultural enterprises, including employees of government corporations established under the Corporation Code as well as employees of religious, medical or educational institutions whether operating for profit or not, except managerial employees, shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining. 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.

Supervisory employees and **security guards shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own;** Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit; Provided, further, that alien employees with valid working permits issued by the Department of Labor and Employment may exercise the right to self-organization and join or assist labor organizations for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs.

For the purpose of this Section, any employee, whether employed for a definite period or not, shall, beginning on the first day of his service, be eligible for membership in the union.

As to **Security Guards**, basically they have the right to self-organize. Previous reiterations of the law say they were excluded. Aliens with working permits, under the Department Orders of the DOLE, they are permitted to organize; under sa Department Order 40-03. Kating aliens with valid working permits, i-emphasize lang gyud nako ang **VALID WORKING PERMITS** because when an alien comes to the Philippines, if they want to work, they have to get an employment permit from the DOLE to allow them to work here in the Philippines. It is a very complicated process where you need an updated residential visa, you need to prove to the DOLE that the alien is not taking away work from a Filipino who is ready and capable of giving the same kind of work. Basically, they need a **VALID WORKING PERMIT** from DOLE, a prerequisite for them to exercise their right to self-organize.

Manila Electric Company vs. Hon. Secretary of Labor and Employment

Facts: The Staff and Technical Employees Association of MERALCO filed a petition for certification election seeking to represent, among others, the non-managerial employees in the Patrol Division, Treasury Security Services Section, Secretaries who are automatically removed from the bargaining unit.

MERALCO however contended that as regards those in the Patrol Division and Treasury Security Service Section, they are not eligible to join the rank and file bargaining unit since these employees are tasked with providing security to the company.

Issue: Whether security guards or personnel may be lumped together with the rank-and-file union and/or the supervisory union.

Ruling: Yes. E.O No. 111 eliminated the provision on the disqualification of security guards. What was retained was the disqualification of managerial employees, renumbered as Art. 245 (previously Art. 246), as follows:

"ART. 245. Ineligibility of managerial employees to joint any labor organization. — Managerial employees are not eligible to join, assist or form any labor organization."

With the elimination, security guards were thus free to join a rank and file organization.

On March 2, 1989, Congress passed RA 6715. Section 18 thereof amended Art. 245, to read as follows: "Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. — Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist, or form separate labor organizations of their own."

As will be noted, the second sentence of Art. 245 embodies an amendment disqualifying supervisory employees from membership in a labor organization of the rank-and-file employees. It does not include security guards in the disqualification.

The implementing rules of RA 6715, therefore, insofar as they disqualify security guards from joining a rank and file organization are null and void, for being not germane to the object and purposes of EO 111 and RA 6715 upon which such rules purportedly derive statutory moorings.

While therefore under the old rules, security guards were barred from joining a labor organization of the rank and file, under RA 6715, they may now freely join a labor organization of the rank and file or that of the supervisory union, depending on their rank. By accommodating supervisory employees, the Secretary of Labor must likewise apply the provisions of RA 6715 to security guards by favorably allowing them free access to a labor organization, whether rank and file or supervisory, in recognition of their

constitutional right to self-organization.

Phillips Industrial Development, Inc. vs. NLRC

Facts: Philips Industrial Development, Inc. (PIDI) had a total of 6 collective bargaining agreements with private respondent Philips Employees Organization-FFW (PEO-FFW), a registered labor union and the certified bargaining agent of all rank and file employees of PIDI. In the said CBAs, security guards and security personnel were among those excluded in the bargaining unit.

Issue: Whether or not the NLRC erred in ruling that under the law, all workers, except managerial employees and security personnel, are qualified to join a union, or form part of a bargaining unit.

Ruling: Yes. At the time Case No. NLRC-NCR-00-11-03936-87 was filed in 1987, security personnel were no longer disqualified from joining or forming a union.

Section 6 of E.O. No. 111, enacted on 24 December 1986, repealed the original provisions of Article 245 of the Labor Code, reading as follows:

"Art. 245. Ineligibility of security personnel to join any labor organization. — Security guards and other personnel employed for the protection and security of the person, properties and premises of the employer shall not be eligible for membership, in any labor organization."

and substituted it with the following provision:

"Art. 245. Right of employees in the public service. —"

x x x x x x x x x

By virtue of such repeal and substitution, security guards became eligible for membership in any labor organization.

g. Aliens with valid Working Permits

Department Order No. 09, S. 1997

Alien employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor organizations for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs.

For the purpose of this Section, any employee, whether employed for a definite period or not, shall, beginning on the first day of his service, be eligible for membership in any labor organization.

Department Order No. 40-023, S. 2003

Alien employees with valid working permits issued by the Department may exercise the right to self-organization and join or assist labor unions for purposes of collective bargaining if they are nationals of a country which grants the same or similar rights to Filipino workers, as certified by the Department of Foreign Affairs, or which has ratified either ILO Convention No. 87 and ILO Convention No. 98.

Under the Department Orders from DOLE, they are permitted to self-organize. Aliens must have **valid working permits** from DOLE as a prerequisite for them to be able to exercise the right to self-organization. Because when an alien comes to the Philippines to work, they need to get an employment permit from DOLE to allow them to work here in the Philippines and it's a very complicated process.

You will need an updated residential visa and you need to prove to the DOLE that the alien is not taking away work from a Filipino who is ready and capable of giving the same kind of work.

h. Members of a Cooperative

Cooperative Rural Bank of Davao City, Inc. vs. Ferrer-Calleja

Facts: Cooperative Rural Bank of Davao City, Inc. (CRBDCI) is owned in part by the Government and its employees. The Federation of Free Workers (FFW) filed with the Davao City Regional Office of the then Ministry of Labor and Employment a verified Petition for certification election among the rank-and-file employees of the petitioner and this was granted.

CRBDCI sought the reversal of the Order and insists that its employees are disqualified from forming labor organizations for purposes of collective bargaining.

Issue: Whether or not the employees of a cooperative can organize themselves for purposes of collective bargaining.

Ruling: It depends. An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners.

However, in so far as it involves cooperatives with employees who are not members or co-owners thereof,

certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.

The questioned ruling therefore of public respondent Pura Ferrer-Calleja must be upheld insofar as it refers to the employees of petitioner who are not members or co-owners of petitioner. It cannot extend to the other employees who are at the same time its members or co-owners.

This case and the case following it, the Benguet case, are very funny to me because you have a group of essentially the employers (sila man ang owners sa cooperative) trying to join a labor union and collectively bargain with themselves. The whole point of a labor union is to collectively bargain. So here you are, owner ka, so technically you are the employer, joining a labor union so you can ultimately bargain with yourself. I honestly don't know what they were thinking. Basin nakathink sila na makaget sila ug benefit if member sila ug cooperative. It's strange.

An employer cannot bargain with himself. In this case, however, the Supreme Court did say that, and in the succeeding case, if the union was composed of employees who are NOT OWNER/MEMBER, mao ning mga staff nga gihire sa coop to do administrative functions or even kanang mga main house janitors nga i-hire sa coop to maintain the cleanliness of their office. They can definitely form a union because they are employees, they are not owners-members man sad. There is nothing to stop them from organizing. But, in this case, since naay employer nga nag apil apil so definitely, dili pwede. Because of the fact there's an employer among the union members, there is a possibility nga ma-influence or ma-manipulate niya ang proceedings within the union, ang mga negotiations nila.

So, it will only be a company-run union. Later on we will discuss unfair labor practices and one of the things that are prohibited is company-run union. Meaning, ang company nagplant ug mga spies diha ba, mga trusted employees in the union so they can manipulate the union on what the company wants. Or even kanang union nga majority of the employees is naa sa bulsa sa employer; that is considered unfair labor practice.

Benguet Electric Cooperative, Inc. v. Ferrer-Calleja

Facts: In the certification election conducted for purposes of choosing among BADLO, BELU, or NO UNION, BELU (Beneco Employees Labor Union) garnered the highest votes. BENECO, the cooperative, protested that "employees who are members-consumers are being allowed to vote when . . . they are not eligible to be members of any labor union for purposes of collective bargaining; much less, to vote in this certification election" Respondent Director of Bureau of Labor Relations argues that to deny the members of BENECO the right to form, assist or join a labor union of their own choice for purposes of collective bargaining would amount to a

patent violation of their right to self-organization. While the employees concerned became members of petitioner cooperative, their status employment as rank and filers who are hired for fixed compensation had not changed. They still do not actually participate in the management of the cooperative as said function is entrusted to the Board of Directors and to the elected or appointed officers thereof. They are not vested with the powers and prerogatives to lay down and execute managerial policies; to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; and/or to effectively recommend such managerial functions.

Issues: Whether or not **MEMBER-EMPLOYEES** who do not participate in the actual management of the cooperative of a cooperative are qualified to form or join a labor organization for purposes of collective bargaining

Ruling: No. Based on various cases decided by the SC, the right to collective bargaining is not available to an employee of a cooperative who at the same time is a member and co-owner thereof. With respect, however, to employees who are neither members nor co-owners of the cooperative they are entitled to exercise the rights to self-organization, collective bargaining and negotiation as mandated by the 1987 Constitution and applicable statutes.

The fact that the members-employees of petitioner do not participate in the actual management of the cooperative does not make them eligible to form, assist or join a labor organization for the purpose of collective bargaining with petitioner. Reiterating SC's ruling in the Davao City case, members of cooperative cannot join a labor union for purposes of collective bargaining was based on the fact that as members of the cooperative they are co-owners thereof. As such, they cannot invoke the right to collective bargaining for "certainly an owner cannot bargain with himself or his co-owners." It is the fact of ownership of the cooperative, and not involvement in the management thereof, which disqualifies a member from joining any labor organization within the cooperative.

Thus, irrespective of the degree of their participation in the actual management of the cooperative, all members thereof cannot form, assist or join a labor organization for the purpose of collective bargaining.

Republic of the Philippines v. Asiapro Cooperative

Facts: Respondent cooperative entered into several Service Contracts 9 with Stanfilco — a division of DOLE Philippines, Inc. and a company based in Bukidnon. The owners-members do not receive compensation or wages from the respondent cooperative. Instead, they receive a share in the service surplus which the respondent cooperative earns from different areas of trade it engages in, such as the income derived from the said Service Contracts with Stanfilco. The owners-members get their income from the service surplus generated by the quality and amount of services they rendered, which is determined by the Board of Directors of the respondent cooperative.

In order to enjoy the benefits under the Social Security Law

of 1997, the owners-members of the respondent cooperative, who were assigned to Stanfilco requested the services of the latter to register them with petitioner SSS as self-employed and to remit their contributions as such.

However, petitioner SSS through its Vice-President for Mindanao Division, Atty. Eddie A. Jara, sent a letter 11 to the respondent cooperative, addressed to its Chief Executive Officer (CEO) and General Manager Leo G. Parma, informing the latter that based on the Service Contracts it executed with Stanfilco, respondent cooperative is actually a manpower contractor supplying employees to Stanfilco and for that reason, it is an employer of its owners-members working with Stanfilco. Thus, the respondent cooperative should register itself with petitioner SSS as an employer and make the corresponding report and remittance of premium contributions in accordance with the Social Security Law of 1997.

Petitioner SSS sent a letter to respondent cooperative ordering the latter to register as an employer and report its owners-members as employees for compulsory coverage with the petitioner SSS. Respondent cooperative continuously ignored the demand of petitioner SSS.

Accordingly, petitioner SSS filed a Petition before petitioner SSC against the respondent cooperative and Stanfilco praying that the respondent cooperative or, in the alternative, Stanfilco be directed to register as an employer and to report respondent cooperative's owners-members as covered employees under the compulsory coverage of SSS and to remit the necessary contributions in accordance with the Social Security Law of 1997.

Respondent cooperative filed its Answer with Motion to Dismiss alleging that no employer-employee relationship exists between it and its owners-members, thus, petitioner SSC has no jurisdiction over the respondent cooperative.

Issues: Whether or not no employer-employee relationship exists between it and its owners-members, thus, petitioner SSC has no jurisdiction over the respondent cooperative..

Ruling: No. As a rule, an owner-member cannot bargain collectively with the cooperative of which he is also the owner because an owner cannot bargain with himself. In the case of Cooperative Rural Bank of Davao City, Inc. v. Ferrer-Calleja, the court held that: A cooperative, therefore, is by its nature different from an ordinary business concern, being run either by persons, partnerships, or corporations. Its owners and/or members are the ones who run and operate the business while the others are its employees . . . An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners. However, in so far as it involves cooperatives with employees who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.

In the instant case, there is no issue regarding an owner-member's right to bargain collectively with the cooperative.

The question involved here is whether an employer-employee relationship can exist between the cooperative and an owner-member. A cooperative, being a juridical person represented by its Board of Directors, can enter into an employment with its owners-members; hence, in this case, there is an employer-employee relationship between the respondent cooperative and its owners-member.

Having declared that there is an employer-employee relationship between the respondent cooperative and its owners-member, the SC conclude that the petitioner SSC has jurisdiction over the petition-complaint filed before it by the petitioner SSS.

II. BARGAINING UNITS

A. BARGAINING UNITS AND APPROPRIATE BARGAINING UNITS

Section 1 (e), D.O. 40-03

(e) “**Bargaining Unit**” refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.

Definition of “appropriate bargaining unit”

San Miguel Foods, Incorporated v. San Miguel Corporation Supervisors and Exempt Union

Facts: San Miguel Foods has plants/branches in 1) Cabuyao, 2) San Fernando, and 3) Otis. The employees from these three plants wanted to form a single bargaining unit. However, this was opposed by the company.

Issue: Whether or not the employees of the three plants constitute an appropriate single bargaining unit.

Ruling: Yes, the employees of the three plants constitute an appropriate single bargaining unit because although they belong to three different plants, they perform work of the same nature, receive the same wages and compensation, and most importantly, share a common stake in concerted activities.

An **appropriate bargaining unit** is defined as **a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicates to**

be best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.

A unit to be appropriate must effect a grouping of employees who have substantial, mutual interests in wages, hours, working conditions and other subjects of collective bargaining. It is readily seen that the employees in the instant case have community or mutuality of interests, which is the standard in determining the proper constituency of a collective bargaining unit. It is undisputed that they all belong to the Magnolia Poultry Division of San Miguel Corporation.

B. BARGAINING UNIT vs. LABOR ORGANIZATION vs. LEGITIMATE LABOR ORGANIZATION vs. EXCLUSIVE BARGAINING AGENT

Bargaining unit vs. labor organization vs. exclusive bargaining agent

Bargaining Unit	Labor Organization	Exclusive Bargaining agent
A group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit. (D.O. 40-03)	Any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection, or other lawful purposes.(D.O. 40-03)	A legitimate labor union duly recognized or certified as the sole and exclusive bargaining representative or agent of all the employees in a bargaining unit.(D.O. 40-03)
Group of employees segregated/classified based on their mutual interest..	Employees who actively group themselves into an organization for purposes of mutual	It is the union that is duly recognized by the BLR as the one who can negotiate with the employer directly.

	protection, collective bargaining, etc.	
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Labor Organization	Legitimate Labor Organization
Any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection, or other lawful purposes.(D.O. 40-03)	Any labor organization in the private sector registered or reported with the Department in accordance with Rules III and IV of these Rules. (D.O. 40-03)
Employees who actively group themselves into an organization for purposes of mutual protection, collective bargaining, etc.	If the labor organization will register with the Bureau of Labor Relations (BLR), it will become a legitimate labor organization because it is recognized by the government.

What do you understand by the term "bargaining unit"? Do you think a bargaining unit is necessarily all the employees of an employer? For example, in UC, do you think the bargaining unit of UC would be all of its employees?

A: No, because **not all employees share the same interest.** Later, we will be discussing CB and you'll understand why it's important na, because you'll find out later on **mutual interest is usually the most used test in determining a bargaining unit**, this is because when the employees are bargaining like **for example, UC, obviously the administrative staff, they will have different interest compared to the teachers. The teachers would want to negotiate about teaching loads and etc. but ang mga administrative staff dili sila ka relate ana.** So, later on we will be discussing Collective Bargaining so it will make sense na when you're negotiating with the employer, you will want to be group with people who share the same interest as you, otherwise, dili sila ka relate nimo, it will be hard for you to get support, like championing for your rights and demands etc.

Q: What is an appropriate bargaining unit?

A: An **appropriate bargaining unit** is defined as a group of employees of a given employer, comprised of all or less than all of the entire body of employees,

which the collective interest of all the employees, consistent with equity to the employer, indicates to be best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.

Look at the definition of “appropriate bargaining unit. Emphasized on “All or less than the entire body of employees”. From that definition pa lang, we get an indication that a collective bargaining unit is NOT necessarily all the employees of the employer because different groups of employees have different interests, so a single employer might have to deal with different bargaining units.

So, for example a company as big as the Ayala group, there might be several bargaining units within their companies, not just one employer and one bargaining unit but several groups of bargaining units. So, an employer might find themselves negotiating with multiple employee groups at the same time when the time comes na mag unionize ang employees. This is very important. Keep in mind, not necessarily na one employer to one bargaining unit, maybe if it's a simple business lang like for example a security agency where all the employees have more or less the same kind of interest, that's not always the case especially now that businesses are going more complex.

Is a bargaining unit the same as a labor organization? (See table above)

A: No. Just to clarify the difference, collective bargaining unit is the group of employees usually segregated or classified based on their mutual interest. Usually maybe because of their work.

A labor organization on the other hand is when the employees actively group themselves into an organization for purposes of mutual protection, for collective bargaining, etc.

So, collective bargaining unit is the group of people but labor organization is when they actively group themselves meaning they want to associate with each other by exercising their right to self-organization. It may be nga naay collective bargaining unit nga never sila mag exercise sa ilang right to self-organization, so they are a bargaining unit but they are not a labor organization. So bargaining unit is just them as a general group but when they exercise their right to self-organization, labor organization na sila.

If they register with the Bureau of Labor Relations (BLR), they are now a legitimate labor organization because they are recognized by the government. So, you have a bargaining unit, labor organization,

legitimate labor organization.

Legitimate labor organization may be a **union** (**collective bargaining**), it may also be a **worker's association** (**mutual aid and protection**).

Bargaining unit, when it **self-organizes**, it becomes a **labor organization**, and when it **registers itself with BLR**, it is now a **legitimate labor organization**; and a **legitimate labor organization** may be a **union** if their **purpose** is **collective bargaining** meaning they negotiate with the employer for benefits, working hours, working environment, etc. **but** if their **purpose** is **simply mutual aid and protection**, like making a mutual fund for insurance, loan program etc. then they are a **worker's association**.

	Act	Concept
Bargaining Unit	Self-organizes	Labor Organization
	Purpose	Concept
Legitimate Labor Organization	Collective Bargaining	Union
	Mutual aid and Protection	Worker's Association

What is an Exclusive bargaining agent?

A: **Exclusive Bargaining agent** is the **sole and exclusive bargaining agent of the bargaining unit**.

What does that mean? You have a bargaining unit (group of employees with similar interest), now they decided to exercise their right to self-organization but it turns out because people rarely ever decide on the same thing, what happens is there will be multiple labor organizations.

Just like in a classroom, you have your own barkadas, your own groups, imagine that murag syag classroom, you gravitated towards each other, so there are multiple labor organizations in the one bargaining unit. **So, for example if teachers, let's say ang mga ni group together ang kaning this group of teacher, and there's another group of teacher because mao man ilang mga close and then, they all registered, so there are multiple legitimate labor organization in the one bargaining unit.** However, **there can only be one exclusive**

bargaining agent so hence the term "exclusive".
What does that mean?

Exclusive bargaining agent is the sole and exclusive bargaining agent -- is the one union that is duly recognized by the Bureau of Labor relations as the one who can negotiate with the employer directly. The employer is not required to deal with all the labor organizations at the same time even if registered sila because its confusing if you're the employer, and there are multiple labor organizations ana na unit, you won't know who to deal with because daghan kaayo sila. You won't know na basin ang ganahan ani na grupo is different from that group. So, there can only be one legitimate labor organization from that bargaining unit who can negotiate directly with the employer. There is only one exclusive bargaining agent meaning negotiations can only be between the employer and the exclusive bargaining agent/representative.

as having acquired juridical personality which may not be attacked collaterally. Also, the teaching and non-teaching personnel of petitioner school must form separate bargaining units. Thus, the order for the conduct of two separate certification elections, one involving teaching personnel and the other involving non-teaching personnel.

The concepts of a union and of a legitimate labor organization are *different from, but related to*, the concept of a bargaining unit. Article 212(g) of 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." Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the applicant labor organization a certificate indicating that it is included in the roster of **legitimate labor organizations**. Any applicant labor organization shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration.

On the other hand, a **bargaining unit** has been defined as a "group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interests of all the employees, consistent with equity to the employer, indicated to be best suited to serve reciprocal rights and duties of the parties under the collective bargaining provisions of the law."

Membership in a bargaining unit and membership in a union are different.

A bargaining unit is a group of employees sought to be represented by a petitioning union. Such employees need not be members of a union seeking the conduct of a certification election.

A union certified as an exclusive bargaining agent represents not only its members but also other employees who are not union members.

Decision and Resolution of CA which affirmed the Decision of the SOLE that set aside the Decision of Med-Arbiter denying the private respondent's petition for certification election are hereby AFFIRMED.

There is only one exclusive bargaining agent meaning negotiations can only be between the employer and the exclusive bargaining agent or the

Bargaining unit vs. Labor Organization vs. Legitimate Labor Organization vs. Exclusive Bargaining Agent

Holy Child Catholic School v. Sto. Tomas

Facts: Private Respondent Pinag-Isang Tinig at Lakas ng Anakpawis-Holy Child Catholic School Teachers and Employees Labor Union (HCCS-TELU-PIGLAS) filed a petition for certification election.

Petitioner Holy Child Catholic School (HCCS) contends that members of private respondent (union) do not belong to the same class and that it is not only a mixture of managerial, supervisory, and rank-and-file employees but also a combination of teaching and non-teaching personnel.

Med-Arbiter denied the petition for certification election on the ground that the unit which private respondent sought to represent is inappropriate.

SOLE ruled against the dismissal of the petition and directed the conduct of 2 separate certification elections for the teaching and the non-teaching personnel. Petitioner HCCS filed before the Court of Appeals. CA dismissed the petition.

Issues: Whether or not the petition for certification election should be dismissed on the ground that the private respondent is not qualified for its failure to qualify as a legitimate labor organization.

Ruling: No. Private respondent, having been validly issued a certificate of registration, should be considered

sole exclusive bargaining representative. Sila duha ra ang mag negotiate. The employers are not obligated to recognize or even negotiate with those other labor organizations because they are not the sole exclusive bargaining agent. Now, maybe you are thinking, is it unfair na isa ra ang gipili? Maybe, some would see it as unfair. But what would happen is that, for the employer it would also be unfair to require them to deal with multiple labor organizations all at once. Ultimately, it is for the convenience of the employer man sad. But, what about the other labor organizations? What would happen is that, they would also benefit from whatever the sole and exclusive bargaining agent will get from the negotiation so, even ang katung mga belonging to other groups, they will also benefit from the negotiations but we will discuss that later on how that affects them.

So basically, the **bargaining unit** is the group of employees by themselves. If they exercise their right to self-organization they become a labor organization or even multiple labor organizations in the same bargaining unit, depende sa how they group themselves. If they register, those labor organizations become legitimate labor organizations. Remember, ang registration is with the Bureau of Labor Relations. Anything to do with labor organizations, usually its with the Bureau of Labor Relations (keep that in mind as we will discuss jurisdiction later on)

These **multiple legitimate labor organizations in the single bargaining unit, cannot all deal with the employer.** There only has to be one.

So what happens is, there will be a certification election. They will elect who the sole and exclusive bargaining agent will be from among the legitimate labor organizations. So ultimately only one of those legitimate labor organizations will deal with the employer and that is the exclusive bargaining agent.

Bargaining unit, self-organize sila = labor organization.
Register sila with BLR = legitimate labor organization.
If the legitimate labor organization gets elected, it is now the exclusive bargaining agent and has the exclusive right to deal with the employer and negotiate better terms and conditions, etc.

Why is it important that we determine what the bargaining unit is?

A: You cannot expect an outsider to protect your interest.

So, if for example, bargaining unit of teachers, you cannot really expect someone from the registrar (an outsider) to adequately defend or negotiate unsa imong interest with the employer.

Who do you think can vote in a certification election?

A: Only employees with the same interests can vote in the certification election. If there is a certification election to choose the exclusive bargaining agent for the bargaining unit of teachers, do you think someone from the registrar can vote in that certification election? No.

Why is it important to determine what the collective bargaining unit is?

A: The most important reason is that **only the employees in that bargaining unit can vote in a certification election** that will choose the exclusive bargaining agent.

if you are a bargaining unit of teachers, someone from the registrar cannot vote in your certification election kay they don't have the same interest or maybe you cannot expect someone from the registrar to understand the situation of the teachers. When you are choosing an exclusive bargaining agent, this is someone who is going to defend your interest and negotiate with the employer on your behalf. So, only those who have a vested interest in that group should be allowed to vote. So, someone who is foreign to the bargaining unit should not be allowed to vote in the certification election. Naturally, if mu vote sila, their vote will not be counted or should be excluded.

So, most of the time, the employer kay mu question sya sa certification election because dili daw sila bargaining unit or this is not an appropriate bargaining unit, because lahi lahi silag interest. So, usually that's what the employer usually does, they will attack the bargaining unit saying that, "they don't have the same interest or lahi lahi man ni sila nga group, ngano gi count man sila as one group?"

There are also other things to consider sad why important kaayo ang determining the bargaining unit. You will notice later on especially sa provisions of law na a lot of the time they say things like 25% or majority of the votes in the bargaining unit or 25% of the members of the bargaining unit. So, a lot of the requirements in the Labor Code go back to what the

bargaining unit is. It is important to determine who the bargaining unit is for purposes of complying with the requirements under the Labor Code. If you don't know what the bargaining unit is, you also can't determine who the members are. And if you can't determine who the members are or how many they are, how are you going to compute the majority? the 25%? 30%? And the other percentages in the Labor Code.

C. TESTS FOR DETERMINING BARGAINING UNITS

Holy Child Catholic School v. Sto. Tomas

Four Tests in Determining Bargaining Units:

1. will of employees (Globe Doctrine);
2. affinity and unity of employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions;
3. prior collective bargaining history; and
4. employment status, such as temporary, seasonal and probationary employees.

What is the best test among the four of them?

A: The Supreme Court did not categorically, explicitly say the best test. The trend now, the SC seems to favor the commonality or mutuality of interests.

1. Community or Mutuality of interests

San Miguel Corporation Employees Union - PTGWO v. Hon. Confesor

Facts: Petitioner-union San Miguel Corporation EMployees Union-PTGWO entered into a CBA with private respondent San Miguel Corporation (SMC). MAGNOLIA and feeds and livestock division were spun-off and became two separate and distinct corporations: MAGNOLIA Corp, and SAN MIGUEL FOODS, Inc. (SMFI).

Petitioner-union insisted that the bargaining unit of SMC should still include the employees of the spun-off corporations.

Issues: WON the bargaining unit of SMC should not include the employees of Magnolia and SMFI?

Ruling: No. The bargaining unit of SMC should not include the employees of Magnolia and SMFI.

In determining an appropriate bargaining unit, the test of grouping is **mutuality or commonality of interests**. The

employees sought to be represented by the collective bargaining agent must have **substantial mutual interests in terms of employment and working conditions** as evinced by the type of work they performed.

SMC was engaged in the business of beer manufacturing. MAGNOLIA involved in the manufacturing and processing of the dairy products. SMFI is involved in the production of feeds and the processing of chicken.

The nature of their products and scales of business may require **different skills** which must necessarily be commensurate by **different compensation packages**. The different companies may have **different volumes of work** and **different working conditions**.

Philtranco Service Enterprises v. Bureau of Labor Relations

Facts: Petitioner Philtranco Service Enterprises, Inc. is a land transportation company engaged in the business of carrying passengers and freight. The company employees included field workers consisting of drivers, conductors, coach drivers, coach stewards and mechanics and office employees like clerks, cashiers, programmers, telephone operators, etc.

The Kapisanan ng mga Kawani, Assistant, Manggagawa at Konfidensyal sa Philtranco (KASAMA KO), a registered labor organization, filed a petition for certification election with the Department of Labor and Employment, alleging among others that:

They desire to represent all professional, technical, administrative, and confidential employees personnel of respondent at its establishments in Luzon, Visayas and Mindanao for purposes of collective bargaining.

Issues: Whether or not substantial differences exist in the terms and conditions of employment between KASAMA KO's members and the rest of the company's rank and file employees.

Ruling: NO. The respondents state that this case is an exception to the general rule considering that substantial differences exist between the office employees or professional, technical, administrative and confidential employees vis-a-vis the field workers or drivers, conductors and mechanics of the petitioner. Against this contention, is more imagined than real. The Court agreed with the petitioner that the differences alleged are not substantial or significant enough to merit the formation of another union.

Certainly, there is a **commonality of interest** among filing clerks, dispatchers, drivers, typists, and field men. They are all interested in the progress of their company and in each worker sharing in the fruits of their endeavors equitably and generously. Their functions mesh with one another. One group needs the other in the same way that the company needs them all.

The drivers, mechanics and conductors are necessary for the company but technical, administrative and office personnel

are also needed and equally important for the smooth operation of the business. There may be differences as to the nature of their individual assignments but the distinctions are not enough to warrant the formation of separate unions. The private respondent has not even shown that a separate bargaining unit would be beneficial to the employees concerned. Office employees also belong to the rank and file. There is an existing employer wide unit in the company represented by NAMAWU-MIF.

Holy Child Catholic School v. Sto. Tomas

Facts: Private Respondent HCCS-TELU-PIGLAS filed a petition for certification election. Petitioner Holy Child Catholic School has (1) teaching, (2) non-teaching academic employees, and (3) non-teaching non-academic workers. SOLE directed to conduct 2 certification elections, 1 among teaching personnel and 1 among non-teaching personnel.

ISSUE: Whether or not teaching and non-teaching staff should be in separate bargaining unit, using the community or mutuality of interest test.

RULING: YES. Section 1 (q), Rule I, Book V of the Omnibus Rules defines a "bargaining unit" as a group of employees sharing mutual interests within a given employer unit comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit. This definition has provided the "community or mutuality of interest" test as the standard in determining the constituency of a collective bargaining unit.

In the case at bar, the employees of [petitioner], may, as already suggested, quite easily be categorized into (2) general classes[:] one, the teaching staff; and two, the non-teaching-staff. Not much reflection is needed to perceive that the community or mutuality of interest is wanting between the teaching and the non-teaching staff. It would seem obvious that the teaching staff would find very little in common with the non-teaching staff as regards responsibilities and function, working conditions, compensation rates, social life and interests, skills and intellectual pursuits, etc. These are plain and patent realities which cannot be ignored. These dictate the separation of these two categories of employees for purposes of collective bargaining

Issues: WON the employees of San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis constitute a single bargaining unit. YES

Ruling: YES. The employees of San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis constitute a single bargaining unit.

In San Miguel vs Lagunesma, the Court explained that the employees of San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis constitute a single bargaining unit, which is not contrary to the one-company, one-union policy. An appropriate bargaining unit is defined as a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicate to be best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.

IN THIS CASE, there is a mutuality of interest among the employees. Their functions mesh with one another—interrelatedness of their work. One group needs the other in the same way that the company needs them both. There may be differences as to the nature of their individual assignments, but the distinctions are not enough to warrant the formation of a separate bargaining unit.

There should be only one bargaining unit for the employees in Cabuyao, San Fernando, and Otis of Magnolia Poultry Products Plant involved in dressed chicken processing and Magnolia Poultry Farms engaged in live chicken operations. Although they seem separate and distinct from each other, the specific tasks of each division are actually interrelated and there exists mutuality of interests which warrants the formation of a single bargaining unit.

2. Will of the Employees (*Globe Doctrine*)

Democratic Labor Association v. Cebu Stevedoring Company, Inc. [citing *Globe Machine and Stamping Co.* (3 NLRB 294 (1937))]

Facts: The Cebu Stevedores Association, a labor union, filed with the Court of Industrial Relations a petition for certification election to determine the collective bargaining unit that should represent the employees and laborers of the Cebu Stevedoring Co Inc (respondent). Three other labor unions intervened in the petition, (a) Democratic Labor Association (petitioner), (b) Cebu Trade Union, © Katubasan sa Mamumuo. the petitioner was declared as the collective bargaining agency for all regular and permanent workers of respondent considering that it has more employees belonging to this class than other unions.

The trial judge also ordered that an election be conducted among the casual laborers to select if the Democratic Labor Assoc or Cebu Trade Union will represent them.

Community or mutuality of interest despite difference in nature of individual work

San Miguel Foods, Incorporated v. San Miguel Supervisors

Facts: San Miguel Foods has factories/branches in 1) Cabuyao, 2) San Fernando, and 3) Otis. The employees from these three branches wanted to form a single bargaining unit. This was opposed by the company as being against the "one company, one union" policy. SC ruled that applying the mutuality of interest test, there should only be one bargaining unit.

Issues: WON there should be 2 collective bargaining units to represent the regular or permanent, and the casual or temporary employees

Ruling: Yes. One of the factors to determine the proper constituency of bargaining unit is the will of employees (Globe doctrine). According to the Globe doctrine, to determine the employees' will, the National Labor Relations Board may hold a series of elections not for the purpose of allowing the group receiving an overall majority of votes to represent all employees; but for the specific purpose of permitting employees in each of the several categories of work to select the group which each chose as a bargaining unit.

In this case, 2 certification elections may be held to choose the collective bargaining unit for the regular/permanent employees and the casual/temp employees. The Democratic Labor Assoc should represent the reg employees since it has more reg employees in its membership. Another certification election may be held for the casual employees in which the 4 labor unions should participate in.

Mechanical Department Labor Union sa Philippine National Railways v. Court of Industrial Relations

Facts: Respondent "Samahan ng mga Manggagawa, etc." filed a petition calling attention to the fact that there were three unions in the Caloocan shops of the Philippine National Railways: the "Samahan", the "Kapisanan ng Manggagawa sa Manila Railroad Company", and the Mechanical Department Labor Union.

The **CIR ruled based on the "Globe doctrine"** and the history of union representation, holding that the employees in the Caloocan Shops should be given a chance to vote on whether their group should be separated from that represented by the Mechanical Department Labor Union, and ordered a plebiscite held for the purpose.

Issues: Whether or not the Globe doctrine of considering the will of the employees in determining what union should represent them can be applied in this case.

Ruling: YES. Appellant contends that the application of the "Globe doctrine" is not warranted because the workers of the Caloocan shops do not require different skills from the rest of the workers in the Mechanical Department of the Railway Company. This question is primarily one of facts.

The Industrial Court has found that there is a basic difference, in that those in the Caloocan shops not only have a community of interest and working conditions but perform major repairs of railway rolling stock, using

heavy equipment and machineries found in said shops, while the others only perform minor repairs.

It is easy to understand, therefore, that the workers in the Caloocan shops require special skill in the use of heavy equipment and machinery sufficient to set them apart from the rest of the workers.

The *Globe Doctrine* doesn't really stand on its own, even in these cases since it's cited with the other tests. *I would say that it's not really a strong doctrine, but it's part of jurisprudence.*

3. Collective bargaining history

Generally, not decisive or conclusive

While a factor, bargaining history is not conclusive

National Association of Free Trade Unions v. Mainit Lumber Development Company Workers Union

Facts: Private respondent Mainit Lumber Development Company Workers Union-United Lumber and General Workers of the Philippines, MALDECOWU-ULGWP (ULGWP), a legitimate labor organization, filed a petition for certification election to determine the sole and exclusive collective bargaining representative among the rank and file workers/employees of Mainit Lumber Development Company Inc. (MALDECO), a duly organized, registered and existing corporation engaged in the business of logging and saw-mill operations employing approximately 136 rank and file employees/workers.

Petitioner ULGWP, private respondent herein, in its petition for certification election, which the Med-Arbiter granted.

NAFTU appealed the decision of the Med-Arbiter on the ground that **MALDECO was composed of two (2) bargaining units**, the **Sawmill Division** and the **Logging Division**, but both the petition and decision treated these separate and distinct units only as one

Issues:

- (1) Whether or not there must be two separate bargaining units?
- (2) Whether the bargaining history of MALDECO is conclusive in the determination of the appropriate bargaining unit

Ruling:

(1) **No.** Certainly, there is a mutuality of interest among the employees of the Sawmill Division and the Logging Division. Their functions mesh with one another. One group needs the other in the same way that the company needs them both. There may be difference as to the nature of their individual assignments but the distinctions are not enough to warrant the formation of a separate bargaining unit. In the case at bar, petitioner alleges that the employer MALDECO was composed of two bargaining units, the Sawmill Division in Butuan City and the Logging Division, in Zapanta Valley, Kitcharao, Agusan Norte, about 80 kilometers distant from each other and in fact, had then two separate CBA's, one for the Sawmill Division and another for the Logging Division. Significantly, out of two hundred and one (201) employees of MALDECO, one hundred seventy five (175) consented and supported the petition for certification election, thereby confirming their desire for one bargaining representative

(2) **No.** While the existence of a bargaining history is a factor that may be reckoned with in determining the appropriate bargaining unit, the same is **not decisive or conclusive**. Other factors must be considered. The **test of grouping is community or mutuality of interests**. This is so because "the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights."

Previously, there were two separate bargaining units. The main issue here is that the Med-Arbiter declared that there was only one bargaining unit.

Q: How binding is the bargaining history?

A: The existence of a bargaining history is not **decisive or conclusive** in determining the appropriate bargaining units as other factors must be considered such as the **test of grouping is community or mutuality of interests**.

Certainly, there is a mutuality of interest among the employees of the Sawmill Division and the Logging Division. Their functions mesh with one another. One group needs the other in the same way that the company needs them both. There may be difference as to the nature of their individual assignments but the distinctions are not enough to warrant the formation of a separate bargaining unit.

In this case the SC went back again to the commonality rule. Collective bargaining history is basically "how they were treated before" or "how did they act before", or

"how did they group themselves before", "how did they negotiate with the employer before". Collective Bargaining History isn't really binding because if you were to apply it strictly, you are kind of limiting the employees, like they can never change because "that's their history, it can't be changed, it has to be always consistent". This is really preventing the employees from self-organizing. The history of the relationship of the ee-er is not conclusive because the employees can always change their minds.

San Miguel Corporation v. Lagunesma

Facts: North Luzon Magnolia Sales Labor Union (respondent union) filed a petition for certification election. Petitioner San Miguel Corporation opposed the petition and questioned the appropriateness of the bargaining unit sought to be represented by respondent union. **It claimed that its bargaining history in its sales offices, plants and warehouses is to have a separate bargaining unit for each sales office.**

Mediator-Arbiter certified respondent union as the sole and exclusive bargaining agent of all the regular Magnolia sales personnel of the North Luzon sales area.

Petitioner claims that in issuing the impugned Orders, public respondent disregarded its collective bargaining history which is to have a separate bargaining unit for each sales office. It insists that its prior collective bargaining history is the most persuasive criterion in determining the appropriateness of the collective bargaining unit.

Issues: Whether or not respondent union represents an appropriate bargaining unit.

Ruling: Yes. The existence of a prior collective bargaining history is neither decisive nor conclusive in the determination of what constitutes an appropriate bargaining unit. Indeed, **the test of grouping is mutuality or commonality of interests**. The employees sought to be represented by the collective bargaining agent must have substantial mutual interests in terms of employment and working conditions as evinced by the type of work they perform.

In this case, respondent union sought to represent the sales personnel in the various Magnolia sales offices in northern Luzon. There is similarity of employment status for only the regular sales personnel in the north Luzon area are covered. They have the same duties and responsibilities and substantially similar compensation and working conditions. The commonality of interest among the sales personnel in

the north Luzon sales area cannot be gainsaid. In fact, in the certification election, the employees concerned accepted respondent union as their exclusive bargaining agent. Clearly, they have expressed their desire to be one.

Petitioner cannot insist that each of the sales office of Magnolia should constitute only one bargaining unit. What greatly militates against this position is the meager number of sales personnel in each of the Magnolia sales office in northern Luzon. Even the bargaining unit sought to be represented by respondent union in the entire north Luzon sales area consists only of approximately fifty-five (55) employees. Surely, it would not be for the best interest of these employees if they would further be fractionalized. The adage "**there is strength in number**" is the very rationale underlying the formation of a labor union.

There were different bargaining units for each sales office.

What was the nature of the work of these employees from different offices? Was it similar?

A: Sales, plants and warehouses. There is similarity of employment status for only the regular sales personnel in the north Luzon area are covered. They have the same duties and responsibilities and substantially similar compensation and working conditions.

Based on the history each of those offices would have their own bargaining unit. One for sales, a separate one for plants and another one for plants. Then the employees then decided to have only 1 bargaining unit for all the regular Magnolia Sales Personnel of North Luzon. So different areas but more or less, similar work.

In this case the SC held that collective bargaining history does not prejudice the employees of the bargaining unit to change their minds. Otherwise, they would always be stagnant. The SC applied commonality/mutual interest and will of the employees; so more or less the ee have similar functions but they were scattered across Luzon.

It's also interesting in this case, because the SC highlighted the importance of **strength in numbers - which is the sole purpose of why employees unionize.** The SC encourages the employees to group together to form a larger number because there is strength in numbers, they would have stronger bargaining powers if there were more of them in the bargaining unit.

The SC also applied the **commonality of interests:** it would be in the best interest of the ee to group together

because not only would they be able to negotiate better if there are more of them, but also because they share similar functions and interests.

4. Doctrine of Employment Status

Philippine Land-Air-Sea Labor Union v. CIR

Facts: Prior to the holding of the certification election for the sole collective bargaining agent of the employees of the San Carlos Milling Co., respondent AWA filed an urgent motion to exclude 144 employees from participating in the election.

The motion was denied by the Industrial Court holding that the workers sought to be excluded were eligible to vote since they were actual employees of good standing of the respondent company during the milling season of 1955 and were included in the company's payroll as of that date.

Petitioner PLASLU received 88 votes while AWA garnered 149, with 390 ballots recorded as challenged, 242 of them by the petitioner PLASLU and 142 by the respondent AWA. Within 72 hours after the closing of the election, AWA filed a petition contesting the election on the ground of the ineligibility of the voters who cast the 148 ballots it challenged. Said respondent AWA also alleged that the 242 ballots challenged by PLASLU were cast by legitimate employees of the company, as they were the votes of "piece work (pakiao) workers and stevedores appearing in the employer's payroll during the milling and off-season" of 1955. PLASLU, on the other hand, questioned the validity of the 242 ballots cast by the stevedores and piece workers.

Issues: WON the votes cast by the stevedores and piece workers which were counted in favor of the respondent AWA should be disregarded

Ruling: Yes. These employees whose votes were challenged were hired on temporary or casual basis and had work of a different nature from those of the laborers permitted to vote in the certification election.

In the determination of the proper constituency of a collective bargaining unit, certain factors must be considered, among them, the **employment status of the employees** to be affected, that is to say, the positions and categories of work to which they belong, and the unity of employees' interest such as substantial similarity of work and duties. The most efficacious bargaining unit is one which comprises **constituents enjoying a community or mutuality of interest.** And

this is so because the basic test of a bargaining unit's acceptability is whether it will best assure to all employees the exercise of their collective bargaining rights.

It appearing that the 242 stevedores and piece workers, whose votes have been challenged, were employed on a casual or day to day basis and have no reasonable basis for continued or renewed employment for any appreciable substantial time—not to mention the nature of work they perform—they cannot be considered to have such mutuality of interest as to justify their inclusion in a bargaining unit composed of permanent or regular employees.

Here, it seems that the employment status is kind of like an offshoot of the community of interest. The supreme court held that the piece-rate workers that were not permanently employed do not have the same interests as the regular employees because of the nature of their work because they lack permanence or they have not been employed for an appreciable time or a substantial time.

The SC held that because of the different natures of their employment they cannot be grouped together because their interests are very different. Obviously if you are not a permanent employee your interests are short-term, so you probably won't be as demanding as you are not thinking long-term—you won't be as demanding in negotiations compared to the regular employees who are presumably there until they retire. If you're a short-term employee, you're probably not gonna demand retirement benefits, longevity pay or loyalty bonus – you are probably not going to demand these things if you are merely a short term employee, but if you are a regular employee, you are thinking ahead on whether you would get a decent retirement pay when you reach 50 or 60+ years old. In this regard, it can be said that they do not have the same interests.

Belyca Corporation v. Ferrer-Calleja, G.R. No. 77395, 29 November 1988.

FACTS: Private respondent Associated Labor Union (ALU)- TUCP filed a petition for direct certification as the sole and exclusive bargaining agent of all the rank and file employees/workers of Belyca Corporation (Livestock and Agro-Division) – a corporation engaged in the business of poultry raising, piggery and planting of agricultural crops such as corn, coffee and various vegetables,

In the instant case, respondent ALU seeks direct

certification as the sole and exclusive bargaining agent of all the rank-and-file workers of the livestock and agro division of petitioner BELYCA Corporation, engaged in piggery, poultry raising and the planting of agricultural crops such as corn, coffee and various vegetables. But petitioner contends that the bargaining unit must include all the workers in its integrated business concerns ranging from piggery, poultry, to supermarkets and cinemas so as not to split an otherwise single bargaining unit into fragmented bargaining units.

ISSUE: W/N the bargaining unit must include all the workers in the integrated business concerns of the Petitioner ranging from piggery, poultry, to supermarkets and cinemas. = NO

RULING: The basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights.

IN THE CASE AT BAR, the employees of the livestock and agro division of petitioner corporation perform work entirely different from those performed by employees in the supermarkets and cinema. Among others, the noted differences are: their working conditions, hours of work, rates of pay, including the categories of their positions and employment status.

Due to the nature of the business in which its livestock-agro division is engaged, very few of its employees in the division are permanent, the overwhelming majority of which are seasonal and casual and not regular employees. Definitely, they have very little in common with the employees of the supermarkets and cinemas. To lump all the employees of petitioner in its integrated business concerns cannot result in an efficacious bargaining unit comprised of constituents enjoying a community or mutuality of interest. Undeniably, the rank and file employees of the livestock-agro division fully constitute a bargaining unit that satisfies both requirements of classification according to employment status and of the substantial similarity of work and duties which will ultimately assure its members the exercise of their collective bargaining rights.

The work pool of the company here is very diverse – they have bakery, livestock, agriculture, cinemas and supermarkets.

In this case, the SC held that the core test is really the commonality test. But the SC also mentioned briefly to consider the employment status of the employees. So in this case, they held that those who were in the agro-livestock division were mainly seasonal employees or temporary employees – they were not really hired on

the whole year round, especially in agriculture because they do not necessarily have work all the time (planting, long period of waiting and then harvest).

The SC mentioned briefly that they might not have the same interests as the employees in the supermarkets or in the cinemas who are really hired there full-time. Because of the fact that workers in the agriculture and livestock division are not full time, they are not there the whole year round, their interests might not jive with the interests of those in the other divisions. So the employment status test is an offshoot of the community of interests test – that it is really built on the community of interests test – because obviously different groups of employees who have different employment statuses, will have different interests.

Philips Industrial Development, Inc. v. NLRC

The issue was whether or not the service engineers, sales representatives and confidential employees (division secretaries, staff of general management, personnel and industrial relations department, secretaries of audit, EDP and financial system) are qualified to be included in the existing bargaining unit for the rank and file employees of PIDI.

The SC held that all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees.

By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them. In holding that they are included in the bargaining unit for the rank and file employees of PIDI, the NLRC practically forced them to become members of PEO-FFW or to be subject to its sphere of influence, it being the certified bargaining agent for the subject bargaining unit. This violates, obstructs, impairs and impedes the service engineers' and the sales representatives' constitutional right to form unions or associations and to self-organization.

The SC also said that since the only issue is the subject employees' inclusion in or exclusion from the bargaining unit in question, the Globe Doctrine finds no application. Besides, this doctrine applies only in instances of evenly balanced claims by competitive groups for the right to be established as the bargaining unit, which do not obtain in this case.

5. All Four Tests

International School Alliance of Educators v. Quisumbing, G.R. No. 128845, 01 June 2000 (all

(four tests)

FACTS: The School grants foreign-hires certain benefits not accorded local-hires. These include housing, transportation, shipping costs, taxes, and home leave travel allowance. Foreign-hires are also paid a salary rate twenty-five percent (25%) more than local-hires. The School justifies the difference on two "significant economic disadvantages" foreign-hires have to endure, namely: (a) the "dislocation factor" and (b) limited tenure.

When negotiations for a new CBA were held, petitioner ISAE, a legitimate labor union and the collective bargaining representative of all faculty members of the School, contested the difference in salary rates between foreign and local-hires. This issue, as well as the question of whether foreign-hires should be included in the appropriate bargaining unit, eventually caused a deadlock between the parties.

ISSUE: Whether the foreign-hires should be included in the bargaining unit of local-hires. NO

RULING: Foreign-hires do not belong to the same bargaining unit as the local-hires.

In this case, it does not appear that foreign-hires have indicated their intention to be grouped together with local-hires for purposes of collective bargaining. **The collective bargaining history in the School also shows that these groups were always treated separately. Foreign-hires have limited tenure; local-hires enjoy security of tenure.** Although foreign-hires perform similar functions under the same working conditions as the local-hires, foreign-hires are accorded certain benefits not granted to local-hires such as housing, transportation, shipping costs, taxes and home leave travel allowances. These benefits are reasonably related to their status as foreign-hires and justify the exclusion of the former from the latter. To include foreign-hires in a bargaining unit with local-hires would not assure either group the exercise of their respective collective bargaining rights.

Was it only the mutual interests rule or did the SC apply the other tests? What about the globe doctrine? Did the Foreign hires say that they wanted to be grouped together with the local hires?

A: The SC explicitly applied the different tests. With regard to the substantial mutual interests test, the SC held that foreign hires do not have the same interests as local hires because local hires do not have

to deal with isolation from their homeland, being emigrated from their place of origin to work in the Philippines, because of this, there interests are different. The foreign hires have to worry about housing, about adjusting to local language and culture, and etc -- these are substantial grounds to differentiate their interests from those of the local hires.

The court also considered the **Globe doctrine** – that at no point did the employees say that they willed to be grouped together. So, the SC held that the will of the employees does not apply in this case because it was never manifested it in a clear way.

They also scrutinized the **bargaining history** of the bargaining units showing that these groups of employees have consistently and always have been treated separately. So there was never a point that they were grouped together, they were always treated as distinct groups.

This case is a good example of how you can apply more than 1 of the different tests in a single case.

D. SIGNIFICANCE OF DETERMINING THE “APPROPRIATE” BARGAINING UNIT

Omnibus Rules, Book Five

Rule I Definition of Terms

Section 1. Definition of terms

(x) "Certification Election" means the process of determining, through secret ballot, the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit, for purposes of collective bargaining.cralaw

(y) "Consent Election" means the election voluntarily agreed upon by the parties to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit.cralaw

(z) "Run-Off" refers to an election between the labor unions receiving the two (2) higher number of voters when a certification election which provides for three (3) or more choices results in no choice receiving a majority of the valid votes cast, where the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

Rule II Registration of Unions

Section 4. Requirements for registration of local unions; applications. — The application for registration of a local union shall be signed by at least **twenty percent (20%) of the employees in the appropriate bargaining unit** which the applicant union seeks to represent, and shall be accompanied by the following:

- Fifty-peso registration fee;
- The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;

- The names of all its members and the number of employees in the bargaining unit;
- If the applicant union has been in existence for one or more years, copies of its annual financial reports;
- Four copies of its constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it;
- A sworn statement by the applicant union that there is no certified bargaining agent in the bargaining unit concerned. In case where there is an existing collective bargaining agreement duly submitted to the Department of Labor and Employment, a sworn statement that the application for registration is filed during the last sixty (60) days of the agreement; and
- The application for registration and all the accompanying documents shall be verified under oath by the secretary or the treasurer, as the case may be, and attested to by the president.cralaw

Rule IX Registration of Collective Bargaining Agreements

Section 1. Registration of collective bargaining agreement. — The parties to a collective bargaining agreement shall submit to the Bureau or the appropriate Regional Office five (5) duly signed up copies thereof within thirty (30) calendar days from execution. Such copies of the agreement shall be accompanied by verified proof of its posting in two conspicuous places in the workplace and of ratification by the majority of all the workers in the bargaining unit.

Five (5) copies of the collective bargaining agreement executed pursuant to an award by the appropriate government authority or by a voluntary arbitrator shall likewise be submitted by the parties to the Bureau or Regional Office accompanied by verified proof of its posting in two conspicuous places in the workplace.

Such proof shall consist of copies of the following documents certified under oath by the union secretary and attested to by the union president:

- Statement that the collective bargaining agreement was posted in at least two conspicuous places in the establishment at least five (5) days before its ratification, and
- Statement that the collective bargaining agreement was ratified by the majority of the employees in the bargaining unit.

The posting required in the preceding paragraph shall be the responsibility of the parties.

The Bureau or the Regional Office shall assess the employer for every collective bargaining agreement a registration fee of one thousand (P1,000.00) pesos.

The Regional Office shall transmit two (2) copies of the agreement to the Bureau and one (1) to the Board within five (5) calendar days from its registration. Where the agreement is registered with the Bureau, one (1) copy shall be sent to the Board and two (2) copies to the Regional Office where the company has its principal office.

The Bureau or the Regional Office shall issue a certificate of registration within five (5) calendar days from receipt of the agreement.

Rule XIII Picketing, Strikes and Lockouts

Section 7. Strike or lockout vote. — A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the employer corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule.

DO 40-03, s. 2003

RULE IX CONDUCT OF CERTIFICATION ELECTION

Section 5. Minutes of pre-election conference. – The Election Officer shall keep the minutes of matters raised and agreed upon during the pre-election conference. The parties shall acknowledge the completeness and correctness of the entries in the minutes by affixing their signatures thereon. Where any of the parties refuse to sign the minutes, the Election Officer shall note such fact in the minutes, including the reason for refusal to sign the same. In all cases, the parties shall be furnished a copy of the minutes. The pre-election conference shall be completed within thirty (30) days from the date of the first hearing.

Section 13. Protest; When Perfected. – Any party-in-interest may file a protest based on the conduct or mechanics of the election. Such protests shall be recorded in the minutes of the election proceedings. Protests not so raised immediately after the last ballot cast are deemed waived. General reservation to file a protest shall be prohibited. The protesting party shall specify the grounds for protest. The protesting party must formalize its protest with the Mediator-Arbitrator, with specific grounds, arguments and evidence, within five (5) days after the close of the election proceedings. If not recorded in the minutes and formalized within the prescribed period, the protest shall be deemed dropped.

RULE III REGISTRATION OF LABOR ORGANIZATIONS

Section 1. Where to file. – Applications for registration of independent labor unions, chartered locals, workers' associations shall be filed with the Regional Office where the applicant principally operates. It shall be processed by the Labor Relations Division at the Regional Office in accordance with Sections 2-A, 2-C, and 2-E of this Rule. Applications for registration of federations, national unions or workers' associations operating in more than one region shall be filed with the Bureau or the Regional Offices, but shall be processed by the Bureau in accordance with Sections 2-B and 2-D of this Rule.

DO 40-03, s. 2003

(r) “**Eligible Voter**” refers to a voter belonging to the appropriate bargaining unit that is the subject of a petition for certification election.

Art. 251. Rights of legitimate labor organizations. A legitimate labor organization shall have the right:

- (a) To act as the representative of its members for the purpose of collective bargaining;
- (b) To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;

National Union of Works in Hotels, Restaurants and Allied Industries - Manila Pavilion Hotel Chapter v. Secretary of Labor

Ruling: It's important to determine the bargaining unit to determine the majority representation of the unit. It is also important to determine who the members are. By determining who the members are, you can determine the majority, the 25%, the 30%, etc. for purposes of voting.

E. BARGAINING UNITS AMONG DIFFERENT COMPANIES/EMPLOYERS

Different companies, different bargaining units

Diatagon Labor Federation Local 110 of the LGWP v. Ople

Facts: Lianga Bay Logging Co. Inc. is a domestic corporation which was organized in 1954. It has offices in Diatagon, Lianga Surigao del Sur and Filipinas Bldg., Ayala Avenue, Makati, Metro Manila. It is engaged in logging and manufacturing plywood. Georgia Pacific International Corporation is a Delaware Corporation licensed to do business in the Philippines on March 31, 1967. It has an office at Lianga. The Diatagon Labor Federation Local 110 of ULGWP had a collective bargaining agreement with the Lianga Bay logging Co. Inc. Before the expiration of that CBA, a rival union, the Mindanao Association of Trade Unions, filed with the Bureau of Labor Relations a petition for the holding of a certification of election at Lianga Bay Logging Co. Inc. BLR Case no. 0399. The union assumed that Lianga Bay Logging Co. Inc. had approximately 900 employees. At this juncture, it should be stressed that the said CBA included 236 employees working at the venue plant and electrical department of Georgia Pacific International Corporation in Lianga. Those 236 employees were formerly employees of Lianga Bay Logging Co. Inc. After July, 1974, they were transferred to Georgia Pacific International Corporation and became employees of the latter. The 236 employees continued to use in 1975 the pay envelopes and identification cards of their former employer, Lianga Bay Logging Co. Inc.

Issues: Whether or not the two corporations should be regarded as one as the employees continued to use the pay envelopes and identification cards of their former employees.

Ruling: This goes back to what we learned from Corporation Law that corporations always have a distinct and separate

legal personality from each other and from the people composing them. In this case, even though the 2 businesses of the two companies are closely related, the fact remains that they are 2 distinct companies. Hence, employees of each company must form a separate and distinct bargaining unit.

This also goes back to the **commonality of interest**. The employees of one employer have interests that are separate and distinct from that of the employees of another employer even if their work are closely related. One employer may have stricter rules than the other. Hence, if they merge, it will only create more chaos and misunderstanding.

Indophil Textile Mill Workers Union - PTGWO v. Calica

Facts: Petitioner Indophil Textile Mill Workers Union-PTGWO and private respondent Indophil Textile Mills, Inc. executed a collective bargaining agreement. Meanwhile, Indophil Acrylic Manufacturing Corporation was formed and registered with the Securities and Exchange Commission. Eventually, Acrylic became operational and hired workers according to its own criteria and standards. Sometime in July, 1989, the workers of Acrylic unionized and a duly certified collective bargaining agreement was executed.

A year after the workers of Acrylic have been unionized and a CBA executed, the petitioner union claimed that the plant facilities built and set up by Acrylic should be considered as an extension or expansion of the facilities of private respondent Company pursuant to Section 1(c), Article I of the CBA, to wit., c) This Agreement shall apply to the Company's plant facilities and installations and to any extension and expansion thereof. In other words, it is the petitioner's contention that Acrylic is part of the Indophil bargaining unit.

The petitioner's contention was opposed by private respondent which submits that it is a juridical entity separate and distinct from Acrylic. Voluntary Arbitrator ruled in favor of Indophil.

Issue: Whether Indophil Acrylic is a separate and distinct entity from the respondent company for purposes of union representation.

Ruling: YES. The separate distinct personalities of the companies were upheld especially because there was no proof that the other company was an extension of another.

Labor Union, while Express Lamination and Express Coat are entities separately registered with the Securities and Exchange Commission (SEC). This controversy stemmed from three (3) separate Petitions for Certification Election filed by three (3) different Labor Unions (Unions A,B, and C) to represent all the rank-and-file employees under their respective employers: Super Lamination, Express Lamination, and Express Coat.

These establishments, all represented by one counsel, separately claimed in their Comments and Motions to Dismiss that the petitions must be dismissed on the same ground: lack of employer-employee relationship between these establishments and the bargaining units that Unions A, B, and C seek to represent. All 3 Petitions for CE were denied.

Hence, the 3 unions filed their respective appeals before the Office of the DOLE Secretary. DOLE found out that the 3 establishments were sister companies that had a common human resource department. It also found out that the 3 companies constantly rotated their workers, and that the latter's identification cards had only one signatory. To DOLE, these circumstances showed that the companies were engaged in a work-pooling scheme and hence, one and the same entity for the purpose of determining the appropriate bargaining unit in a certification election.

Issue: Whether the rank-and-file employees of Super Lamination, Express Lamination, and Express Coat constitute an appropriate bargaining unit?

Ruling: The basic test for determining the appropriate bargaining unit is the application of a standard whereby a unit is deemed appropriate if it affects a grouping of employees who have substantial, mutual interests in wages, hours, working conditions, and other subjects of collective bargaining.

We have ruled that geographical location can be completely disregarded if the communal or mutual interests of the employees are not sacrificed. In the present case, there was communal interest among the rank-and-file employees of the three companies based on the finding that they were constantly rotated to all three companies, and that they performed the same or similar duties whenever rotated.

Therefore, aside from geographical location, their employment status and working conditions were so substantially similar as to justify a conclusion that they shared a community of interest. This finding is consistent with the policy in favor of a single-employer unit, unless the circumstances require otherwise. The more solid the employees are, the stronger is their bargaining capacity.

The SC in this case disregarded the general rule on separate and distinct juridical personalities and treated the employees as a single bargaining unit despite the fact that there were 3 companies because these employees were rotated between the three companies probably to circumvent them from creating a bargaining unit. Since the employers tried to perform a fraudulent act, the SC held them as one bargaining unit.

Employees from different corporations considered as single bargaining unit

Lee v. Samahang Manggagawa ng Super Lamination

Facts: Petitioner Erson Ang Lee, through Super Lamination, is an entity engaged in the business of providing lamination services. Respondent SMSLS-NAFLUC-KMU), is a legitimate

Community and Mutuality Interest was also applied and it was determined that these employees had the same work, regardless of what company they were assigned,

III. LABOR ORGANIZATIONS AND UNIONS

A. LABOR ORGANIZATION vs. LEGITIMATE LABOR ORGANIZATION, WORKERS' ASSOCIATION vs. LEGITIMATE WORKERS' ASSOCIATION

Labor Organization	Legitimate Labor Organization
¹ 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.	² any labor organization duly registered with the Department of Labor and Employment, and includes any branch or local thereof.
³ any union or association of employees in the private sector which exists in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection, or other lawful purposes.	⁴ any labor organization in the private sector registered or reported with the Department in accordance with Rules III and IV of these Rules.
Group of employees from the same bargaining unit who have exercised the right to self organization	Duly registered

Workers' Association	Legitimate Workers' Association
⁵ an association of workers organized for the mutual aid and protection of its members or for any	⁶ an association of workers organized for mutual aid and protection of its members or for any

¹ Article 212 (g), Labor Code

² Article 212 (h), Labor Code

³ Section 1 (dd), D.O. 40-03

⁴ Section 1 (ff), D.O. 40-03

legitimate purpose other than collective bargaining	legitimate purpose other than collective bargaining registered with the Department in accordance with Rule III, Sections 2-C and 2-D of these Rules.
Labor organizations for mutual aid and protection	Duly registered

B. JURISDICTION OVER REGISTRATION AND CANCELLATION - BUREAU OF LABOR RELATIONS

Article 237. Additional requirements for federations or national unions.

Subject to Article 238, if the applicant for registration is a federation or a national union, it shall, in addition to the requirements of the preceding Articles, submit the following:

Proof of the affiliation of at least ten (10) locals or chapters, each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates, supporting the registration of such applicant federation or national union; and

The names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved.

Progressive Development Corp. - Pizza Hut v. Laguesma

Facts: Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan (respondent Union) files a petition for certification election with the DOLE in behalf of the rank-and-file employees of Progressive Development Corp. (Pizza Hut). PIZZA HUT, on the other hand, opposed by filing a Motion to Dismiss the petition of respondent Union because of the alleged fraud, falsification and misrepresentation in the latter's registration making it void and invalid. PIZZA HUT filed a petition seeking the cancellation of the Union's registration on the same grounds, and then later on filed a motion requesting to suspend the proceedings in certification election case until after the prejudicial question of the Union's legal personality is determined in the proceedings for cancellation of registration.

⁵ Section 1 (eee), D.O. 40-03

⁶ Section 1 (gg), D.O. 40-03

Despite all that, the Med-Arbiter went on with the certification election and explained that since the union is a legitimate labor organization, it shall remain as such until its very charter certificate is cancelled or otherwise revoked by competent authority. Furthermore, the Med-Arbiter insisted that the alleged misrepresentation, fraud and false statement in connection with the issuance of the charter certificate are collateral issues which could be properly ventilated in the cancellation proceedings. Undersecretary of Labor, Lagunesma, denied the same. Hence, this present petition.

Issues: Whether or not the Med-Arbiter committed grave abuse of discretion in allowing the certification election

Ruling: The court held that to determine the validity of labor unions Art. 234 requirements of registration must be complied with. If its application for registration is vitiated by falsification and serious irregularities, especially those appearing on the face of the application and the supporting documents, a labor organization should be denied recognition as a legitimate labor org.

Wherefore, inasmuch as the legal personality of respondent union had been seriously challenged, it would have been more prudent to have granted petitioners request for the suspension of proceedings in the cert election case, until the issue of the legality of the unions registration shall have been resolved. Failure of the med-arbiter and public respondent to heed the request constituted a grave abuse of discretion.

Hence, BLR has jurisdiction over registration cases by labor organizations. However, it is not a ministerial function.

If a labor union applies for registration, is it automatic that the BLR will recognize it as a labor union? In other words, is it a ministerial function?

A: No, insofar as the application is concerned. It does not mean that the labor organization will be automatically granted.

What would be the effect if the labor organization registers with the SEC and not with the BLR?

A: According to Azucena, if a labor organization that is not yet registered with BLR but registers itself with SEC, they will have a legal personality. But they will not have the power to bargain collectively with the employer because in order for a labor organization to become an exclusive bargaining agent, it has to be legitimate. A labor organization can only be legitimate if it is registered with the BLR.

C. KINDS OF LABOR ORGANIZATIONS

1. Unions

There are different kinds of labor organizations under sa unions. You have chartered local, independent unions, and national unions/federations.

An **independent union** is one that registers on its own initiative with the BLR. A **chartered local** is a labor organization given a charter by a national union or federation.

Federation or national union is a group of unions (kind of like a conglomerate or group of organizations) that come together to help each other out. They can register independently with BLR. Now a **national union/federation** can issue a charter. Meaning, it will issue a charter recognizing that a labor organization in this particular company is one of its charters and the effect of this is that labor organization now has the personality to file a petition for certification election. So basically its personality is really only for filing this petition.

DO 40-03, s. 2003

(ccc) “**Union**” refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purposes.

a. Chartered Local

DO 40-03, s. 2003

(j) “**Chartered Local**” refers to a labor organization in the private sector operating at the enterprise level that acquired legal personality through registration with the Regional Office in accordance with Rule III, Section 2-E of these Rules.

- Tentative Legal Personality

DO 40-03, s. 2003, Section 2 (E), Rule III

A duly-registered federation or national union may directly create a local/chapter by issuing a charter certificate indicating the establishment of the local/chapter. The local/chapter shall acquire legal

personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate. The local/chapter shall be entitled to all other rights and privileges of a legitimate labor organization only upon the submission of the following documents in addition to its charter certificate:

- (a) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and
- (b) The chapter's constitution and by-laws provided, that where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly. The genuineness and due execution of the supporting requirements shall be certified under oath by the Secretary or Treasurer of the local/chapter and attested to by its President.

Article 234-A. Chartering and Creation of a Local Chapter.

A duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate.

The chapter shall be entitled to all other rights and privileges of a legitimate labor organization only upon the submission of the following documents in addition to its charter certificate:

- (a) The names of the chapter's officers, their addresses, and the principal office of the chapter; and
- (b) The chapter's constitution and by-laws: Provided, That where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

The additional supporting requirements shall be certified under oath by the secretary or treasurer of the chapter and attested by its president.

Social Security System Employees Association vs. Court of Appeals

Facts: SSS filed with the RTC of Quezon City a complaint for damages with a prayer for a writ of preliminary injunction against the Social Security System Employees Association (SSSEA).

SSS alleged that the officers and members of SSSEA staged an illegal strike and barricaded the entrances to the SSS Building, preventing non-striking employees from reporting for work and SSS members from transacting business with the SSS and that the strike was reported to the Public Sector Labor - Management Council which ordered the strikers to return to work but the strikers refused to and the SSS suffered damages as a result of the strike.

It appears that the SSSEA went on strike after the SSS failed to act on the union's demands, and allegedly committed acts of discrimination and unfair labor practices.

Issues:

1. Do the employees of the SSS have the right to strike?
2. Are employees of the SSS covered by the prohibition against strikes?

Ruling:

1. NO. A reading of the proceedings of the Constitutional Commission that drafted the 1987 Constitution would show that in recognizing the right of government employees to organize, the commissioners intended to limit the right to the formation of unions or associations only, without including the right to strike.
2. YES. Considering that under the 1987 Constitution "the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters" also Sec. 1 of E.O. No. 180 where the employees in the civil service are denominated as "government employees" and that the SSS is one such government-controlled corporation with an original charter, its employees are part of the civil and are covered by the Civil Service Commission's memorandum prohibiting strikes. This being the case, the strike staged by the employees of the SSS was illegal.

b. Independent Unions

Section 1 (x), Rule I, DO 40-03, s. 2003

(x) "**Independent Union**" refers to a labor organization operating at the enterprise level that acquired legal personality through independent registration under Article 234 of the Labor Code and Rule III, Section 2-A of these Rules.

- **Independent Union as an affiliate**

Section 1 (b), Rule I, DO 40-03, s. 2003

(b) "**Affiliate**" refers to an independent union affiliated with a federation, national union or a chartered local which was subsequently granted independent registration but did not disaffiliate from its federation, reported to the Regional Office and

the Bureau in accordance with Rule III, Sections 6 and 7 of these Rules.

c. National Union / Federation

d. Trade Union Center

Trade union center	National union or Federation
Any group of registered national unions or federations organized for the mutual aid and protection of its members; for assisting such members in collective bargaining; or for participating in the formulation of social and employment policies, standards, and programs, and is duly registered with the DOLE in accordance with Rule III, Section 2 of the Implementing Rules.	A labor organization with at least ten locals or chapters or affiliates, each of which must be a duly certified or recognized collective bargaining agent; The Implementing Rules, as amended by Department Order No. 9, provide that a <i>duly registered federation or national union</i> may directly create a local or chapter.

Trade union center cannot create chapters

San Miguel Corp. Employees Union v. San Miguel Packaging Products Employee Union

Facts: Respondent is registered as a chapter of Pambansang Diwa ng Manggagawang Pilipino (PDMP). PDMP issued Charter Certificate No. 112 to respondent. In compliance with registration requirements, respondent submitted the requisite documents to the BLR for the purpose of acquiring legal personality. Upon submission of its charter certificate and other documents, respondent was issued Certificate of Creation of Local or Chapter PDMP-01 by the BLR. Thereafter, respondent filed with the Med-Arbiter of the DOLE-NCR, three separate petitions for certification election to represent SMPP, SMCSU, and SMBP. All three petitions were dismissed, on the ground that the separate petitions fragmented a single bargaining unit.

Petitioner filed with the DOLE-NCR a petition seeking the cancellation of respondent's registration and its dropping from the rolls of legitimate labor organizations. Petitioner claimed, among others, that PDMP is not a legitimate labor organization, but a trade union center, hence, it cannot directly create a local or chapter.

Issue: Whether or not PDMP as a trade union center is a legitimate labor organization and has the power to create a local or chapter?

Ruling: NO. Department Order No. 9 mentions two labor organizations either of which is allowed to directly create a local or chapter through chartering – a duly registered federation or a national union.

Article 234 now includes the term trade union center, but interestingly, the provision indicating the procedure for chartering or creating a local or chapter, namely Article 234-A, still makes no mention of a "trade union center."

Although PDMP as a trade union center is a legitimate labor organization, **it has no power to directly create a local or chapter.** Thus, SMPPEU-PDMP cannot be created under the more lenient requirements for chartering, but must have complied with the more stringent rules for creation and registration of an independent union, including the 20% membership requirement.

D. Procedure: Registration

Sec. 1 (rr), Rule I, DO 40-03, s. 2003

(rr) "**Registration**" refers to the process of determining whether the application for registration of a union or workers' association and collective bargaining agreement complies with the documentary requirements for registration prescribed in Rules III, IV, and XVII of these Rules.

Art. 240. [234] Requirements of registration. Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

- (a) Fifty pesos (P50.00) registration fee;
- (b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;
- (c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;
- (d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and
- (e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.

Art. 241. [234-A] Chartering and Creation of a Local Chapter.

A duly registered federation or national union may directly

create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate.

The chapter shall be entitled to all other rights and privileges of a legitimate labor organization only upon the submission of the following documents in addition to its charter certificate:

- (a) The names of the chapter's officers, their addresses, and the principal office of the chapter; and
- (b) The chapter's constitution and by-laws: *Provided*, That where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

The additional supporting requirements shall be certified under oath by the secretary or treasurer of the chapter and attested by its president. (As amended by Rep. Act No. 9481).

Art. 242. [235] *Action on application*. - The Bureau shall act on all applications for registration within thirty (30) days from filing.

All requisite documents and papers shall be certified under oath by the secretary or the treasurer of the organization, as the case may be, and attested to by its president.

Art. 243. [236] *Denial of registration; Appeal*. - The decision of the Labor Relations Division in the regional office denying registration may be appealed by the applicant union to the Bureau within ten (10) days from receipt of notice thereof.

Art. 244. [237] *Additional Requirements for Federations or National Unions*. - Subject to Article 238 (Now Art. 244), if the applicant for registration is a federation or a national union, it shall, in addition to the requirements of the preceding Articles, submit the following:

- (a) Proof of the affiliation of at least ten (10) locals or chapters, each of which must be a duly recognized collective bargaining agent in the establishment or industry in which it operates, supporting the registration of such applicant federation or national union; and
- (b) The names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved.

Rules III and IV, DO 40-03, s. 2003

RULE III REGISTRATION OF LABOR ORGANIZATIONS

Section 1. Where to file. – Applications for registration of independent labor unions, chartered locals, workers' associations shall be filed with the Regional Office where the applicant principally operates. It shall be processed by the Labor Relations Division at the Regional Office in accordance with Sections 2-A, 2-C, and 2-E of this Rule.

Applications for registration of federations, national unions or workers' associations operating in more than one region shall be filed with the Bureau or the Regional Offices, but shall be processed by the Bureau in accordance with Sections 2-B and

2-D of this Rule.

Section 2. Requirements for application. – A. The application for registration of an independent labor union shall be accompanied by the following documents:

- 1) the name of the applicant labor union, its principal address, the name of its officers and their respective addresses, approximate number of employees in the bargaining unit where it seeks to operate, with a statement that it is not reported as a chartered local of any federation or national union;
- 2) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
- 3) the name of all its members comprising at least 20% of the employees in the bargaining unit;
- 4) the annual financial reports if the applicant has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- 5) the applicant's constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting. In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s).

B. The application for registration of federations and national unions shall be accompanied by the following documents:

- 1) a statement indicating the name of the applicant labor union, its principal address, the name of its officers and their respective addresses;
- 2) the minutes of the organizational meeting(s) and the list of employees who participated in the said meeting(s);
- 3) the annual financial reports if the applicant union has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- 4) the applicant union's constitution and by-laws, minutes of its adoption or ratification, and the list of the members who participated in it. The list of ratifying members shall be dispensed with where the constitution and by-laws was ratified or adopted during the organizational meeting(s). In such a case, the factual circumstances of the ratification shall be recorded in the minutes of the organizational meeting(s);
- 5) the resolution of affiliation of at least ten (10) legitimate labor organizations, whether independent unions or chartered locals, each of which must be a duly certified or recognized bargaining agent in the establishment where it seeks to operate; and
- 6) the name and addresses of the companies where the affiliates operate and the list of all the members in each company involved.

Labor organizations operating within an identified industry may also apply for registration as a federation or national union within the specified industry by submitting to the Bureau the same set of documents.

C. The application for registration of a workers' association shall be accompanied by the following documents:

- 1) the name of the applicant association, its principal address, the name of its officers and their respective addresses;
- 2) the minutes of the organizational meeting(s) and the list of members who participated therein;
- 3) the financial reports of the applicant association if it has been in existence for one or more years, unless it has not collected any amount from the members, in which case a statement to this effect shall be included in the application;
- 4) the applicant's constitution and by-laws to which must be attached the names of ratifying members, the minutes of adoption or ratification of the constitution and by-laws and the date when ratification was made, unless ratification was done in the organizational meeting(s), in which case such fact shall be reflected in the minutes of the organizational meeting(s).

D. Application for registration of a workers' association operating in more than one region shall be accompanied, in addition to the requirements in the preceding subsection, by a resolution of membership of each member association, duly approved by its board of directors.

E. "A duly-registered federation or national union may directly create a local/chapter by issuing a charter certificate indicating the establishment of the local/chapter. The local/chapter shall acquire legal personality only for purposes of filing a petition for certification election from the date it was issued a charter certificate.

The local/chapter shall be entitled to all other rights and privileges of a legitimate labor organization only upon the submission of the following documents in addition to its charter certificate:

- (a) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and
- (b) The chapter's constitution and by-laws provided, that where the chapter's constitution and by-laws are the same as that of the federation or the national union, this fact shall be indicated accordingly.

The genuineness and due execution of the supporting requirements shall be certified under oath by the Secretary or Treasurer of the local/chapter and attested to by its President."

RULE IV PROVISIONS COMMON TO THE REGISTRATION OF LABOR ORGANIZATIONS AND WORKERS ASSOCIATION

Section 1. Attestation requirements. – The application for registration of labor unions and workers' associations, notice for change of name, merger, consolidation and affiliation including all the accompanying documents, shall be certified under oath by its Secretary or Treasurer, as the case may be, and attested to by its President.

Section 2. Payment of registration fee. – A labor union and workers' association shall be issued a certificate of registration upon payment of the prescribed registration fee.

Section 3. Accompanying documents. – One (1) original copy and two (2) duplicate copies of all documents accompanying the application or notice shall be submitted to the Regional Office or the Bureau.

Section 4. Action on the application/notice. – The Regional Office or the Bureau, as the case may be, shall act on all applications for registration or notice of change of name, affiliation, merger and consolidation within one (1) day from receipt thereof, either by: (a) approving the application and issuing the certificate of registration/acknowledging the notice/report; or (b) denying the application/notice for failure of the applicant to comply with the requirements for registration/notice."

RA 9481

AN ACT STRENGTHENING THE WORKERS' CONSTITUTIONAL RIGHT TO SELF-ORGANIZATION, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

Note: This law amended Art. 234 and inserted Art. 234-A (old numbers) of the Labor Code. These are already reflected above in the codal provisions of Arts. 240-244.

1. Constitution and by-laws as a contract between union and its members

When a labor organization registers with BLR, it has to submit copies of its constitution and by-laws. What is the nature of these constitution and by-laws? This was discussed in the Johnson and Johnson Labor Union case. It's actually binding between the organization itself and the member/employee. Essentially the constitution and by-laws, like the constitution and by-laws of a corporation, is binding as a contract between the member and the labor organization. We learned in corporation law that while the constitution and by-laws are internal documents, they serve as a binding contract between the body and the member. So it's similar here in the labor organization. The fact na the labor organization questioned its own by-laws, essentially they were in estoppel as they cannot backout of their own constitution and by-laws. It is an enforceable contract between the labor organization and the employee-member.

Johnson and Johnson Labor Union - FFY v. Director of Labor Relations

Facts: Oscar Pili, a member of the petitioner-union, was dismissed from his employment by employer Johnson & Johnson (Phil.) Inc., for non-disclosure in his job application form of the fact that he had a relative in the company in violation of company policies.

A complaint was filed by Pili against the officers of the petitioner-union alleging, among others, that the union officers had refused to provide the private respondent the financial aid as provided in the union constitution despite demands for payment thereof.

Issue: Whether or not petitioner-union should extend financial aid to Oscar Pili as provided in the petitioner-union's constitution and by-laws?

Ruling: YES. Section 5, Article XIII of the petitioner-union's constitution and by-laws earlier aforequoted is self-executory. The financial aid extended to any suspended or terminated union member is realized from the contributions declared to be compulsory under the said provision in the amount of seventy-five centavos due weekly from each union member.

The petitioner-union's constitution and by-laws govern the relationship between and among its members. As in the interpretation of contracts, if the terms are clear and leave no doubt as to the intention of the parties, the literal meaning of the stipulations shall control.

Thus, there is no doubt that the petitioner-union can be ordered to release its funds intended for the promotion of mutual assistance in favor of the private respondent. **The union constitution is a covenant between the union and its members and among the members.** There is nothing in their constitution which leaves the legal interpretation of its terms unilaterally to the union or its officers or even the general membership.

2. Legal personality not subject to collateral attack

Constitution and by-laws. These are one of the requirements. You have to file with the BLR before you can be granted a certificate of registration as a legitimate labor organization.

So what is the effect if you are duly registered as a labor organization?

For one thing, you can file a petition for certification election and if you get enough votes, you can be considered as the sole and exclusive bargaining agent of the bargaining unit.

What is another effect of registration?

Under DO 40-03, **the legitimate labor organization has a legal personality that is not subject to collateral attack.** What does that mean? If there is a petition for certification election, can another party ask

for the cancellation of the certificate of registration of a labor organization? Under DO 40-03, the legitimacy of a labor organization is actually not subject to collateral attack. Instead, you actually have to file a petition for cancellation of their registration for that purpose jud. If you really want to cancel the registration of a labor organization, you have no other remedy than filing a petition for cancellation of registration.

Now this is different from the cases we discussed where they questioned if the bargaining unit was appropriate. That's a different issue because you're questioning whether sakto ba ang votes but you're not questioning the legitimacy of the labor organization itself. If you really want to attack the legitimacy of the labor organization itself, you have to file a petition for cancellation of registration. That's very clear in DO 40-03.

Sec. 8, Rule IV, DO 40-03, s. 2003

Section 8. Effect of registration. – The labor union or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration or certificate of creation of chartered local.

Such legal personality may be questioned only through an independent petition for cancellation of union registration in accordance with Rule XIV of these Rules, and not by way of collateral attack in petition for certification election proceedings under Rule VIII.

3. Independent union

• Membership requirement

Under sa atong Labor Code and DO 40-03, there's actually a membership requirement in order for you to register with BLR. **But this is only for independent unions.** Independent unions are those na walay national union or federation involved. Nag register lang mo on your own initiative. This is the case for a lot of unions actually. Kanang sila-sila ray naghimo, sila-sila ray nag set-up and ganahan lang sila mag register. So that is what we call an independent union. Now under the law, what is the membership requirement for independent unions?

A: at least 20% of all the employees in the bargaining unit where it seeks to operate

Under the Labor Code, **when an independent union submits an application, there is a minimum 20% membership requirement.** Meaning, the independent union has to have membership of at least 20% of the members of that bargaining unit. So if there are 100

employees of that bargaining unit, they need to have at least 20 members. 20 employees from that bargaining unit have to be members of the independent union. Again this goes back to why it is important to know what the bargaining unit is. So that you will be able to determine how many members are in the bargaining unit as well as so you can comply with the 20% requirement.

Impact of withdrawal of membership on application

Eagle Ridge Golf and Country Club v. CA and Eagle Ridge Employees Union

Facts: Eagle Ridge's rank-and-file employees organized themselves into an independent labor union, named "Eagle Ridge Employees Union" (EREU) and then formally applied for registration before the DOLE. The EREU then filed a petition for certification election in Eagle Ridge Golf & Country Club, but Eagle Ridge opposed on the grounds of misrepresentation, false statement, or fraud on the part of EREU in connection with the adoption of its constitution and by-laws, the numerical composition of the Union, and the election of its officers.

Eagle Ridge contended that there was over-declaration of the number of employees, forgery, and the withdrawal of six members reducing the mandatory minimum 20% membership requirement under the Labor Code. EREU countered that in one case decided by the Supreme Court, citing La Suerte Cigar and Cigarette Factory v. Director of Bureau of Labor Relations, Belyca Corporation and Oriental Tin Can Labor Union, it was ruled that "once the required percentage requirement has been reached, the employees' withdrawal from union membership taking place after the filing of the petition for certification election will not affect the petition." EREU asserted the applicability of said ruling as the petition for certification election was filed long before the affidavits of retraction were executed by the five union members.

Issue: Whether or not the legal personality is subject to collateral attack?

Ruling: NO. As noted by the Supreme Court, Eagle Ridge has apparently resorted to filing the instant case for cancellation of the Union's certificate of registration to bar the holding of a certification election. The Court sees this as tantamount to a clear circumvention of the law and cannot be countenanced.

Jurisprudence provides that the employees' withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such petition is considered

to be involuntary and does not affect the same. Now then, if a withdrawal from union membership done after a petition for certification election has been filed does not vitiate such petition, it is but logical to assume that such withdrawal cannot work to nullify the registration of the union.

At what point did these employees withdraw? Did they already file an application for registration?

A: The withdrawal of members was subsequent to the application.

So in this case, the Supreme Court held that subsequent withdrawal of the 6 employees should not be deemed to retroact to the time na ni submit og application for registration ang labor organization. It was undisputed that at the time of application, the 20% requirement was met and all those employees including the 6 who eventually withdrew, did so willingly and voluntarily submit their names to be part of the labor organization. The fact nga subsequently they changed their mind is of no moment because what matters is at the time of submission of application kay naka-comply ra sila with the 20% requirement.

This goes back to the fundamental principle na labor law should be construed in favor of the employees. Anyway, nothing shows in this case man na there was fraud, malice, or ill intent on the part of the labor organization. It was alleged na fraudulent ang application because they said na they complied with the 20% requirement. But that is unfair sad to the labor organization because at the time of the submission, they really did comply with the 20% requirement and you can't really expect na maka predict sila na katong 6 employees eventually mo decide mohawa.

So what is most important is at the time of application, they had complied with the 20% requirement. Regarding the 20% requirement, let's go to another case. Remember, this 20% requirement is only for independent unions. Meaning, those who applied for application at their own initiative, not those who are supported by federation or national union. This is for independent unions only. Let's talk about the Takata Philippines Corporation case.

Takata Phil. Corp. v. Bureau of Labor Relations

Facts: Takata Phil. Corp. filed a petition for cancellation of Union respondent, Samahang Lakas Manggagawa ng Takata (SALAMAT) on the ground, among others, that the latter is guilty of misrepresentation, false statement and fraud with respect to the number of those

who participated in the organizational meeting. As provided for in Art. 234(3) of the Labor Code, one of the requirements for registration is "in case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate." DOLE ruled in favor of the petition finding that the 68 employees who attended the organizational meeting was obviously less than 20% of the total number of 396 regular rank-and-file. BLR reversed such by contending among others that the list of employees who participated in the organizational meeting was a separate and distinct requirement from the list of the names of members comprising at least 20% of the employees in the bargaining unit.

Issue: Whether or not the 20% requirement applies to organizational meetings.

Ruling: NO. The 20% requirement pertains to actual membership and not those who actively participate in organizational meetings.

It does not appear in Article 234 (b) of the Labor Code that the attendees in the organizational meeting must comprise 20% of the employees in the bargaining unit. In fact, even the Implementing Rules and Regulations of the Labor Code does not so provide. It is only under Article 234 (c) that requires the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate.

Clearly, the 20% minimum requirement pertains to the employees' membership in the union and not to the list of workers who participated in the organizational meeting. Indeed, Article 234 (b) and (c) provide for separate requirements, which must be submitted for the union's registration, and which respondent did submit.

In this case, there was a petition for cancellation of registration on the ground of fraud because of the mistated number of employees who actually attended the organizational meeting.

However, the Supreme Court said that this is actually of no moment because the 20% requirement pertains to actual membership and not necessarily those who attend the organizational meeting. In fact, there's no mention of organizational meetings in the labor code and subsequent regulations. So the fact na they fell short of the 20% katong ni actually attend sa meeting, the fact remains that their membership more than complied with the 20% membership requirement.

TN: What is required is only membership and not

necessarily active participation for the 20% membership requirement.

E. FEDERATION / NATIONAL UNION

- Local Union Relationship

Earlier we briefly discussed federations and national unions but unsa man jud ni sila exactly. So let's go to Adamson and Adamson case. But before we proceed, let's see first the provision under **Section 1 (II) of D.O.-40-03-A-I, definition of National Union or Federation.**

DO 40-03, s. 2003

(II) "National Union" or "Federation" "National Union" or "Federation" refers to a group of legitimate labor unions in a private establishment organized for collective bargaining or for dealing with employers concerning terms and conditions of employment for their member unions or for participating in the formulation of social and employment policies, standards and programs, registered with the Bureau in accordance with Rule III, Section 2-B of these Rules.

Basically, **National Union** or **Federation** is a group of unions that come together to meet for self-organization; a group of self-organized entities who organized further into groups. Now, these national unions or federations, they can actually have chartered local or local charters. Meaning, they can issue charters to unions in different places or different companies to make them become part of murag branch nila, or something like that.

But what is the relationship between local charters and national union or federation?

1. Principal-Agent relationship and Independent Personality of Local Union

Adamson & Adamson, Inc. v. Court of Industrial Relations

Facts: Adamson and Adamson Inc. filed a petition to set aside the decision of the CIR holding that the Adamson and Adamson Inc. Supervisory Union (FFW) can legally represent supervisors of the petitioner corporation notwithstanding the affiliation of the rank-and-file union of the same company with the same Labor Federation, the Federation of Free Workers

(FFW).

The petitioner argues that the affiliation of the respondent union of supervisors, the salesmen's association, and the rank and file personnel with the same national federation (FFW) violates Section 3 of the Industrial Peace Act because — (1) it results in the indirect affiliation Of supervisors and rank-and-file employees with one labor organization; (2) since respondent union and the unions of non-supervisors in the same company are governed by the same constitution and by-laws of the national federation, in practical effect, there is but one union; and (3) it would result in the respondent union's losing its independence because it becomes the alter ego of the federation.

Issues: Whether or not a Supervisor's Union may affiliate with a federation with which unions of rank and-file employees of the same employer are also affiliated.

Ruling: Yes, the Supervisor's Union may affiliate with a federation that a rank and-file employees of the same employer are also affiliated.

There is nothing in the provisions of the Industrial Peace Act which provides that a duly registered local union affiliating with a national union or federation loses its legal personality, or its independence.

Citing the case of Elisco-Elirol vs Noriel and Liberty Cottons, the court ruled that the locals are separate and distinct units primarily designed to secure and maintain the equality of bargaining power between the employer and their employee-member in the economic struggle for the fruits of the joint productive effort of labor and capital; and the association of the locals into the national union was in the furtherance of the same end. Yet the locals remained the basic units of association; free to serve their own and the common-interest of all, subject to the restraints imposed by the Constitution and By-laws of the Association.

In the case at bar, The Adamson and Adamson Supervisory Union and the Adamson and Adamson, Inc., Salesmen Association (FFW), have their own respective constitutions and by-laws. They are separately and independently registered of each other. Both sent their separate proposals for collective bar agreements with their employer. There could be no employer influence on rank-and-file organizational activities nor there could be any rank-and-file influence on the supervisory function of the supervisors because of the representation sought to be proscribed.

The Supreme Court held that the local union that's affiliated with a national union or federation actually

retains its independent personality. So just because they are affiliated doesn't mean that the two suddenly became one. There's no merger. While there is a relationship between the federation and the local union, the fact remains that they are still independently registered and therefore, can act independently of each other. Let's go to the Insular Hotel Employees Union case.

Insular Hotel Employees Union - NFL v. Waterfront Insular Hotel Davao

Facts: Respondent Waterfront Insular Hotel Davao (WATERFRONT) sent the DOLE a Notice of Suspension of Operations notifying the same that it will suspend its operations for a period of six months due to severe and serious business losses. A MOA was then executed by Waterfront and the union. But then, local officers of the National Federation of Labor (NFL), filed a Notice of Mediation before the National Conciliation and Mediation Board (NCMB) raising the issue of "Diminution of wages and other benefits through unlawful Memorandum of Agreement." It was then argued by the opposing party that the persons who filed the instant complaint in the name of the Insular Hotel Employees Union-NFL have no authority to represent the Union.

Issue: Whether or not the mother federation (NFL in this case) has the license to act on behalf of the local union.

Ruling: No. Based on jurisprudence, "a local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. Mere affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency, where the former acts in representation of the latter. Hence, local unions are considered principals while the federation is deemed to be merely their agent.

In this case, even granting that petitioner Union was affiliated with NFL, still the relationship between that of the local union and the labor federation or national union with which the former was affiliated is generally understood to be that of agency, where the local is the principal and the federation is the agent. Being merely an agent of the local union, NFL should have presented its authority to file the Notice of Mediation. While the Court commend NFL's zealousness in protecting the rights of lowly workers, it cannot be, however, allowed it to go beyond what it is empowered to do.

In this case, the Supreme Court again discussed the fact that a local union is independent from the federation or the national union with which it is affiliated. Consequently, because of this, the two cannot be considered the same man. So, in order for the federation to act on behalf of the local union, the federation must be duly authorized. Meaning, the relationship between the local union and the federation can be one of agency where the local union is the principal and the federation is the agent. Now, federation is supposedly authorized to act on behalf of the local union especially in matters such as the ones in this case, whether it's mediation or negotiation, make sure that you have presented a duly issued authority from the local union. Similar with SPAs with natural persons, an agent cannot be presumed to be an agent unless he has proof of the agency. Because again, the local union and the federation are not the same entity so it cannot be presumed that the federation can act on behalf of the local union. So keep that in mind ha? It's a relationship of agency where the federation acting on behalf of the local union **but the federation still needs to present proof of such agency.**

primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members. A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. The mere act of affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency where the former acts in representation of the latter.

The alleged disaffiliation of the Union from the FFW was by virtue of a Resolution signed on February 23, 2010 and submitted to the DOLE Laguna Field Office on March 5, 2010 – two months after the present petition was filed on December 22, 2009, – hence, it did not affect FFW and its Legal Center's standing to file the petition nor this Court's jurisdiction to resolve the same.

Cirtek Employees' Labor Union - FFW v. Cirtek Electronics

Facts: The employer had a CBA with its employees and before the third year of the CBA, the parties renegotiated its economic provisions but failed to reach a settlement--- issue on wage increases. The employee-union declared a bargaining deadlock and filed a Notice to Strike. Consequently, employer filed a Notice of Lockout. DOLE Sec assumed jurisdiction on the case. The parties came up with a MOA that increased the wages. DOLE issued a different ruling on the said increase in wages. Employer appealed the DOLE ruling before the CA--- latter granted. Hence, this petition.

The employer avers that DOLE Sec cannot insist on ruling beyond the compromise agreement entered into by the parties. The petitioner-union later on filed a resolution of disaffiliation from the Federation of Free Workers before the DOLE. The union then lacked personality to file the said appeal.

Issue: WON petitioner lost its personality to represent the workers because of its disaffiliation from the Federation of Free Workers.

Ruling: NO. This fact does not affect the Court's upholding of the authority of the DOLE Sec to impose arbitral awards higher than what was supposedly agreed in the MOA.

A local labor union is a separate and distinct unit

In this case, the important aspect lang in this case, the Supreme Court said that **unless the constitution and by-laws provides for a specific manner of disaffiliation, a local unit is actually free to disaffiliate at any time.** Disaffiliated meaning dili na siya connected with the national union or federation. In short, buwag sila.

So, in order words, there can be certain conditions for disaffiliation in the constitution and by-laws that have to be complied with. So if the local union fails to comply, basin there can be some sort of penalty or something like that. However, **in no case will disaffiliation lose result in the local union losing its personality because it's independently registered;** it has a separate personality from the federation. Even if there are violations or whatever, the fact there's disaffiliation does not mean that any party is divested of their personality. Keep in mind lang na in these cases, it is pre-supposed that the local union is independently registered na.

This is not the same as unchartered, murag nasayop akong label sa case outline. But a local charter is different from the affiliated local union. Local union in the contemplation of these cases we have discussed so far pre-supposes na independently registered siya before the federated came along and affiliated with it. A local charter, on the other hand, pre-supposes naay labor organization that has not yet been registered, gi-issuehan siya ug charter by a federation or national union, and by virtue of the charter pwede na siya mufile for registration or certification election before the BLR. But we'll discuss that in more detail at the next meeting. To start with the certification election.

2. Reportorial Requirements

- Report of Affiliation

Last meeting, we discussed that **a federation or a national union is a group of unions who have come together to strengthen their bargaining power** usually you'll notice in a lot of cases we've discussed -- in the name of the union there is a dash and then there is an acronym following it -- that is usually to indicate that the local union is affiliated with a federation, usually the federation comes after the dash (Samahan-FFW). So, this is to indicate that the local union is supported by a federation or national union, basically it's saying to the employer "oy we are being supported by other unions as well" this is to show to the employer that they have bargaining power.

The relationship between a federation/national union and a local union is basically one of agent and principal. The agent is the federation and the local union is the principal. A local union is usually independently registered, so what happened is that the local union existed before the federation/ national union came along and ask them (local union) to join their ranks.

Sometimes, the federation will act on behalf of the local union, like usually the federation will file a case on behalf of the local union, or the federation will bargain on behalf of the local union because of bargaining power. However, we have to remember that **the relationship here is that the federation is actually the agent. Remember both of these entities (local union and federation) have their own distinct personalities, we cannot assume that one is the agent of the other**, similar with people, people have different legal personalities, and no matter how close the two people can be, it can never be presumed that one is the agent of the other. Similarly, the case of a federation, **if ever the federation will file a case on behalf of the union or if it negotiates with the employer, the federation has to present a special power of attorney or present a form of authorization showing that the union has in fact authorized the federation to act on its behalf because both of these entities have separate and distinct legal personalities.** The federation or national union as an agent of the local union has to present proof of the agency.

Obviously, walang forever, so sometimes the local union will decide to disaffiliate with the federation/national union, maybe there is bad blood or maybe the local union has realized that they are capable of acting even without the support of the national union/federation or sometimes wala lang di

lang nila feel, sometimes the relationship just loses its spark. So maybe later on, **the local union will decide to disaffiliate with the federation. The legal basis of this is – if you have the freedom of association, it presupposes that there is also the freedom to disassociate.**

How do you exercise freedom of association by disaffiliation?

A: The easiest way is **to inform the federation or the national union that you plan to disaffiliate by registering such a fact of disaffiliation with DOLE** that is the simplest form. However, relationships get complicated so it's not as easy as telling the truth. We mention that an employer and union will enter into a collective bargaining unit, a contract between the employer and the union for better benefits, and salaries.

When a local union is supported by a federation, the federation or national union will participate in the negotiation process, and there will be other provisions that will be included in the CBA other than the benefits provisions. So, **a CBA will also provide for the terms and conditions of disaffiliation, meaning what steps the local union will have to undergo in order to recognize the disaffiliation by the employer.** And obviously the employer will be bound by the CBA because it is a contract.

Essentially, **if a local union chooses to sever its relationship with the federation without following the terms and conditions for disaffiliation under the CBA, it can be considered as breach of contract but disaffiliation can still be recognized because of the freedom of association and disassociation.** However, non-compliance with the terms and conditions of disaffiliation under the CBA will affect the relationship between the local union and the employer because the CBA may provide that employees who are disaffiliating will be subject to **penalties or termination.** In some CBA, there is called the union security clause which we will discuss in depth later on. **A union security clause** is a clause in the CBA saying that the employer will only hire employees who are members of the union or who will join the union shortly after they are hired. This is actually a valid form of employment because it encourages self-organization. A union security clause encourages the right to self-organization.

What happens if the union security clause is violated?

A: The employer if they so wish can terminate the services of the employee for violating that condition of employment.

In some CBAs, the union security clause will provide circumstances of disaffiliation meaning if some employees choose to disaffiliate from the national union or federation, the employer can treat it as a breach of the union security clause and therefore the employees can be let go by the employer as breach of the union security clause.

Volkschel Labor Union v. Bureau of Labor Relations

Doctrine: The right to local union to disaffiliate from its mother union is well-settled. In previous cases, it has been repeatedly held that a local union, being a separate and voluntary association, is free to serve the interest of all its members including the freedom to disaffiliate when circumstances warrant.

3. Disaffiliation

a. Basis: Freedom of Association

Phil. Skylanders v. NLRC

Doctrine: It is well-settled that local unions have the right to separate from their mother federation on the ground that as separate and voluntary associations, local unions do not owe their creation and existence to the national federation to which they are affiliated but, instead, to the will of their members.

Tropical Hut Employees Union - CGW v. Tropical Hut Food Market

Doctrine: The union security clause embodied in the Collective Bargaining Agreement cannot be used to justify the dismissals meted to petitioners since it is not applicable to the circumstances obtaining in this case. The CBA imposes dismissal only in case an employee is expelled from the union for joining another federation or for forming another union or who fails or refuses to maintain membership therein.

b. Observance of terms of disaffiliation in CBA, and the absence thereof

Malayang Samahan ng mga Maggagawa sa M Greenfield (MSMG-WP) v. Ramos

Doctrine: The Supreme Court held that dismissal of employees under the union security clause is authorized by law, but employees must be afforded their fundamental rights to due process. A local union, being a separate and voluntary association, is free to serve the interests of all its members including the freedom to disaffiliate or declare its autonomy from the federation to which it belongs when circumstances warrant, in accordance with the constitutional guarantee of freedom of association.

Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.

Doctrine: Dismissal of employees under the union security clause is authorized by law, but employees must be afforded their fundamental rights to due process.

c. Not a violation of union security clause if not provided for

Abaria v. NLRC,

Doctrine: If one is Not a legitimate labor organization, it is not entitled to those rights granted to a legitimate labor organization under Art. 242, specifically: (a) To act as the representative of its members for the purpose of collective bargaining; (b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining;

d. Disaffiliating union must be registered

National Union of Bank Employees v. Philnabank Employees Association

Doctrine: A local union may disaffiliate at any time from its mother federation, absent any showing that the same is prohibited under its constitution or rule. Such, however, does not result in it losing its legal personality altogether.

A local labor union is a separate and distinct unit primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members. A local union does not owe its existence to the federation with which it is affiliated.

It is a separate and distinct voluntary association owing its creation to the will of its members. The mere act of affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency where the former acts in representation of the latter.

Before disaffiliation, the local union has a distinct and separate personality from the federation or the national union however, this is premised on the assumption that the local union is registered with the BLR. If it is not registered with the BLR, it is not a legitimate labor organization so, obviously it cannot be a valid union. If it is not registered with the BLR, it has no separate and independent personality as a labor organization to speak of. So, once it disaffiliates from the federation or the national union it actually loses its

personality because in that sense it's like it borrowed legal personality, or its dependence on the existing personality of the federation or nation union.

e. When

- Freedom

Tanduay Distillery Labor Union v. NLRC

Doctrine: No petition for certification election for intervention, disaffiliation shall be entertained or given due course except **within the 60-day freedom period immediately preceding the execution of the Collective Bargaining Agreement.**

- EXC: Majority Vote

Associated Workers Union - PTGWO v. NLRC

Doctrine: Generally, a labor union may disaffiliate from the mother union to form a local or independent union only during the 60-day freedom period immediately preceding the expiration of the CBA.

Even before the onset of the freedom period (and despite the closed-shop provision in the CBA between the mother union and management) **disaffiliation may still be carried out, but such disaffiliation must be effected by a majority of the members in the bargaining unit.** This happens when there is a substantial shift in allegiance on the part of the majority of the members of the union. In such a case, however, the CBA continues to bind the members of the new or disaffiliated and independent union up to the CBA's expiration date.

For context, every CBA has a period of 5 years because it has to be registered with BLR. It has a life of 5 years. The last 60 days of that life is called the freedom period. The freedom period is the period where the parties can negotiate, conduct a certification election. Basically, it changed the status quo within that time. Mura syag election period ba. **During the freedom period, local union can exercise their right to disaffiliate. However, there is an exception. If the majority of the union choose to disaffiliate, this can be a valid exception to the rule na freedom period ra pwe de mag disaffiliate.** Because by a majority vote, they are showing that they are no longer content in the arrangement with the federation or national union. You cannot hold them in an arrangement na dili sila content. You have to respect the majority decision of the union.

QWhat are the rights of labor organizations?

A: Articles 250 and 251 of the Labor Code. You do not have to be a legitimate labor organization to enjoy rights as a labor organization.

Cirtek Employees Labor Union - FFW v. Cirtek Electronics

Doctrine: A local labor union is a separate and distinct unit primarily designed to secure and maintain an equality of bargaining power between the employer and their employee members.

A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members.

The mere act of affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency where the former acts in representation of the latter.

f. Employer not a party

An employer is also not a party to disaffiliation. Disaffiliation is between the local union and the national union or federation only. The employer is a third-party. He is not relevant. The only participation of the employer in a disaffiliation proceedings is really only to the extent of implementing the terms and conditions of the CBA.

For example, if the CBA does not provide anything related to disaffiliation, like walay union security clause, walay terms and conditions for disaffiliation, the employer pretty much has nothing to do with the disaffiliation because the CBA (the contract between the employer and employee) is silent on disaffiliation. So, the employer really has no involvement in the act of disaffiliation itself.

H. PROCEDURE: CANCELLATION

Article 245. Cancellation of Registration

The certificate of registration of any legitimate labor organization, whether national or local, may be cancelled by the Bureau, after due hearing, only on the grounds specified in Article 239 hereof.

Article 246. Effect of a Petition for Cancellation of Registration.

A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.

In case of cancellation, nothing herein shall restrict the right of the union to seek just and equitable remedies in the appropriate courts.

Article 247. Grounds for Cancellation of Union Registration.

The following may constitute grounds for cancellation of union registration:

- (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
- (b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;
- (c) Voluntary dissolution by the members.

Article 248. Voluntary Cancellation of Registration.

The registration of a legitimate labor organization may be cancelled by the organization itself: Provided, That at least two-thirds of its general membership votes, in a meeting duly called for that purpose to dissolve the organization: Provided, further, That an application to cancel registration is thereafter submitted by the board of the organization, attested to by the president thereof.

Section 2, Rule XIV, D.O. No. 40-03

Section 2. Who may file. – Any party-in-interest may commence a petition for cancellation of registration, except in actions involving violations of Article 250 (renumbered), which can only be commenced by members of the labor organization concerned.

1. Grounds under Labor Code

- Note: vote requirement for self-cancellation

Rule VIII, Book V, Implementing Rules

Section 1. Complaint.

A complaint for any violation of the constitution and by-laws and the rights and conditions of membership under Article 242 may be filed in the Regional Office where the union is domiciled.

Section 2. Who may file.

If the issue involves the entire membership of the union, the complaint shall be signed by at least 30 percent of the

membership of the union. In addition to the above requirement, the petition must show on its face that the administrative remedies provided for in the constitution and by-laws have been exhausted or such remedies are not readily available to the complaining members through no fault of their own. However, if the issue affects a single member only, such member may alone file his complaint.

Section 3. Contents of complaint.

The complaint must, among other things, contain the following: (a) The person or persons charged; (b) The specific violation/s committed; (c) The relief/s prayed for; and (d) Other relevant matters. Such complaint must be in writing and under oath, and a copy thereof served on the respondent.

Section 4. Procedure.

Upon receipt of the complaint, the Regional Director shall immediately assign the case to a Med-Arbiter. The Med-Arbiter shall have twenty (20) working days within which to settle or decide the case. The decision of the Med-Arbiter shall state the facts and the reliefs granted, if any. If the conflicts involve a violation of the rights and conditions of the membership enumerated under Article 242 of the Code, the Med-Arbiter shall order the cancellation of the registration certificate of the erring union or the expulsion of the guilty party from the union, whichever is appropriate.

Section 5. Appeal

The aggrieved party may, within ten (10) calendar days from receipt of the decision of the Med-Arbiter, appeal the same to the Secretary on any of the following grounds: (a) Grave abuse of discretion; and (b) Gross incompetence. The appeal shall consist of a position paper specifically stating the grounds relied upon by the appellant and supporting arguments under oath.

Section 6. Where to file appeal.

The appellant shall file his appeal, which shall be under oath and copy furnished the appellee in the Regional Office where the case originated.

Section 7. Period to answer.

The appellee shall file his answer thereto within ten (10) calendar days from receipt of the appeal. The Regional Director shall, within five (5) calendar days, forward the entire records of the case to the Office of the Secretary.

Section 8. Decision of the Secretary final and appealable.

The Secretary shall have fifteen (15) calendar days within which to decide the appeal from receipt of the records of the case. The decision of the Secretary shall be final and appealable.

Section 9. Execution pending appeal.

The execution of the order of the Med-Arbiter shall be stayed pending appeal.

2. Petition for Cancellation

I. REVOCATION OF LOCAL CHAPTER

J. MERGER AND CONSOLIDATION OF LOs

Section 10, Rule IV, D.O. No. 40-03

Section 10. Effect of merger or consolidation. – Where there is a merger of labor organizations, the legal existence of the absorbed labor organization(s) ceases, while the legal existence of the absorbing labor organization subsists. All the rights, interests and obligations of the absorbed labor organizations are transferred to the absorbing organization.

Where there is consolidation, the legal existence of the consolidating labor organizations shall cease and a new labor organization is created. The newly created labor organization shall acquire all the rights, interests and obligations of the consolidating labor organizations

Article 250 [241]. Rights and Conditions Membership in a Labor Organization.

The following are the rights and conditions of membership in a labor organization:

- (a) No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;
- (b) The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization;
- (c) The members shall directly elect their officers in the local union, as well as their national officers in the national union or federation to which they or their local union is affiliated, by secret ballot at intervals of five (5) years. No qualification requirement for candidacy to any position shall be imposed other than membership in good standing in subject labor organization. The secretary or any other responsible union officer shall furnish the Secretary of Labor and Employment with a list of the newly-elected officers, together with the appointive officers or agents who are entrusted with the handling of funds within thirty (30) calendar days after the election of officers or from the occurrence of any change in the list of officers of the labor organization;
- (d) The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or force majeure renders such secret ballot impractical, in which case, the board of directors of the organization may make the decision in behalf of the general membership;
- (e) No labor organization shall knowingly admit as members or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;
- (f) No person who has been convicted of a crime involving moral turpitude shall be eligible for election as a union officer or for appointment to any position in the union;
- (g) No officer, agent or member of a labor organization shall collect any fees, dues, or other contributions in its behalf or make any disbursement of its money or funds unless he is duly authorized pursuant to its constitution and by-laws;
- (h) Every payment of fees, dues or other contributions by a member shall be evidenced by a receipt signed by the officer or agent making the collection and entered into the record of the organization to be kept and maintained for the purpose;
- (i) The funds of the organization shall not be applied for any

purpose or object other than those expressly provided by its constitution and by-laws or those expressly authorized by written resolution adopted by the majority of the members at a general meeting duly called for the purpose;

(j) Every income or revenue of the organization shall be evidenced by a record showing its source, and every expenditure of its funds shall be evidenced by a receipt from the person to whom the payment is made, which shall state the date, place and purpose of such payment. Such record or receipt shall form part of the financial records of the organization.

Any action involving the funds of the organization shall prescribe after three (3) years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier: Provided , That this provision shall apply only to a legitimate labor organization which has submitted the financial report requirements under this Code: Provided, further, That failure of any labor organization to comply with the periodic financial reports required by law and such rules and regulations promulgated thereunder six (6) months after the effectivity of this Act shall automatically result in the cancellation of union registration of such labor organization;

- (k) The officers of any labor organization shall not be paid any compensation other than the salaries and expenses due to their positions as specifically provided for in its constitution and by-laws, or in a written resolution duly authorized by a majority of all the members at a general membership meeting duly called for the purpose. The minutes of the meeting and the list of participants and ballots cast shall be subject to inspection by the Secretary of Labor or his duly authorized representatives. Any irregularities in the approval of the resolutions shall be a ground for impeachment or expulsion from the organization;
- (l) The treasurer of any labor organization and every officer thereof who is responsible for the account of such organization or for the collection, management, disbursement, custody or control of the funds, moneys and other properties of the organization, shall render to the organization and to its members a true and correct account of all moneys received and paid by him since he assumed office or since the last day on which he rendered such account, and of all bonds, securities and other properties of the organization entrusted to his custody or under his control. The rendering of such account shall be made:
 - 1) At least once a year within thirty (30) days after the close of its fiscal year;
 - 2) At such other times as may be required by a resolution of the majority of the members of the organization; and
 - 3) Upon vacating his office. The account shall be duly audited and verified by affidavit and a copy thereof shall be furnished the Secretary of Labor.

(m) The books of accounts and other records of the financial activities of any labor organization shall be open to inspection by any officer or member thereof during office hours;

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members in a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president.

(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; and

(p) It shall be the duty of any labor organization and its officers to inform its members on the provisions of its constitution and by-laws, collective bargaining agreement, the prevailing labor relations system and all their rights and obligations under existing labor laws.

For this purpose, registered labor organizations may assess reasonable dues to finance labor relations seminars and other labor education activities.

Any violation of the above rights and conditions of membership shall be a ground for cancellation of union registration or expulsion of officers from office, whichever is appropriate. At least thirty percent (30%) of the members of a union or any member or members specially concerned may report such violation to the Bureau. The Bureau shall have the power to hear and decide any reported violation to mete the appropriate penalty.

Criminal and civil liabilities arising from violations of above rights and conditions of membership shall continue to be under the jurisdiction of ordinary courts.

Article 251 [242]. Rights of Legitimate Labor Organizations.

A legitimate labor organization shall have the right:

- (a) To act as the representative of its members for the purpose of collective bargaining;
- (b) To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;
- (c) To be furnished by the employer, upon written request, with its annual audited financial statements, including the balance sheet and the profit and loss statement, within thirty (30) calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representative of the employees in the bargaining unit, or within sixty (60) calendar days before the expiration of the existing collective bargaining agreement, or during the collective bargaining negotiation;
- (d) To own property, real or personal, for the use and benefit of the labor organization and its members;
- (e) To sue and be sued in its registered name; and
- (f) To undertake all other activities designed to benefit the organization and its members, including cooperative, housing, welfare and other projects not contrary to law.

Notwithstanding any provision of a general or special law to the contrary, the income and the properties of legitimate labor organizations, including grants, endowments, gifts, donations and contributions they may receive from fraternal and similar organizations, local or foreign, which are actually, directly and exclusively used for their lawful purposes, shall be free from taxes, duties and other assessments. The exemptions provided herein may be withdrawn only by a special law expressly repealing this provision.

UST Faculty Union v. Bitonio

Doctrine: USTFU's Constitution and by laws were violated. The importance of the union's constitution and by laws cannot be overemphasized. They embody a covenant between a union and its members and constitute the fundamental law governing the member's rights and obligations. SC agrees that the election was tainted with irregularities.

In this case, the assembly was not called by the USTFU. It was merely a convocation of faculty, as indicated in the memorandum and sent to all faculty members. It was not convened in accordance with the provision on general membership meetings as found in USTFU's CBL. There was no COMELEC to oversee the election, as mandated by the CBL. and the election was not done in secret balloting which

is also a violation of the CBL and Labor Code.

K. RIGHTS OF LABOR ORGANIZATIONS AND LEGITIMATE LABOR ORGANIZATIONS

T/N: You do not have to be a legitimate labor organization to have rights

1. Constitution and by-laws

Litton Mills Employees Association Kapatrian v. Ferrer-Calleja

Doctrine: The act of affiliating with a federation is a major modification in the status of the petition-union. The act of the union officer to affiliate the petitioner-union with a federation was a ground for impeachment according to the union's constitution and by-laws. However, the impeachment of the union officer was not in accordance with the union's Constitution and by laws. Nevertheless, a group of employees broke away with the petitioner-union, and formed a new union. The new union was chosen to be the collective bargaining unit.

Ferrer v. NLRC

Doctrine: A CBA is the law between the company and the union in compliance with the express policy to give protection to labor. A CBA provision for closed shop is a valid form of union security and it is not a restriction on the right or freedom of association.

In the case at bar, while it is true that the CBA between OFC and the SAMAHAN provided for the dismissal of employees who have maintained their membership in the union, the manner in which the dismissal was enforced left much to be desired in terms of the right of petitioner to procedural due process. SAMAHN should have observed its own constitution and by laws by giving petitioners an opportunity to air their side and explain. The right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own union is not wiped away by a union security clause or union shop clause in the CBA,

2. Eligibility of voters and candidates in elections

Kapisanan ng mga Manggagawa sa MRR v Hernandez

Doctrine: Section 17. Rights and Conditions of Membership in Labor Organizations. - It is hereby declared to be the public policy of the Philippines to encourage the following internal labor organization procedures. A minimum of ten percent of the members of a labor organization may report an alleged violation of these procedures in their labor organization to the

Court. If the Court finds, upon investigation, evidence to substantiate the alleged violation and that efforts to correct the alleged violation through the procedures provided by the labor organization's constitution or by-laws have been exhausted, the Court shall dispose of the complaint as in "unfair labor practice" cases.

3. Internal Remedies

- **Exhaustion of administrative remedies**

Diamonon v DOLE

Doctrine: Administrative remedies shall be exhausted even for intra-union disputes. Non-compliance with this rule will allow the quasi-judicial bodies, such as the DOLE in this case, to dismiss a case of the party

- **EXC: Denial of Justice**

Kapisanan ng mga Manggagawa sa MRR v. Hernandez

Doctrine: Court of Industrial Relations; Power to interfere in internal affairs of a labor union. — Judicial interference in internal affairs of a labor union is sanctioned by Sec. 17 of Republic Act 875, otherwise known as the Industrial Peace Act. For the court to intervene, two requirements must be satisfied: (1) at least 10% of the union membership must concur to report the alleged violation; and (2) the procedures provided by the Union's constitution or by-laws must first be exhausted.

Unfair labor practice; Procedure under republic act 875; Rule of redress within organization first not absolute.

Under Section 17, Republic Act No. 875, redress must first be sought within the organization itself in accordance with its constitution and by-laws.

However, this requirement is not absolute but yields to exceptions under varying circumstances. Where as in this case, exhaustion of remedies within the union itself would practically amount to a denial of justice, or would be illusory or vain, it will not be insisted upon, particularly where property rights of the members are involved, as a condition to the right to involve the aid of the court.

4. Check-offs and assessments

A method of deducting from an employee's pay at prescribed period, the amounts due the union for fees, fines and assessments.

Deductions for union service fee are authorized by law and do not require individual check-off authorization.

Deduction is not automatic. It needs the written consent or authorization from the employees. The union dues or

the agency fees are deducted from their salary.

General Rule: The employer cannot make deductions from the salary of the employees.

Exception: There is check-off.

The employer cannot deduct from the salary of the employee if the latter did not agree. However, if the employer deducts otherwise, it is considered an illegal deduction.

If the employee does not agree with the check-off, he/she can pay manually directly to the labor organization.

What happens if the employee will not allow check-off?

The employer cannot deduct from their salary. If an employer deducts, it's an illegal deduction on the part of the employer if there is no written authorization on the part of the employee.

In that case, what will the employee do, if he does not allow check-off?

He would have to pay manually to the labor organization.

ABS-CBN Supervisors Employees Union Members v. ABS-CBN Corp

Doctrine: A **check-off** is a process or device whereby the employer, on agreement with the Union, recognized as the proper bargaining representative, or on prior authorization from its employees, deducts union dues or agency fees from the latter's wages and remits them directly to the union. As this Court has acknowledged, the system of check-off is primarily for the benefit of the Union and only indirectly, for the individual employees

a. Dues

Article 250 [241]. Rights and Conditions Membership in a Labor Organization.

(a) No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;

Article 251 [242]. Unfair Labor Practices of Employers.

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another

union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, That the individual authorization required under Article 242, paragraph (o) of this Code 204 shall not apply to the non-members of the recognized collective bargaining agent

Omnibus Rules, Book Five

Rule XVI General Provisions

Section 14. Check-off from non-members.

Pursuant to Article 248 (e) of the Code, the employer shall check-off from non-union members within a collective bargaining unit the same reasonable fee equivalent to the dues and other fees normally paid by union members without the need for individual check-off authorizations.

b. Special assessments

Article 250 [241]. Rights and Conditions Membership in a Labor Organization.

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members of a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president.

c. Dues v. Agency fee

Holy Cross of Davao College v. Joaquin

Union Dues	Agency Fees
The legal basis of check-off is found in statutes or in contracts (Art. 241 LC).	Collection of agency fees in an amount equivalent to union dues and fees, from <u>employees who are not union members</u> , is recognized by Article 248 (e) of the Labor Code.
union members	non-union members

Limitations on check-offs:

- 1) authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose;
- 2) secretary's record of the minutes of the meeting; and
- 3) individual written authorization for check-off duly signed by the employee concerned

Authorization to effect a check-off of union dues is co-terminus with the union affiliation or membership of employees

No requirement of written authorization from the non-union employee is imposed.

The employee's acceptance of benefits resulting from a collective bargaining agreement justifies the deduction of agency fees from his pay and the union's entitlement thereto.

In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union

d. Requirements for special assessment

1. Authorization by a written resolution of the majority of all the members at the general membership meeting duly called for that purpose
2. Secretary's record of the minutes of the meeting includings the list of members present, votes case, purpose of the special assessments and the recipient of such assessments which must be attested to by the president.
3. Individual written authorization for check-off duly signed by the employee concerned to levy such assessment

e. Liability of employer

Holy Cross of Davao College v. Joaquin

Doctrine: While an employer's failure to deduct union dues and assessments from its employees' salaries pursuant to a check-off stipulation may make it liable for unfair labor practice, it does not, by that omission, incur liability to the union for the aggregate of dues or assessments uncollected from the union members, or agency fees from non-union employees;

No provision of law makes the employer directly liable for the payment to the labor organization of union dues and assessments that the former fails to deduct from its employees' salaries and wages pursuant to a check-off

stipulation. The employer's failure to make the requisite deductions may constitute a violation of a contractual commitment for which it may incur liability for unfair labor practice.

But it does not by that omission, incur liability to the union for the aggregate of dues or assessments uncollected from the union members, or agency fees from non-union employees. Check-offs in truth impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by management at the instance of

the union and for its benefit, in order to facilitate the collection of dues necessary for the latter's life and sustenance. But the obligation to pay union dues and agency fees obviously devolves not upon the employer, but the individual employee. It is a personal obligation not demandable from the employer upon default or refusal of the employee to consent to a check-off.

The only obligation of the employer under a check-off is to effect the deductions and remit the collections to the union. The principle of unjust enrichment necessarily precludes recovery of union dues — or agency fees — from the employer, these being, to repeat, obligations pertaining to the individual worker in favor of the bargaining union. Where the employer fails or refuses to implement a check-off agreement, logic and prudence dictate that the union itself undertake the collection of union dues and assessments from its members (and agency fees from non-union employees); this, of course, without prejudice to suing the employer for unfair labor practice.

f. Jurisdiction over disputes

Philippine National Construction Corp. v. Ferrer-Calleja

Issue: Whether or not the Bureau of Labor Relations has jurisdiction over the case involving the validity and refund of check-off assessments made by a labor union against the salaries of union members through the petitioner-employer.

Ruling: Under Article 241 of the Labor Code, the Bureau of Labor Relations has jurisdiction over cases of reported violations thereof and to mete the appropriate penalty in disputes between and among the union, its officers and members. The petition was for violation of said article which provides that "(n)o special assessment or other extra-ordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose.

The principal relief sought in the case was for the nullification of Union Resolution No. 15-S-84. The inclusion of petitioner as a co-respondent and the monetary claim against it is only incidental or ancillary to the principal relief and is a

consequence of petitioner having acted as a collection agent of the respondent union officers. The action, therefore, is not essentially a money claim for underpayment of wages that would fall under the jurisdiction of the labor arbiter.

5. Prescriptive Periods

Article 250. [241] Rights and Conditions of Membership in a Labor Organization.

(j) xxx Any action involving the funds of the organization shall prescribe after three (3) years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted as required by law, whichever comes earlier: Provided , That this provision shall apply only to a legitimate labor organization which has submitted the financial report requirements under this Code: Provided, further, That failure of any labor organization to comply with the periodic financial reports required by law and such rules and regulations promulgated thereunder six (6) months after the effectivity of this Act shall automatically result in the cancellation of union registration of such labor organization;

6. Violation of rights: cancellation

Omnibus Rules, Book Five

Chapter II RIGHTS AND CONDITIONS OF MEMBERSHIP

Article 250. [241] Last paragraph

xxx

Any violation of the above rights and conditions of membership shall be a ground for cancellation of union registration or expulsion of officers from office, whoever is appropriate. **At least thirty percent (30%) of the members of a union or any member or members specially concerned may report such violation to the Bureau.** The Bureau shall have the power to hear and decide any reported violation to meet the appropriate penalty.

Criminal and civil liabilities arising from violations of above rights and conditions of membership shall continue to be under the jurisdiction of ordinary courts.

It's clear from that paragraph that the BLR also has jurisdiction to settle possible disputes involving alleged violations of rights and conditions of membership.

a. 30% requirement

- of UNION, not bargaining unit

At least thirty percent (30%) of the members of a union or any member or members specially concerned may report such violation to the Bureau.

Is the 30% requirement absolute?

A: No. It is not necessary that every instance is 30%. If the employee is aggrieved by the violation, they can file a report or complaint before the BLR.

TN: 30% of the members of the union, not the entirety of bargaining unit

Verceles v. BLR

Facts: Private respondents Dalupan et al. are members of the University of the East Employees' Association (UEEA), they each received a Memorandum from the UEEA charging them with spreading false rumors and creating disinformation among the members of the said association

Issues: WON respondents violated Art 241 when it reported violation related to union membership without the support of at least 30% of the association

Ruling: No, the respondents did not violate the 30% rule because it is not mandatory. This is evident from Article 241's use of the word "**MAY**" and the absence of the 30% requirement in Article 226 granting the BLR jurisdiction over inter and intra union conflicts. The 30% requirement is not mandatory.

TN: The use of the permissive "may" in the provision at once negates the notion that the assent of 30% of all members is mandatory.

When there is a violation,

- 30% pertains to the union, not necessarily to the bargaining unit. It is also permissive
- Any employee who is concerned can file by themselves.

L. MAJOR DIFFERENCE BETWEEN LO and LLO

What is the key difference between LO and LLO?
Because the Labor code and the issues of the DOLE do not say that they are the same thing. So, what is the difference aside from the fact of registration? What is the effect of registration on the rights of the organizations?

A: It is clear that only a legitimate labor organization can represent the Employees for purposes of collective bargaining as well as the right that they can be certified as the exclusive bargaining agent. So, this implies that if you are not registered, you cannot enjoy these rights. You can never be an exclusive bargaining agent for your collective bargaining unit. You cannot collectively bargain with the employer. So if you are an employer and this unregistered LO comes to you to negotiate, you have every right to refuse to negotiate with them or collectively bargain with them because of the fact that they are not registered, they cannot enjoy the right to collectively bargain with the employer.

Art. 251. Rights of legitimate labor organizations. A legitimate labor organization shall have the right:

- To act as the representative of its members for the purpose of collective bargaining;
- To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;

Philippine Diamond Hotel v. Manila Diamond Hotel Employees Union, G.R. No. 158075, 30 June 2006

Facts: The Union filed a petition for a certification election, which was dismissed by the DOLE. Despite the dismissal of their petition, the Union sent a letter to the Hotel of its intention to negotiate, by Notice to Bargain but the hotel advised the union that since it was not certified by the DOLE as the exclusive bargaining agent, it could not be recognized as such. Failing to settle the issue, the Union staged a strike against the Hotel.

The Hotel claims that the strike was illegal and dismissed some employees for their participation in the allegedly illegal concerted activity. The Union, on the other hand, accused the Hotel of illegally dismissing the workers.

Issue: WON respondent union can represent its members in the negotiations for a CBA (NO)

Ruling: Under Article 255 of the LC, it provides that the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present

grievances to their employer

In this case, the union is admittedly not the exclusive representative of the majority of the employees of petitioner, hence, it could not demand from petitioner the right to bargain collectively on their behalf.

In this case class, the SC upheld the contention of the employer saying that the mere fact that a labor organization was the one negotiating is not enough, they have to be registered with BLR and be a legitimate labor organization before they can exercise the right to collectively bargain with the employer. So whenever you are the employer, whenever you decide to run a business or start a company, if a group of employees come to you asking that they want to negotiate asking for better wages, at your discretion, you can negotiate with them but you have no legal obligation to recognize them as a labor organization and collectively bargain with them if they are not registered with DOLE.

For instance, if there are multiple unions, as an employer you are not obligated to deal with any of them until they have chosen an exclusive bargaining agent.

Who can be an exclusive bargaining agent?

A: Only those who are legitimate labor organizations. Under Article 251, only legitimate labor organizations have the right to be certified as an exclusive bargaining agent through a certification election.

Compromise Agreements

Sometimes in labor law, there are compromise agreements. Sometimes the employee wants something, usually in the form of monetary compensation, and usually the employer does not want to give it in whole or in part, so the parties come to a middle ground. If the employees want 10,000 bonus but the ER said that he will only give the employees 5,000 bonus, so the parties negotiate it, they discuss and they compromise, so in the end they decided for the 7,000 bonus and will enter into a compromise agreement.

Let us say for working conditions, they want better working hours, they want vacation leave. Sometimes the employers will give in and sometimes the employers will negotiate and the parties will enter into a compromise.

What happens if a labor organization compromises

on behalf of the entire bargaining unit?

A: When an exclusive bargaining agent bargains with the ER, this benefits all the members of the bargaining unit, not just the members of the union – because the union can be one of the many unions in the collective bargaining unit. So, all the employees will be benefited, not just those members of the union.

What happens if there is a compromise? What if there is a demand on the part of the collective bargaining unit but then they settle and compromise with the employer, will this affect also all the employees of the collective bargaining unit OR all the members in the union?

A: Refer to the case of Golden Donuts

Golden Donuts v. NLRC

Facts: The workers in this case were employees of petitioner Golden Donuts, Inc. They were members of the KMDD-CFW whose collective bargaining agreement with the corporation expired. During the freedom period, both management and Union panels were able to agree on the rules regarding the negotiation.

However, during the negotiations, the management panel arrived late, thus prompting the union panel to walkout. A day after, the management addressed a letter of apology and requested that the CBA negotiation be resumed. The union panel did not show up despite the management letters advising the former about the CBA meetings. Finally, despite management's open letter of admonition, the union conducted a strike. Golden Donuts filed a Complaint on the ground that the strike was illegal

KMU's Atty. Pontenciano Flores, sensing the gravity of the penalties attendant to the strike resorted to, including the financial award that may be due the Golden Donuts, Inc., pleaded for a compromise. Hence, a compromise agreement was entered into by the KMDD-CFW and Golden Donuts, Inc. whereby they agreed to: withdraw/dismiss with prejudice any and all cases; execute an affidavit of desistance and/or Motion to Dismiss; and not to file any other charges/complaints against each other as this act constitutes a general waiver or release.

Out of the said 262 striking force, only 5 complainants disagreed and did not receive the amount due, arguing that the compromise agreement was entered into by their counsel and the President of the Union without their individual consent and/or authority and that the same was not approved nor ratified by the majority of

the union membership.

Issues:

- 1) Whether or not a union may compromise or waive the rights to security of tenure and money claims of its minority members, without the latter's consent? **(NO)**
- 2) Whether or not the compromise agreement entered into by the union with petitioner company, which has not been consented to nor ratified by respondents minority members has the effect of res judicata upon them? **(NO)**

Ruling:

1. Even if a clear majority of the union members agreed to a settlement with the employer, the union has no authority to compromise the individual claims of members who did not consent to such settlement. Rule 138 Section 23 of the 1964 Revised Rules of Court requires a special authority before an attorney may compromise his client's litigation. "The authority to compromise cannot lightly be presumed and should be duly established by evidence."

In the case at bar, minority union members did not authorize the union to compromise their individual claims. Absent a showing of the union's special authority to compromise the individual claims of private respondents for reinstatement and back wages, there is no valid waiver of the aforesaid rights. As private respondents did not authorize the union to represent them not bound by the terms thereof.

The judgment of the Labor Arbiter based on the compromise agreement in question does not have the effect of *res judicata* upon private respondents who did not agree thereto.

General Rule: As a general rule, a union may compromise on behalf of the collective bargaining unit.

Exception: A union cannot compromise individual claims of employees, specifically money claims.

Exception to the Exception: If the union members executed an individual SPA authorizing the union to compromise their personal rights//claims.

Example: Let us say you are a member of the union and the union members were not able to receive their wages, so the union negotiated with the employer and the employer said that he will settle this issue and will

pay the employees P3,000 each. As a union member, you can reject the compromise because it affects your individual rights. Your salary is an individual right, it is not just a collective right for the entire union. You receive your salary as an individual, therefore, unless you give the union an SPA, they cannot compromise away your salary or any other benefits that you are currently enjoying.

Can they compromise on other things such as working environment, hours of work, etc?

Yes. But if it is something specific to you as an individual, they cannot compromise that without a special authorization on the part of the individual employee.

- 1. LLO: right to act as representative and to be certified as exclusive representative**

Article 242. Right of legitimate labor organizations.

A legitimate labor organization shall have the right:

- (a) To act as representative of its members for the purpose of collective bargaining.

- 2. General rule: compromise by union is binding on minority members**

- **EXC: Money claims**

Golden Donuts v. NLRC

Doctrine: Money claims due to laborers cannot be the object of settlement or compromise effected by a union or counsel without the specific individual consent of each laborer concerned. The beneficiaries are the individual complainants themselves. The union to which they belong can only assist them but cannot decide for them.

Heirs of Teodolo M. Cruz v. Court of Industrial Relations

Doctrine: Express authority of union leaders required by nature of settlement. — When it is further taken into consideration that the judgment award was for the payment of overtime, premium and differential pay to the individual union members as claimants and for the reinstatement of the individual union members who testified and proved their having been illegally laid-off, which represent a personal material interest directly in favor of the individual union members, as against the lack of material interest on the part of the union as such,

the union's lack of authority to execute the settlement, in the absence of express or specific authorization by the union members, becomes patent.

The authority of the union as such, to execute a settlement of the judgment award in favor of the individual union members, cannot be presumed but must be expressly granted.

General Rubber and Footwear Corp. v. Drilon, G.R. No. 76988, 31 January 1989

Facts: Wage Order No. 6 was issued, increasing the statutory minimum wage rate and the mandatory cost of living allowance in the private sector. Petitioner General Rubber and Footwear Corporation applied to the National Wages Council for exemption from the provisions of Wage Order No. 6.

Some members of respondent General Rubber Workers' Union – NATU- declared a strike against petitioner. Three days later, however, the members representing the striking workers entered into a Return-to-Work Agreement. The Agreement stated that the COMPANY agrees to implement in full Wage Order No. 6 and agrees to withdraw the Motion for Reconsideration which it filed with the National Wages Council in connection with the Application for Exemption and in consideration, the UNION, its officers and members, agrees not to demand or ask from the COMPANY the corresponding differential pay arising out of the non-compliance of said wage order during the said period.

This agreement was subsequently ratified by some 268 members of respondent union, each member signing individually the instrument of ratification. Respondent union countered that the Agreement — despite the majority ratification — was not binding on the union members who had not consented thereto, upon the ground that ratification or non-ratification of the Agreement, involving as it did money claims, was a personal right.

Issue: W/N the union members who did not ratify a waiver of accrued wage differentials are bound by the ratification made by a majority of the union members.

Ruling: NO. In the instant case, there is no dispute that private respondents had not ratified the Return-to-Work Agreement. It follows that private respondents cannot be held bound by the Return-to-Work Agreement. The waiver of money claims, which in this case were accrued money claims, by workers and employees must be regarded as a personal right, that is, a right that must be personally exercised. For a waiver thereof to

be legally effective, the individual consent or ratification of the workers or employees involved must be shown. Neither the officers nor the majority of the union had any authority to waive the accrued rights pertaining to the dissenting minority members, even under a collective bargaining agreement which provided for a "union shop."

The key words of this case is – **personal right**. It is clear that without a special authorization from the individual employee, the union cannot compromise away something covered by the personal right of the employee – in this case, the wages and the differential pay.

If it impacts the individual right of the employees, it is covered by the power of the union to compromise on behalf of its members. At best, the union can only assist the individual employee but cannot bargain away something that belongs to them as an individual.

IV. CERTIFICATION ELECTION AND EXCLUSIVE BARGAINING AGENT

A. Employees' Participation in Management Policies

Certification election

From the bargaining unit, there may spring up multiple labor organizations and those labor organizations may choose to register with the BLR making them LLO.

LLOs have the right to be certified as the exclusive bargaining agent for the collective bargaining unit. But how are they certified? – through a certification election.

Art. 267. Exclusive bargaining representation and workers' participation in policy and decision-making.

The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.

Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment

may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils: Provided, That the representatives of the workers in such labor-management councils shall be elected by at least the majority of all employees in said establishment.

B. DEFINITION OF TERMS

1. Certification Election

Par. (x) Section 1, Rule I, Book V, Omnibus Rules

"Certification Election" means the process of determining, through secret ballot, the sole and exclusive bargaining agent of the employees in an appropriate bargaining unit, for purposes of collective bargaining.

CERTIFICATION ELECTION

From the labor code, certification election is a process where an exclusive bargaining agent is selected by the members of the collective bargaining unit.

Certification election is a democratic process where the members of the union get to choose their exclusive bargaining representative or exclusive bargaining agent. It is **non-litigious**, meaning not the typical court hearing. The fact that it is connected with the BLR, this is **administrative in nature and not adversarial**. There are no technical rules of evidence – rules of evidence are not strictly applied.

2. Consent Election

Par. (y) Section 1, Rule I, Book V, Omnibus Rules

"Consent Election" means the election voluntarily agreed upon by the parties to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit.cralaw

CONSENT ELECTION

In consent elections, the intention is similar but it is conducted **without the assistance or intervention of the BLR**. It is a private affair and ultimately, they will just

register the results with the BLR

Certification election, however, is where a petition is filed with the BLR to conduct a certification election. From step 1 until the very end of it, the BLR is involved.

3. Run-off Election

Par. (z) Section 1, Rule I, Book V, Omnibus Rules

"Run-Off" refers to an election between the labor unions receiving the two (2) higher number of voters when a certification election which provides for three (3) or more choices results in no choice receiving a majority of the valid votes cast, where the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.cralaw

RUN-OFF ELECTION

A run-off election is basically what happens when a certification election ends up with a tie or none of the union candidates managed to get the required number of votes.

4. Re-run Election

Section 1 (uu), Rule 1, D.O. 40-03

(uu) "Run-off Election" refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certified or consent results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

5. Union

Section 1 (ccc), Rule 1, D.O. 40-03

(ccc) "Union" refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purposes.

6. Exclusive Bargaining Representative

Section 1 (u), Rule 1, D.O. 40-03

(u) "Exclusive Bargaining Representative" refers to a legitimate labor union duly recognized or certified as the sole and exclusive bargaining representative or agent of all the employees in a bargaining unit.

C. "APPROPRIATE" BARGAINING UNIT: PREFERENCE OF SINGLE or "EMPLOYER" UNIT AND EXCEPTION

D. MEANS OF DETERMINING BARGAINING UNION

1. SEBA Certification

D.O. No. 40-I-15

Section 4. - Section 1 of Rule VIII, as last amended by D.O. 40-F-03, is hereby further amended, to read as follows:

RULE VIII CERTIFICATION ELECTION

Section 1. Who May File. – Any legitimate labor organization, including a national union or federation that has issued a charter certificate to its local/chapter or the local/chapter itself, may file a petition for certification election.

A national union or federation filing a petition in behalf of its local/chapter shall not be required to disclose the names of the local/chapter's officers and members, but shall attach to the petition the charter certificate it issued to its local/chapter.

When requested to bargain collectively in a bargaining unit where no registered collective bargaining agreement exists, an employer may file a petition for certification election with the Regional Office.

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Mediator-Arbiter act favorably on the petition. However, manifestation of facts that would aid the mediator-arbiter in expeditiously resolving the petition such as existence of a contract-bar, one year bar or deadlock bar may be considered. The contract-bar rule shall apply in any of the following: (1) when there exists an unexpired registered CBA; or (2) when there is no challenge on the representation status of the incumbent union during the freedom period.

Section 5. - Section 2 of Rule VIII is hereby amended to read as follows:

Section 2. Where to file. – A petition for certification election shall be filed with the Regional Office which issued the petitioning union's certificate of registration or certificate of creation of chartered local.

At the option of the petitioner, a petition for certification election and its supporting documents may also be filed online.

The petition shall be heard and resolved by the Mediator-Arbiter.

Where two (2) or more petitions involving the same bargaining unit are filed in one (1) Regional Office, the same shall be automatically consolidated with the Mediator-Arbiter who first acquired jurisdiction. Where the petitions are filed in different Regional Offices, the Regional Office in which the petition was first filed shall exclude all others; in which case, the latter shall indorse the petition to the former for consolidation.

Sec. 3, Rule VIII, D.O. 40-03

Section 3. When to file. – A petition for certification election may be filed anytime, except:

- (a) when a SEBA certification has been entered or a valid certification, consent or run-off election has been conducted within the bargaining unit within one (1) year prior to the filing of the petition for certification election. Where an appeal has been filed from the Order of the Mediator-Arbiter certifying the results of the election, the running of the one year period shall be suspended until the decision on the appeal has become final and executory;
- (b) when the duly certified union has commenced and sustained negotiations in good faith with the employer in accordance with Article 261(renumbered) of the Labor Code within the one year period referred to in the immediately preceding paragraph;
- (c) when a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout;
- (d) when a collective bargaining agreement between the employer and a duly certified bargaining agent has been registered in accordance with Article 237(renumbered) of the Labor Code. Where such collective bargaining agreement is registered, the petition may be filed only within sixty (60) days prior to its expiry.

2. Certification Election

Rule VIII, IX, D.O. 40-03

Rule VIII Certification Election

(Kindly refer to the aforementioned provisions in D.O. 40-I-15)

and Sec. 3, Rule VIII, D.O. 40-03)

Rule IX Conduct of Certification Election

Section 1. Employer as by-stander. - Subject to the provisions of Paragraph 3, Section 1 of Rule VIII, the principle of the employer as by-stander shall be strictly observed throughout the conduct of certification election. The employer shall not harass, intimidate, threat or coerce employees before, during and after elections.

Section 2. Raffle of the case. – Within twenty-four (24) hours from receipt of the notice of entry of final judgment granting the conduct of a certification election, the Regional Director shall cause the raffle of the case to an Election Officer who shall have control of the pre-election conference and election proceedings.

Section 3. Pre-election conference. – Within twenty-four (24) hours from receipt of the assignment for the conduct of a certification election, the Election Officer shall cause the issuance of notice of pre-election conference upon the contending unions, which shall be scheduled within ten (10) calendar days from receipt of the assignment. The employer shall be required to submit the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit at the time of the filing of the petition.

Section 4. Waiver of right to be heard. – Failure of any party to appear during the pre-election conference despite notice shall be considered as a waiver of its right to be present and to question or object to any of the agreements reached in the pre-election conference. However, this shall not deprive the non-appearing party of the right to be furnished notices of and to attend subsequent pre-election conferences. (as amended by D.O. 40-F-08)

a. Nature

Democratic nature of certification elections

Philippine Airlines Employees' Association v. Calleja

Doctrine: Employees have a constitutional right to choose their own bargaining representative. The holding of a certification election is a statutory policy that should not be circumvented.

Non-litigious, in relation to technical rules of evidence

Associated Labor Unions v. Calleja

Doctrine: A prior hearing to ascertain the veracity of NFU's allegations is not necessary. Certification proceedings is not a litigation in the sense in which the term is ordinarily understood, but an investigation of non-adversary and fact-finding character. As such, it is not bound by technical rules of evidence which requires such prior hearing.

A certification election is basically a democratic process where the members of the union get to choose [who will be their exclusive bargaining agent]. The fact alone nga its connected with BLR, administrative ni siya. The Rules of Evidence is not strictly applied in this case. So what is the core issue of a certification election? Let's have the case of FEWA vs. CIR.

Fundamental and core issue of certification election

FEWA v. CIR

Facts: Better Buildings was engaged in the business of cleaning and sanitation maintenance of different buildings and establishments. Both the Free Employees and Workers' Association (FEWA) and Better Buildings Labor Union (BLU) claimed representation to bargain collectively for the laborers.

In view of the conflicting demands, the employer instituted proceedings in the Industrial Court, asking that a certification election be held. Both union claimed majority membership.

Counsel for FEWA sought continuance on the ground that it had to prepare and file an urgent pleading on the very day of the election protest. BLU's union president Nelson Padilla exhibited membership rosters.

Counsel for FEWA filed a verified motion for an opportunity to cross-examine the witness, and after hearing. The motion was granted but Padilla and counsel for BLU did not appear.

Since Padilla was absent during the trial, the Industrial Court held the motion to strike out his testimony in abeyance. It also held that many workers had dual membership. Being "in a quandary" as to which union really has the majority, ordered a certification election.

Issue: Whether the Industrial Court was right when it order the striking out of the testimony of BLU's witness Padilla?

Ruling: NO, the Industrial Court was not right. Section 12(b) of the Industrial Peace Act, providing that — "whenever a question arises concerning the representation of employees, the Court may investigate such controversy . . . In any such investigation the Court shall provide for a speedy and appropriate hearing upon due notice, and if there is any reasonable doubt as to whom the employees have chosen . . . the Court shall order a secret election . . ."

The words "appropriate hearing upon due notice"

clearly connote that the intervening parties must be given opportunity not only to present their witnesses but also to cross examine those of the adversary, for there is no real hearing when the party is not given opportunity to test, explain, or refute.

The law does not contemplate the holding of a certification election unless the preliminary inquiry shows a reasonable doubt as to which the contending unions represent a majority, or unless ten per centum of the laborers demand this election. But these grounds necessarily depend on the weight of the evidence adduced by the rival unions, and this weight, in turn, can not be determined properly if the right of cross examination is denied.

In this case, once the testimony of Nelson Padilla is discarded, as it must be, for lack of opportunity for cross examination, then the exhibits identified by him in the course of his testimony must be equally rejected with it, there being no independent ground for their admissibility. So that their consideration by the court below was unwarranted, it is plain that without Nelson Padilla's testimony the case for the BLU can not stand, and the election called for is not justified.

In a petition for certification election, basically the core issue is which union ought to represent the bargaining unit or at least is supported by a majority of the employees of a bargaining unit.

Okay so in a petition for certification election, as mentioned in the case, its not adversarial and its not bound by the technical rules of procedure or the rules on evidence. Now you file a petition for certification election with the Bureau of Labor Relations or at least with the Regional Director of DOLE.

b. Where to file Petition for CE

Section 1, Rule V, Omnibus Rules

SECTION 1. Where to file. — A petition for certification election shall be filed with the Regional Office which has jurisdiction over the principal office of the petitioner. The petition shall be in writing and under oath.

c. Who may file

Section 2, Rule V, Omnibus Rules

SECTION 2. Who may file. — Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition. x x x

Section 2, Rule XI, D.O. 40-03

RULE XI INTER/INTRA-UNION DISPUTES AND OTHER RELATED LABOR RELATIONS DISPUTES

Section 2. Effects of the filing: Pendency of inter/intra-union and other related labor relations disputes. — The rights, relationships and obligations of the parties litigants against each other and other parties-in-interest prior to the institution of the petition shall continue to remain during the pendency of the petition and until the date of finality of the decision rendered therein. Thereafter, the rights, relationships and obligations of the parties litigants against each other and other parties-in-interest shall be governed by the decision so ordered.

The filing or pendency of any inter/intra-union dispute and other related labor relations dispute is not a prejudicial question to any petition for certification election and shall not be a ground for the dismissal of a petition for certification election or suspension of proceedings for certification election.

Article 270 [258]. When an Employer May File Petition.

When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election.

All certification cases shall be decided within twenty (20) working days.

The Bureau shall conduct a certification election within twenty (20) days in accordance with the rules and regulations prescribed by the Secretary of Labor.

Article 271 [258-A]. Employer as Bystander.

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition.

Now who may file a Petition for Certification Election? In Section 2 of the Omnibus Rules, it says there **only a legitimate labor organization**. Emphasis sa legitimate ha. This goes back to the right of a legitimate labor organization. **The right to act as a representative and to be certified as the exclusive bargaining agent**. So if labor organization raka but you're not registered, you cannot file a Petition for Certification Election. And interesting point also, it also provides actually that an employer may file a Petition for Certification Election.

Why do you think an employer is allowed to file a Petition for Certification Election?

Diba maka imagine ka nga you're actually an employer and there are actually multiple legitimate labor organizations sa inyong bargaining unit. Diba you'd be confused, "kinsa man akong storyaon ani?" "Who do I negotiate with?" "Who do I bargain with?" So to help ease that confusion, the employer can actually file a petition para lang mahibaw-an niya which of these jud ang akong i-negotiate with.

Phoenix Iron and Steel Corp. v. Secretary of Labor

Facts: PISCOR-ANGLO, asserting to be a legitimate labor organization, filed a petition for certification election with the Med-Arbiter. Phoenix Iron and Steel Corporation (Phoenix) sought clarification of the legal personality of the Union.

The Secretary of Labor called for the immediate conduct of a certification election since the Union has complied with the requirements of the law on organization of a local after it was shown that it has submitted duly certified copies of its constitution and by-laws, list of officers and charter certificate.

Issue: Whether or not PISCOR-ANGLO has complied with the requirements to become a legitimate labor organization?

Ruling: NO. **The submission of the required documents (and payment of P50.00 registration fee) becomes the Bureau's basis for approval of the application for registration. Upon approval, the labor union acquires legal personality and is entitled to all the rights and privileges granted by the law to a legitimate labor organization.**

Compared with what happened in the Progressive case, this situation before us now is even worse. There are no books of account filed before the BLR, the constitution, by-laws and the list of members who supposedly ratified the same were not attested to by the union president, and the constitution and by-laws were not verified under oath.

So in this case, non-compliance with the requirements for filing before the BLR meant that they were never explicitly given approval by the BLR. In that sense dili pa sila legitimate labor organizations because kung mo register ka before BLR, we talked about this before na BLR's duty to register a union is actually not ministerial. Its actually discretionary because they will go over the documents to determine whether or not sakto ilang na file and etc. So they have the power to deny an application for registration of a labor organization. Consequently, if they are not registered, they can never file a Petition for Certification Election because that is a right reserved exclusively for a legitimate labor organization.

Progressive Development Corp. v. Secretary of Labor

Doctrine: Since the "procedure governing the reporting of independently registered unions" refers to the certification and attestation requirements contained in Article 235, paragraph 2, it follows that the constitution and by-laws, set of officers and books of accounts submitted by the local and chapter must likewise comply with these requirements. The same rationale for requiring the submission of duly subscribed documents upon union registration exists in the case of union affiliation.

Absent compliance with the mandatory requirements, the local or chapter does not become a legitimate labor organization.

So who may file? So clearly a legitimate labor organization OR pwede ang employer. However, keep in mind lang nga an employer is only a bystander to the Petition for Certification Election. Di siya party. Even if siya ang mo file, ultimately kay wa siyay labot gyud sa proceedings. Okay but what happens if, let's say one of the union members or even the union itself is actually involved in a labor case and it's pending? Would this have any impact if the union files a Petition for Certification Election?

Pending labor case

Phil. Fruits and Vegetables Industries, Inc. v. Torres

Facts: Med-Arbiter issued an Order granting the petition for Certification election filed by TUPAS. Said order directed the holding of a certification election among the regular and seasonal workers of the Philippine Fruits and Vegetables, Inc. (PFVI).

Election transpired and only 168 of the questioned workers actually voted. This was opposed by the company and objected the proceeding. However, it was subsequently agreed upon that workers whose names were inadvertently omitted in the list of qualified voters were allowed to vote, subject to challenge. Subsequently, since the majority votes of the employees were not reached, a need to open the 168 challenged vote was necessary.

PFVI filed a position paper arguing against the opening of said votes mainly because said voters are not regular employees nor seasonal workers for having allegedly rendered work for less than 180 days. TUPAS, on the other hand, argued that the employment status of said employees had been resolved when the Labor Arbiter declared that said employees were illegally dismissed.

Issue:

Whether or not the SOLE committed an abuse of discretion in completely disregarding the issue as to whether or not non-regular seasonal workers who have long been separated from employment prior to the filing of the petition for certification election would be allowed to vote and participate in a certification election?

Ruling:

NO. The Secretary of Labor did not completely disregard the issue as to the voting rights of the alleged separated employees for precisely, he affirmed on appeal the findings of the Med-Arbiter.

At any rate, it is now well-settled that employees who have been improperly laid off but who have a present, unabandoned right to or expectation of re-employment, are eligible to vote in certification elections. Thus, and to repeat, if the dismissal is under question, as in the case now at bar whereby a case of illegal dismissal and/or unfair labor practice was filed, the employees concerned could still qualify to vote in the elections.

It's clear nga employees, even if there is a pending labor case, they still have the right to participate and even vote in a Petition for Certification Election. So here the issue is not so much about the filing but the election when its clear na for purposes of membership we can even account those employees who actually have a pending labor case because of the fact that they have an expectation of re-acquiring or obtaining their employment by virtue of a labor case.

Samahan ng Manggagawa sa Pacific Plastic v. Laguesma

Doctrine: Art. 256 of the Labor Code provides that in

order to have a valid election, at least a majority of all eligible voters in the unit must have cast their votes.

It should ideally be the payroll which should have been used for the purpose of the election. However, the unjustified refusal of a company to submit the payroll in its custody, despite efforts to make it produce it, compelled resort to the SSS list as the next best source of information.

Period of employment

Eastland Mfg. Corporation v. Noriel

Facts:

The Director of BLR ordered the holding of a certification election upon petition of 30% of the members of respondent labor union.

Eastland Manufacturing, Co. Inc. disputes the validity of this resolution claiming that of the 275 people in its employ, only 175 were members of the respondent labor union, 43 of whom had less than 6 months service and 6 who had left their employment. They signed a petition for holding a certification election. Even then there would still be more than 30% of the employees whose votes certainly should be counted.

It invoked the provision in the Labor Code particularly Art. 267 (c) of P.D. 442 which provides that for purposes of membership in a labor union, employment for at least one year, whether continuous or broken, is necessary.

Issue:

Whether the one year period required for membership in a labor union is a limitation to the right of all those in a collective bargaining?

Ruling:

NO. All workers of a collective bargaining unit to be given the opportunity to participate in a certification election.

For purposes of membership in any labor union, the one year period is required. That is one thing. Who can vote in a certification election is another. The plain language of the law certainly is controlling. All employees can participate.

In this case, it is clear nga for purposes of participating in a certification election, the law doesn't actually provide for a period of employment. So regardless if the employee has been a member of the union for 1 month or 1 year, so long as they're a member of the union, they actually have the right to participate in a

certification election.

Agency employees

Maligaya Ship Watchmen Agency v. Associate Watchmen and Security Union

Doctrine: As members of the watchmen agencies do not become laborers or employees of the shipping lines or their agents by mere membership in such watchmen agencies, it stands to reason that only those who were actually employed and paid for as watchmen or laborers or employees of the shipping lines and their agents should take part in the certification election and they alone should be certified and be considered as having the right to participate in the elections, there being no actual relation of employer and employee or laborer between the shipping lines and the members of the watchmen agencies by the mere fact of such membership.

Later on, when we will discuss collective bargaining, there are actually employees who refrain from exercising their right to self-organization such as religious objectors. There are groups of employees, on religious grounds, who say na they will not join a labor organization because it's against the doctrines of their churches which is fine because again, because you have a right to self-organize, you also have the right to refrain from organizing. That is your right as an individual. But can these employees, kaning mga religious objectors who do not want to unionize, vote in a certification election? Let's have the case of Reyes v. Trajano.

Votes of employees who refuse to unionize on religious grounds

Reyes v. Trajano

Facts: A certification election was conducted among the employees of Tri-Union Industries Corporation. The competing unions were the Tri-Union Employees Union-Organized Labor Association in Line Industries and Agriculture (TUEU-OLALIA), and Trade Union of the Philippines and Allied Services (TUPAS). Of the 348 workers initially deemed to be qualified voters, only 240 actually took part in the election.

The ballots provided for 3 choices. They provided for votes to be cast for either of the 2 contending labor organizations, (a) TUPAS and (b) TUEU-OLALIA; and, conformably with established rule and practice, for (c) a third choice: "NO UNION."

The challenged votes were those cast by the 141

Iglesia ni Kristo (INK) members. They were segregated and excluded from the final count because they are not members of any union and refused to participate in the previous certification elections.

Issue: Whether the INK employees are disqualified to vote because they are not constituted into a duly organized labor union, but members of the INK which prohibits its followers, on religious grounds, from joining or forming any labor organization?

Ruling: NO. Neither law, administrative rule nor jurisprudence requires that only employees affiliated with any labor organization may take part in a certification election. On the contrary, the plainly discernible intendment of the law is to grant the right to vote to all bona fide employees in the bargaining unit, whether they are members of a labor organization or not.

As held in Airtime Specialists Inc. v. Ferrer-Calleja: x x x Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence, all rank-and-file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. The Code makes no distinction as to their employment status as basis for eligibility in supporting the petition for certification election. The law refers to 'all' the employees in the bargaining unit. All they need to be eligible to support the petition is to belong to the 'bargaining unit.'

Take-aways for this case:

(1st) "No union" is always an option in a certification election. While there may be many labor organizations in a bargaining unit, one option for a vote is always "no union" because this is to respect the rights of employees who may not want to organize at all. Again, the right to self-organization also includes the right to refrain from organizing.

(2nd) Employees of the bargaining unit can vote even if they are not members of the union. In this case, one of the grounds that they object was because the members of the Iglesia Ni Cristo church were not part of a union. On religious grounds, they don't want to join any labor organization. But it is clear (see Art. 268, LC), the employees who are allowed to vote are members of the bargaining unit, not necessarily members of a union. Even those employees who did not organize can also vote in the certification election.

(3rd) Employees are not estopped from voting in a certification election just because they refrain from

voting in the past elections.

(4th) If the majority choose to vote “no union” then that should be respected because based on the secret ballot, it is an indicator that the employees don’t want to organize which is fair, some employees are usually fine with the status quo, they prefer not to organize at all, so if that is the will of the majority, then that is ought to be respected, regardless of the religious beliefs of the majority.

If you read Art. 268 of the LC, it actually provides that the petition has to be supported by a certain number of employees and the basis for that is the bargaining unit, not the union. Because if only the union members vote, it’s a guaranteed win. So that would not be the will of the members of the bargaining unit.

d. When to file

- Organized vs. Unorganized
- FREEDOM PERIOD
- CONTRACT BAR RULE

Article 265. Terms of a Collective Bargaining Agreement.

Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the Collective Bargaining Agreement, the parties may exercise their rights under this Code.

Article 268. Representation Issue in Organized Establishments.

In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed by any legitimate labor organization including a national union or federation which has already issued a charter certificate to its local chapter participating in the certification election or a

local chapter which has been issued a charter certificate by the national union or federation before the Department of Labor and Employment within the sixty (60)-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter’s officers and members.

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

Freedom Period

Tanduay Distillery Labor Union v. NLRC

Facts: Private respondents were all employees of Tanduay Distillery, Inc., (TDI) and members of the Tanduay Distillery Labor Union (TDLU), the exclusive bargaining agent of the rank-and-file employees of TDI. During the term of their CBA, the private respondents joined another union, the Kaisahan Ng Manggagawang Pilipino (KAMPIL).

KAMPIL filed a petition for certification election to determine union representation in TDI. TDLU felt that what the private respondents did was an act of disloyalty. After the investigation, TDLU notified TDI that private respondents had been expelled from TDLU due to disloyalty and demanded that TDI terminate the employment of private respondents because they had lost their membership with TDLU. To validly terminate them, TDI applied for clearance from the MOLE (Ministry of Labor and Employment); which triggered also the private respondents to file an illegal dismissal case. During the pendency of the illegal dismissal case, the Med-Arbiter and BLR ordered the conduct of a certification election.

TDLU filed a petition for review arguing that KAMPIL did not have a cause of action when the petition for

certification was filed because the freedom period was not yet in effect. The fact that the BLR issued its order when the 60-day freedom period had supervened, did not cure this defect. Moreover, the BLR decision completely overlooked or ignored the fact a new CBA had been executed between the TDLU and TDI.

Issues: Whether or not the private respondents may validly disaffiliate from TDLU without severing the Union Security Clause of their CBA.

Ruling: NO. **The private respondents owe loyalty and are required under the Union Security Clause to maintain their membership in good standing with it during the term thereof, a requirement which ceases to be binding only during the 60- day freedom period immediately preceding the expiration of the CBA.** When the private respondents organized and joined the KAMPIL Chapter in TDI and filed the corresponding petition for certification election, there was no freedom period to speak of yet. The private respondents cannot, therefore, escape the effects of the security clause of their own applicable collective bargaining agreement.

When do you file a petition for a certification election? There is a specific time frame in which you must file.

A: During the Freedom period.

What is the freedom period?

A: In an organized establishment, there is a CBA which has a life span of five years registered with the BLR. **The last 60 days of the life of a CBA is called the freedom period and it is the period in which changes can be made including the change in the representation of the collective bargaining unit.** So, if the collective bargaining unit wants to change its exclusive bargaining agent or another union wants to contest the majority status of the existing bargaining agent, they can file within the freedom period a petition for certification election. If you read the last paragraph of Art. 268, it actually explicitly mentions the freedom period.

If a petition for certification election is filed out of time meaning outside of the freedom period, it would be denied by the BLR, during the life span of the CBA the representation status must be respected so that the set up will not be broken.

Pagkakaisa ng mga Manggagawa sa Triumph international Lumber and General Workers of the Philippines (PMTI-ULGWP) v. Ferrer-Calleja

Doctrine: If a collective bargaining agreement validly exists, a petition for certification election can only be entertained within sixty (60) days prior to the expiry date of said agreement.

Respondent union's petition for certification election was filed on November 25, 1987. At the time of the filing of the said petition, a valid and existing CBA was present between petitioner and Triumph International. The CBA was effective up to September 24, 1989. There is no doubt that the respondent union's CBA constituted a bar to the holding of the certification election as petitioned by the respondent union with public respondent.

Chris Garments Corporation v. Sto. Tomas

Doctrine: A petition for certification election may not be filed after the 60-day freedom period

National Congress of Unions in the Sugar Industry of the Philippines (NACUSIP)-TUCP v. Ferrer-Calleja

Doctrine: If a collective bargaining agreement validly exists, a petition for certification election can only be entertained within sixty (60) days prior to the expiry date of said agreement.

Effect of non-filing during freedom period

Ren Transport Corp. v. National Labor Relations Commission

Facts: Samahan ng Manggagawa sa Ren Transport (SMART) is a registered union, which had a five-year CBA with Ren Transport

The 60-day freedom period of the CBA passed without a challenge to SMART's majority status as bargaining agent. SMART thereafter conveyed its willingness to bargain with Ren Transport, to which it sent bargaining proposals, but Ren transport did not reply to the demands.

DOLE was informed that a majority of the members of SMART had decided to disaffiliate from their mother federation to form another union, Ren Transport Employees Association (RTEA).

SMART contested the alleged disaffiliation.

Issues: Whether SMART Ceased to be the exclusive bargaining agent of the rank-and-file employees because of the disaffiliation of the majority of its members.

Ruling: NO. Under Article 263 in relation to Article 267

of the Labor Code, it is during the freedom period - or the last 60 days before the expiration of the CBA - when another union may challenge the majority status of the bargaining agent through the filing of a petition for a certification election

If there is no such petition filed during the freedom period, then the employer "shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed"

In the present case, the facts are not up for debate. No petition for certification election challenging the majority status of SMART was filed during the freedom period.

Given that SMART continued to be the workers' exclusive bargaining agent, Ren Transport had the corresponding duty to bargain collectively with the former. Ren Transport's refusal to do so constitutes an unfair labor practice

Ren Transport cannot avail itself of the defense that SMART no longer represents the majority of the workers. The fact that no petition for certification election was filed within the freedom period prevented Ren Transport from challenging SMART's existence and membership.

What happens if there is no petition for certification election filed during the freedom period?

A: If there is no petition for certification election filed during the freedom period, then the status quo is maintained. Take note, it is only during the freedom period that you can file a petition for certification election. If no petition was filed, the employer will continue to recognize the existing exclusive bargaining agent. So, for another five years, same ra gihapon ang exclusive bargaining agent.

In a case of organized establishment where there are many competing union, freedom period is their crunch time if they really want to change things up, they must get the opportunity, otherwise they will be stuck with the same bargaining agent for another five years but keep in mind, freedom period only applies to organized establishments meaning there is already an existing exclusive bargaining agent or the company has already an existing CBA. What happens if the employees choose "no union", we will talk about that later because the freedom period presupposes the existence of an exclusive bargaining agent.

Freedom period, signing of authorization letter for filing of petition vs. actual filing of petition

Picop Resources, Incorporated v. Dequilla

Facts: Atty. Fuentes, then National President of the Southern Philippines Federation of Labor (SPFL), advised the PICOP management to terminate about 800 employees due to acts of disloyalty, specifically, for allegedly campaigning, supporting and signing a petition for the certification of a rival union, the Federation of Free Workers Union (FFW) before the 60-day "freedom period" and during the effectiveness of the CBA.

Issues: Whether or not Picop can validly dismissed the employees for disloyalty in breach of the union severity clause (NO)

Ruling: Strictly speaking, what is prohibited is the filing of a petition for certification election outside the 60-day freedom period. This is not the situation in this case. If at all, the signing of the authorization to file a certification election was merely preparatory to the filing of the petition for certification election, or an exercise of respondents' right to self-organization.

The act of "signing an authorization for a petition for certification election" is not disloyalty to the union per se considering that the petition for certification election itself was filed during the freedom period.

The Supreme Court held that the signing of the petition is different from the filing of the petition.

During the freedom period, what is permitted is the filing. However, in this case, allowed ra ang signing of the petition by the required number of employees before the freedom period kay if you read Article 268, it says there na the petition has to be supported by at least 25% of the employees in the bargaining unit. There is nothing wrong with the employees signing the petition even before the freedom period. What is prohibited is the filing itself before the BLR.

San Miguel Corp v Employees Union-PTGWO v Confesor

Doctrine: Labor and social legislation; labor code; collective bargaining agreement; term of representation aspect fixed to five years; all other aspects, three years. — Article 253-A is a new provision. This was incorporated by Section 21 of Republic Act No. 6715 (the Herrera-Veloso Law) which took effect on March 21, 1989. This new provision states that the CBA has a term of five (5) years instead of three years, before the amendment of the law as far as the representation aspect is concerned. All other provisions of the CBA shall be negotiated not later than three (3) years after its execution. The "representation aspect" refers to the identity and majority status of the union that negotiated the CBA as the exclusive bargaining representative of the appropriate bargaining unit

concerned. "All other provisions" simply refers to the rest of the CBA, economic as well as non-economic provisions, except representation

Pambansang Kapatiran ng mga Anak Pawis sa Formey v SOLE

DOCTRINE: Collective bargaining agreement; applicability of contract bar rule to case at bench. — Art. 253-A of the Labor Code provides that "(n)o petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty (60) day period immediately before the date of expiry of such five-year term of the collective bargaining agreement." Sec. 3, Rule V, Book V of the *Omnibus Rules Implementing the Labor Code* provides that ". . . (i)f a collective bargaining agreement has been duly registered in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention *can only be entertained within sixty (60) days prior to the expiry date of such agreement.*" The subject agreement was made effective 1 January 1992 and is yet to expire on 31 December 1996. The petition for certification election having been filed on 22 April 1993 it is therefore clear that said petition must fail since it was filed before the so-called 60-day freedom period.

Associated Labor Unions v Calleja

Doctrine: CONTRACT BAR RULE: inapplicable where petition for certification was already pending when disputed agreement was filed. — Additionally, the inapplicability of the contract bar rule is further underscored by the fact that when the disputed agreement was filed before the Labor Regional Office on May 27, 1986, a petition for certification election had already been filed on May 19, 1986. Although the petition was not supported by the signatures of thirty percent (30%) of the workers in the bargaining unit, the same was enough to initiate said certification election

Facts: The associated Labor Unions (ALU) informed GAW Trading, Inc. (GAWTI) that majority of the latter's employees have authorized ALU to be their sole and exclusive bargaining representative, and requested GAW Trading Inc., for a conference for the execution of an initial CBA. GAWTI recognized ALU as the sole and exclusive bargaining agent. The majority of its employees and for which it set the time for conference and/or negotiation On May 15, 1986, ALU in behalf of the majority of the employees of GAW Trading Inc. and GAWTI signed and executed the CBA.

Calleja ordered the holding of a certification election ruling that the "contract bar rule" relied upon by her predecessor Trajano does not apply in the present case. Calleja ruled that CBA is defective because it "was not duly submitted in accordance with Sec. I, Rule IX, Book V of the Implementing Rules of BP 130."

There's no proof that CBA has been posted in at least 2 conspicuous places in the establishment at least 5 days before its ratification and that it has been ratified by the majority of the employees in the bargaining unit."

Issues: WON Calleja erred in reversing Trajano's ruling and ordering the holding of a certification election. NO

Ruling: NO. The CBA in question is defective.

CBA was defective also because of:

1. the failure of GAWTI to post the CBA in at least 2 conspicuous places in the establishment at least 5 days before its ratification,
2. the finding of Calleja that 181 of the 281 4 Art. 256. Representation issue in organized establishments.

In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the DOLE within the 60-day period before the expiration of a CBA, the Med-Arbitrator shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least 25% of all the EEs in the appropriate bargaining unit.

Finally, the inapplicability of the contract bar rule is further underscored by the fact that when the disputed agreement was filed before the Labor Regional Office on May 27, 1986, a petition for certification election had already been filed on May 19, 1986. Although the petition was not supported by the signatures of 30% of the workers in the bargaining unit, it was enough to initiate certification election.

What happens if the CBA is defective? What is the effect on the freedom period and its effect on the filing of the certification election?

TN: The Court held that if the CBA is defective, the contract bar rule cannot apply.

Contract Bar Rule means that the filing of the certification election can only be filed during the freedom period. It is applicable even if the CBA is defective. A defective CBA cannot give rise to the applicability of the contract bar rule and the freedom period. If the CBA, its processes and implementation is marked with defects, there is nothing to stop the competing union from questioning the majority status even outside the freedom period.

Freedom period, recognition of union vs. pending petition for CE

Me-Shurn Corp. v. Me-Shurn Workers Union-FSM

Doctrine: Notwithstanding the Petition for Certification Election filed by respondents and despite knowledge of the pendency thereof, petitioners recognized a newly formed union and hastily signed with it an alleged Collective Bargaining Agreement. Their preference for the new union was at the expense of the respondent union. *Moncada Bijon Factory v. CIR* held that an employer could be held guilty of discrimination, even if the preferred union was not company-dominated.

Under this Code, in an unorganized establishment, only a legitimate union may file a petition for certification election. Hence, while it is not clear from the record whether respondent union is a legitimate organization, we are not readily inclined to believe otherwise, especially in the light of the pro-labor policies enshrined in the Constitution and the Labor Code.

in view of the discriminatory acts committed by petitioners against respondent union prior to the holding of the certification election — acts that included their immediate grant of exclusive recognition to another union as a bargaining agent despite the pending Petition for certification election — the results of that election cannot be said to constitute a repudiation by the affected employees of the union's right to represent them in the present case.

e. 25% Support Requirement

- independent union in organized establishments

Article 268. Representation Issue in Organized Establishments.

In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed by any legitimate labor organization including a national union or federation which has already issued a charter certificate to its local chapter participating in the certification election or a local chapter which has been issued a charter certificate by the national union or federation before the Department of Labor and Employment within the sixty (60)-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the **verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate**

bargaining unit.

To have a **valid election**, at least a **majority of all eligible voters in the unit** must have cast their votes. The **labor union receiving the majority of the valid votes cast** shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter's officers and members.

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

"at least twenty-five percent (25%)⁷ of all the employees in the bargaining unit"

The bargaining unit is usually bigger than the union itself. The one who wins is the one who becomes the exclusive bargaining agent, the labor union who receives the majority of the votes cast.

Majority of the votes cast

- ✗ NOT majority of the union,
- ✗ NOT majority of the bargaining unit
- majority of the VOTES CAST

How many votes are needed for a valid certification election?

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

Double Majority Rule

Majority of the members of the bargaining unit must have voted (the eligible voters in the bargaining unit) and in order for a union to be designated as an exclusive bargaining agent, majority of the votes cast must be taken into account.

For a valid certification election, the majority of the eligible voters in the bargaining unit must have voted AND a majority of those votes is required for a union to be designated as the exclusive bargaining agent.

⁷ Take note of the percentages

- a) For the **filing of the petition**, 25% support requirement of all the members of the bargaining unit
- b) For the conduct of the **certification election**, majority of the eligible voters or members of the bargaining unit must have voted, for the election itself;
- c) Determining the **exclusive bargaining agent** to be named, needs the majority of the votes actually cast.

Process	Requirement
Filing of the verified petition	supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit
Valid election	at least a majority of all eligible voters in the unit must have cast their votes.
Exclusive Bargaining Agent	The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit.

Requirements:

Filing of petition – 25% support requirement

Certification election itself – majority of the eligible voters in a bargaining unit.

For the designation of the exclusive bargaining agent – majority of the votes cast.

Oriental Tin Can Labor Union v. Secretary of Labor

Doctrine: The support requirement is a mere technicality which should be employed in determining the true will of the workers instead of frustrating the same.

Thus, in *Port Workers Union of the Philippines (PWUP) v. Laguesma*, this Court declared that:

"In line with this policy (that the holding of a certification election is a certain and definitive mode of arriving at the choice of the employees' bargaining representative), we feel that **the administrative rule requiring the simultaneous submission of the 25% consent signatures upon the filing of the petition for certification election should not be strictly applied to frustrate the determination of the**

legitimate representative of the workers. Significantly, the requirement in the rule is not found in Article 256, the law it seeks to implement. This is all the more reason why the regulation should at best be given only a directory effect. Accordingly, we hold that the mere filing of a petition for certification election within the freedom period is sufficient basis for the issuance of an order for the holding of a certification election, subject to the submission of the consent signatures within a reasonable period from such filing."

All doubts as to the number of employees actually supporting the holding of a certification election should, therefore, be resolved by going through such procedure. It is judicially settled that a certification election is the most effective and expeditious means of determining which labor organization can truly represent the working force in the appropriate bargaining unit of the company.

California Manufacturing Corp. v. Laguesma

Doctrine: The 25% subscription requirement is required only in organized establishments, that is, those with existing bargaining agents.

Compliance with the said requirement need not even be established with absolute certainty. The Court has consistently ruled that "even conceding that the statutory requirement of 30% (now 25%) of the labor force asking for a certification election had not been strictly complied with, the Director (now the Med-Arbitrator) is still empowered to order that it be held precisely for the purpose of ascertaining which of the contending labor organizations shall be the exclusive collective bargaining agent.

The 25% requirement is relevant only when it becomes mandatory to conduct a certification election. In all other instances, the discretion ought to be ordinarily exercised in favor of a petition for certification.

Effect of Withdrawal of Membership

La Suerte Cigar and Cigarette Factory v. Director of Bureau of Labor Relations, G.R. No. L-55674, 25 July 1983 (effect of withdrawal of membership)

Doctrine: The SC reversed the Order of the respondent Director of the BLR, it appearing indisputably that the 31 union members had withdrawn their support to the petition before the filing of said petition. It would be otherwise if the withdrawal was made after the filing of the petition for it would then be presumed that the withdrawal was not free and voluntary. The presumption would arise that the withdrawal was procured through duress, coercion or

for valuable consideration. In other words, the distinction must be that withdrawals made before the filing of the petition are presumed voluntary unless there is convincing proof to the contrary, whereas withdrawals made after the filing of the petition are deemed involuntary.

The reason for such distinction is that if the withdrawal or retraction is made before the filing of the petition, the names of employees supporting the petition are supposed to be held secret to the opposite party. Logically, any such withdrawal or retraction shows voluntariness in the absence of proof to the contrary. Moreover, it becomes apparent that such employees had not given consent to the filing of the petition, hence the subscription requirement has not been met.

When the withdrawal or retraction is made after the petition is filed, the employees who are supporting the petition become known to the opposite party since their names are attached to the petition at the time of filing. Therefore, it would not be unexpected that the opposite party would use foul means for the subject employees to withdrawal their support.

With the withdrawal by 31 members of their support to the petition prior to or before the filing thereof, making a total of 45, the remainder of 3 out of the 48 alleged to have supported the petition can hardly be said to represent the union. Hence, the dismissal of the petition by the Med-Arbiter was correct and justified.

There were union members who withdrew their membership from the union who filed the petition for certification election. However, the SC held that this did not impact the validity of the certification election. What matters is that at the time of the filing of the petition, the 25% support requirement was met.

If subsequently the members withdraw, this does not impact the validity of the filing of the petition so long as during the time of filing, the 25% requirement was met. This could have been a different story if they had withdrawn their membership before the filing, because at the time of filing, they were not able to meet the petition for certification election.

Contract bar rule
The rule that in an organized establishment, where there is an existing and valid CBA, a petition for certification election can only be filed during the freedom period. The freedom period is the last 60 days of the 5-year life of the CBA.

12 month bar rule or the 1 year rule

It provides that a petition for certification election cannot be held in 1 year or 12 months after the previous petition for certification election. So this is usually applied in cases where the last election resulted in a failure of election – meaning no union got the majority votes or got the majority vote requirement or the double majority vote was not met or maybe the employees opted for no union.

TN: in the 12 month bar rule, no petition for certification election can be held within 12 months from the last one.

Difference:

Contract Bar Rule	12-Month Bar Rule
There is an existing CBA, meaning there is an existing exclusive bargaining agent.	It presupposes that there is no existing CBA and that there is no exclusive bargaining agent.

Negotiation or deadlock bar rule

Under **negotiation or deadlock bar rule**, a certification election cannot be filed if there is a pending negotiation or a deadlock. If there is an ongoing negotiation, general rule is that you cannot file a certification election because if there is ongoing negotiations, it presupposes that the employer is willing to bargain. If ever you will file a petition for certification election while there is an ongoing negotiation, this will ruin the bargaining atmosphere.

An ER can actually file a petition for certification election. The rationale behind this is that the ER wants to determine who he will negotiate or bargain with. Under Article 272, an ER is expressly listed as a bystander in a petition for certification election proceedings – meaning the ER cannot participate because this is an issue to be resolved among the EEs because the ER might unduly influence the proceedings.

f. Double Majority Requirement

Article 268. Representation Issue in Organized Establishments.

xxx the Med-Arbiter shall automatically order an election by secret ballot when the **verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the**

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

Double Majority requirement

National Union of Workers in Hotels, Restaurants and Allied Industries - Manila Pavilion Hotel Chapter v. Secretary of Labor and Employment

Doctrine: As to whether HIMPHLU should be certified as the exclusive bargaining agent, the Court rules in the negative. It is well-settled that under the so-called "double majority rule," for there to be a valid certification election, majority of the bargaining unit must have voted AND the winning union must have garnered majority of the valid votes cast.

Prescinding from the Court's ruling that all the probationary employees' votes should be deemed valid votes while that of the supervisory employees should be excluded, it follows that the number of valid votes cast would increase - from 321 to 337. Under Art. 256 of the Labor Code, the union obtaining the majority of the valid votes cast by the eligible voters shall be certified as the sole and exclusive bargaining agent of all the workers in the appropriate bargaining unit. This majority is $50\% + 1$. Hence, 50% of 337 is $168.5 + 1$ or at least 170.

HIMPHLU obtained 169 while petitioner received 151 votes. Clearly, HIMPHLU was not able to obtain a majority vote. The position of both the SOLE and the appellate court that the opening of the 17 segregated ballots will not materially affect the outcome of the certification election as for, so they contend, even if such member were all in favor of petitioner, still, HIMPHLU would win, is thus untenable.

The true importance of ascertaining the number of valid votes cast is for it to serve as basis for computing the required majority, and not just to determine which union won the elections. The opening of the segregated but valid votes has thus become material. To be sure, the conduct of a certification election has a two-fold objective: to determine the appropriate bargaining unit and to ascertain the majority representation of the bargaining representative, if the employees desire to be represented at all by anyone. It is not simply the determination of who between two or more contending unions won, but whether it effectively ascertains the will of the members of the bargaining unit as to whether they want to be represented and which union they want

to represent them.

Having declared that no choice in the certification election conducted obtained the required majority, it follows that a run-off election must be held to determine which between HIMPHLU and petitioner should represent the rank-and-file employees.

g. One-year/ Twelve-Month bar Rule

Sec. 4.2, Rule VII, D.O. 40-03

Section 4.2. Effect of certification. – Upon the issuance of the certification as sole and exclusive bargaining agent, the certified union or local shall enjoy all the rights and privileges of an exclusive bargaining agent of all the employees in the covered bargaining unit.

The certification shall bar the filing of a petition for certification election by any labor organization for a period of one (1) year from the date of its issuance. Upon expiration of this one-year period, any legitimate labor organization may file a petition for certification election in the same bargaining unit represented by the certified labor organization, unless a collective bargaining agreement between the employer and the certified labor organization was executed and registered with the Regional Office in accordance with Rule XVII of this Rules

Sec. 3 Rule VIII, D.O. 40-03

Section 3. When to file. – A petition for certification election may be filed anytime, except:

(a) when a SEBA certification has been entered or a valid certification, consent or run-off election has been conducted within the bargaining unit within one (1) year prior to the filing of the petition for certification election. Where an appeal has been filed from the Order of the Mediator-Arbitrator certifying the results of the election, the running of the one year period shall be suspended until the decision on the appeal has become final and executory;

(b) when the duly certified union has commenced and sustained negotiations in good faith with the employer in accordance with Article 261(renumbered) of the Labor Code within the one year period referred to in the immediately preceding paragraph;

(c) when a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout;

(d) when a collective bargaining agreement between the employer and a duly certified bargaining agent has been registered in accordance with Article 237(renumbered) of the Labor Code. Where such collective bargaining agreement is registered, the petition may be filed only within sixty (60) days

prior to its expiry.

Sec. 3, 15 (d), 25, Rule VIII, D.O. 40-03

Section 15. Denial of the petition; Grounds. – The Mediator-Arbiter may dismiss the petition on any of the following grounds:

(d) filing of a petition within one (1) year from the date of recording of the SEBA certification , or within the same period from a valid certification, consent or runoff election where no appeal on the results of the certification, consent or run-off election is pending;

Sec. 25, Rule VIII, D.O. 40-03

Section 25. Effects of consent election. – Where a petition for certification election had been filed, and upon the intercession of the Med-Arbiter, the parties agree to hold a consent election, the results thereof shall constitute a bar to the holding of a certification election for one (1) year from the holding of such consent election. Where an appeal has been filed from the results of the consent election, the running of the one (1) year period shall be suspended until the decision on appeal has become final and executory.

Where no petition for certification election was filed but the parties themselves agreed to hold a consent election with the intercession of the Regional Office, the results thereof shall constitute a bar to another petition for certification election.

employees, and if the employer has reasonable doubt as to the bargaining representative of the employees in the appropriate unit.

The employer cannot be held guilty of unfair labor practice for having dismissed from the service members of the labor union who have violated the condition of the closed shop agreement entered into between the company and the said labor union, because "Congress, in the exercise of its policy-making power, has approved the closed-shop, in section 4, subsection (a) paragraph 4 of Republic Act 875"

R. Transport Corp. v. Laguesma

Doctrine: The petitioner's contention that the second petition for certification election should have been filed after one year from the dismissal of the first petition certification election is untenable. Section 3, Rule V, Book V of the Omnibus Rules Implementing the Labor Code provides as follows: In the absence of collective bargaining agreement duly registered in accordance with Article 231 of the Code, a petition for certification election may be filed any time. However, *no certification election may be held within one year from the date of the issuance of a final certification election result.*

The phrase "final certification election result" means that there was an actual conduct of election i.e. ballots were cast and there was a counting of votes. In this case, there was no certification election conducted precisely because the first petition was dismissed, on the ground of a defective petition which did not include all the employees who should be properly included in the collective bargaining unit.

Also untenable is the petitioner's contention that the employment status of the members of respondent CLOP who joined the strike must first be resolved before a certification election can be conducted.

As held in the case of *Philippine Fruits and Vegetables Industries, Inc. v. Torres*, it is now well-settled that employees who have been improperly laid-off but who have a present, unabandoned right to or expectation of re-employment, are eligible to vote in certification elections. Thus, and to repeat, if the dismissal is under question, as in the case now at bar whereby a case of illegal dismissal and/or unfair labor practices was filed, the employees concerned could still qualify to vote in the elections.

Therefore, the employees of petitioner who participated in the strike, legally remain as such, until either the motion to declare their employment status legally terminated or their complaint for illegal dismissal is resolved by the NLRC.

It should be noted that it is the petitioner, the employer, which has offered the most tenacious resistance to the holding of a certification election. This must not be so for the choice of a collective bargaining agent is the sole concern of the employees. The employer has no right to interfere in the election and is merely regarded as a bystander.

One-year/ Twelve-Month bar Rule

Bacolod-Murcia Milling Co., Inc. v. National Employee-Workers Security Union

Doctrine: There are four ways under which a collective bargaining agreement may be entered into between the employer and his employees. These are the one specified in subsections (a), (b), (c) and (d) of section 12 of Republic Act 875. Under the first method, a majority of the employees may designate the labor organization it may choose to act as its representative for the purpose of collection bargaining, which it can do without court intervention, and the organization so designated may immediately conclude a collective bargaining agreement with its employer [subsection (a)]. The second method requires judicial investigation to determine which labor organization has been designated as the representative of the employees whenever a question arises concerning such representation. And if the court should find reasonable doubt as to whom the employees have chosen after such investigation, it shall order a certification election [subsection (b)]. The third method authorizes at least 10 per cent of the employees in the appropriate unit to request an election, which shall be mandatory on the court whenever a petition is filed requesting such election to determine the representation of the employees [subsection (c)]. And the fourth method is the one which permits an employee to petition the court for an election if there has been no certification election held during the twelve months prior to the date of the request of the

**Samahang Manggagawa sa Permex v.
Secretary of Labor**

Doctrine: There can be no determination of a bargaining representative within a year of the proclamation of the results of the certification election.

h. Negotiation or Deadlock Bar Rule

**National Congress of Unions in the
Sugar Industry of the Philippines
NACUSIP) - TUCP v. Trajano**

Doctrine: The Deadlock Bar Rule simply provides that a petition for certification election can only be entertained if there is no pending bargaining deadlock submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout. The principal purpose is to ensure stability in the relationship of the workers and the management.

**Capitol Medical Center Alliance of
Concerned Employees Unified Filipino
Service Workers v. Lagunesma**

Doctrine: There is a deadlock when there is a complete blocking or stoppage resulting from the action of equal and opposed forces . . . The word is synonymous with the word impasse, which . . "presupposes reasonable effort at good faith bargaining which, despite noble intentions, does not conclude in agreement between the parties."

While it is true that, in the case at bench, one year had lapsed since the time of declaration of a final certification result, and that there is no collective bargaining deadlock, public respondent did not commit grave abuse of discretion when it ruled in respondent union's favor since the delay in the forging of the CBA could not be attributed to the fault of the latter.

If the law proscribes the conduct of a certification election when there is a bargaining deadlock submitted to conciliation or arbitration, with more reason should it not be conducted if, despite attempts to bring an employer to the negotiation table by the "no reasonable effort in good faith" on the employer certified bargaining agent, there was to bargain collectively. It is only just and equitable that the circumstances in this case should be considered as similar in nature to a "bargaining deadlock" when no certification election could be held.

**Kaisahan ng Manggagawang Pilipino
(KAMPIL-KATIPUNAN) v. Trajano**

Doctrine: A representation question cannot be entertained if, before the filing of a petition for certification election, a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout.

i. Employer is only a bystander

Article 271 [258-A]. Employer as Bystander.

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbitrator act favorably on the petition.

We mentioned earlier an employer can actually file a Petition for Certification Election. The rationale behind it is that the employer really wants to determine kinsa gyud iyang i-negotiate or i-bargain with. But under Art. 272, an employer is expressly listed as a bystander to a Petition for Certification Election proceedings. Meaning, the employer cannot participate because at its core, a certification election is an issue to be resolved among the employees. The employer must not be involved basin ma influence niya ang outcome sa proceedings. What if ma influence niya ang employees na mo choose silag no union.

In practice class, a lot of employers actually do not want unions to be set-up sa ilang mga companies. Ngano man? Hasolan sila sa negotiation, mahadlok sila nga maka bayad silag more money because the employees are empowered and would demand high wages. I mean obviously this would hamper the right to self-organization sa employees. But from a business perspective, murag maka understand sad ta gamay na murag hadlok sad sila na mo give a lot more money than they are able to. But the reality is, a lot of employers actually do not want unions to be set-up sa ilang companies. Now this is one of the reasons why an employer is relegated to the position of a bystander during a petition for certification election. Not only is it an issue to be resolved among the employees themselves, but an employer might unduly influence the proceedings. Basin mag play siya as devil's advocate and whisper to employees to vote for no union. Basin mag bribe siyang employees to vote for no union. So that might be an interference ba on the part of the employer so that's why they are relegated to the position of bystander.

**Toyota Motors Phil. Corp Workers Association
(TMPCAW) v. Court of Appeals**

Doctrine: By granting the respondent's plea for a writ of preliminary injunction, the CA, in effect, ruled that the respondent is the real party-in-interest, and not merely a

bystander in the certification election; hence, has a material and substantial right sought to be protected. Thus, through the issuance of the writ, the CA in effect had prejudged the principal issue before it.

National Federation of Labor v. Secretary of Labor

Doctrine: Nor is it improper for private respondent to show interest in the conduct of the election. Private respondent is the employer. The manner in which the election was held could make the difference between industrial strife and industrial harmony in the company. What an employer is prohibited from doing is to interfere with the conduct of the certification election for the purpose of influencing its outcome. But certainly an employer has an abiding interest in seeing to it that the election is clean, peaceful, orderly and credible.

Holy Child Catholic School vs. Sto. Tomas

Doctrine: Even without the express provision of Section 12 of RA No. 9481, the "Bystander Rule" is already well entrenched in this jurisdiction. It has been consistently held in a number of cases that a certification election is the sole concern of the workers, except when the employer itself has to file the petition pursuant to Article 259 of the Labor Code, as amended, but even after such filing its role in the certification process ceases and becomes merely a bystander. The employer clearly lacks the personality to dispute the election and has no right to interfere at all therein. This is so since any uncalled-for concern on the part of the employer may give rise to the suspicion that it is batting for a company union. Indeed, the demand of the law and policy for an employer to take a strict, hands-off stance in certification elections is based on the rationale that the employees' bargaining representative should be chosen free from any extraneous influence of the management; that, to be effective, the bargaining representative must owe its loyalty to the employees alone and to no other.

j. Intervention

Toyota Motors Phil. Corp. Labor Union v. Toyota Motor Phil. Corp. Employees and Workers Union

Doctrine: We already impressed our stamp of approval on the factual findings of the Med-Arbiter in his 28 September 1994 decision, i.e., that petitioner had no valid certificate of registration and therefore no legal personality to file the Petition for Certification Election and in the absence of any attempt on its part to rectify the legal infirmity, likewise the disputed Petition-in-Intervention.

k. Effect of pending cases

Pending illegal dismissal case

Phil. Fruits and Vegetables Industries, Inc. v. Torres

Doctrine: At any rate, it is now well-settled that employees who have been improperly laid off but who have a present, unabandoned right to or expectation of re-employment, are eligible to vote in certification elections. Thus, and to repeat, if the dismissal is under question, as in the case now at bar whereby a case of illegal dismissal and/or unfair labor practice was filed, the employees concerned could still qualify to vote in the elections.

Pending unfair labor practice case

General Rule: For pending cases (pending illegal dismissal cases or unfair labor practice cases), as a general rule, the SC has held that the petition to cancel registration does not affect the validity of an ongoing petition for certification election. It can proceed independently of any pending cases.

United CMC Textile Workers Union v. Bureau of Labor Relations

Doctrine: As a rule, pending unfair labor practice cases do not affect the validity of an ongoing petition for certification election. However, under settled jurisprudence, the pendency of a formal charge of company domination is a prejudicial question that, until decided, bars proceedings for a certification election, the reason being that the votes of the members of the dominated union would not be free.

Barrera v. Court of Industrial Relations

Doctrine: Based on jurisprudence, if it were a labor organization objecting to the participation in a certification election of a company-dominated union, as a result of which a complaint for an unfair labor practice case against the employer was filed, the status of the latter union must be first cleared in such a proceeding before such voting could take place. (Postponement of certification election pending determination of ULP)

If it is the management that have an unfair labor practice case filed by it for illegal strike engaged in by some of its employees concluded before it would agree to the holding of a certification election, it should not prevent the expression of a labor group's choice of representative. (No postponement)

Pending petition to cancel union registration

National Union of Bank Employees v. Minister of Labor

Doctrine: Cancellation proceedings is not a prejudicial issue. The pendency of the petition for cancellation of registration

certificate of herein petitioner union is not a bar to the holding of a certification election. The pendency of the petition for cancellation of the registration certificate of petitioner founded on the alleged illegal strikes staged by the leaders and members of the intervenor union and petitioner union should not suspend the holding of a certification election, because there is no order directing such cancellation.

Pending appeal

Philex Miners Union v. National Mines & Allied Workers Union

Doctrine: In the absence of any restraining order issued by a competent court, the filing of a motion for reconsideration with the Court of Industrial Relations en banc, does not have the effect of suspending ipso facto a scheduled election. Even an appeal, without more, does not suspend the effect of a certification election; otherwise a party could arrest, without the necessary adequate court action, the movement of the bargaining process by the interposition of frivolous and useless appeals.

General rule: Supreme Court has held that pending illegal dismissal cases, pending unfair labor practice cases, etc., pending petition to cancel registration, and pending appeal do not affect the validity of an ongoing petition for certification election. It may make problems later on but generally a petition for certification election can proceed independently of any other pending cases.

I. Denial of Petition for Certification Election

Sec. 15, Rule VIII, D.O. 40-03

Conduct of election and canvass of votes. The election precincts shall open and close on the date and time agreed upon during the pre-election conference. The opening and canvass of votes shall proceed immediately after the precincts have closed. Failure of the representative/s of the contending unions to appear during the election proceedings and canvass of votes shall be considered a waiver of the right to be present and to question the conduct thereof.

Under D.O. 40-03, there are grounds for denying a petition for certification election. Some of them are very obvious: unregistered labor organizations, they failed to meet the documentary or reportorial requirements.

m. Appeal

Sec. 22, Rule iX, D.O. 40-03

Appeal; Finality of decision. The decisions of the Mediator-Arbiter may be appealed to the Secretary within ten (10) days from receipt by the parties of a copy thereof.

The appeal shall be under oath and shall consist of a memorandum of appeal, specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence.

Where no appeal is filed within the ten-day period, the order/decision shall become final and executory and the Mediator-Arbiter shall enter this fact into the records of the case. (Sec. 22)

Where to file appeal. The memorandum of appeal shall be filed in the Regional Office where the petition originated, copy furnished the contending unions and the employer, as the case may be. Within twenty-four (24) hours from receipt of the appeal, the Regional Director shall cause the transmittal thereof together with the entire records of the case to the Office of the Secretary. (Sec. 23)

Period to Reply. A reply to the appeal may be filed by any party to the petition within ten (10) days from receipt of the memorandum of appeal. The reply shall be filed directly with the Office of the Secretary. (Sec. 24)

Decision of the Secretary. The Secretary shall have fifteen (15) days from receipt of the entire records of the petition within which to decide the appeal.

The decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the decision shall be entertained. (Sec. 25)

Transmittal of records to the Regional Office. – Within forty-eight (48) hours from notice of receipt of decision by the parties and finality of the decision, the entire records of the case shall be remanded to the Regional Office of origin for implementation. Implementation of the decision shall not be stayed unless restrained by the appropriate court. (Sec. 26)

There is also a mechanism of appeal if ever the union members question the decision of the BLR when it comes to their filing of their petition: whether the petition is denied or there are some issues.

E. RUN-OFF ELECTION

Sec. 1(uu), Rule I, D.O. 40-03

"Run-off Election" refers to an election between the labor unions receiving the two (2) highest number of votes in a certification or consent election with three (3) or more choices, where such a certified or consent results in none of the three (3) or more choices receiving the majority of the valid votes cast; provided that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

Rule X, D.O. 40-03

When proper. When an election which provides for three (3) or more choices results in none of the contending unions receiving a majority of the valid votes cast, and there are no objections or challenges which if sustained can materially alter the results, the Election Officer shall motu proprio conduct a run-off election within ten (10) days from the close of the election proceedings between the labor unions receiving the two highest number of votes; provided, that the total number of votes for all contending unions is at least fifty (50%) percent of the number of votes cast.

"No Union" shall not be a choice in the run-off election.

Notice of run-off elections shall be posted by the Election Officer at least five (5) days before the actual date of run-off election. (Sec. 1)

Qualification of voters. The same voters' list used in the certification election shall be used in the run-off election. The ballots in the run-off election shall provide as choices the unions receiving the highest and second highest number of the votes cast. The labor union receiving the greater number of valid votes cast shall be certified as the winner, subject to Section 21, Rule IX. (Sec. 2)

In a certification election, two or more of the candidate unions failed to get the majority vote requirement but definitely the employees did not choose "no union." What happens is that another election is conducted including only those unions who manage to get majority of the votes. You narrow down the voting but in the run election, "no union" is no longer an option there because it was clear in the initial certification election that the employees definitely did not opt for "no union." If, for example, majority voted for "no union," then that will be the end of it. There will be no union. But in case of a run-off election, majority of the votes went to the unions themselves. The issue is none of the unions complied with the majority vote requirement. Just to help to narrow the choices down, only those unions who

garnered majority votes. This is how the employees would not determine once and for all if aha jud ilang ipili.

F. CONSENT ELECTION

Sec. 1(i), Rule I, D.O. 40-03

"Certification Election" or "Consent Election" refers to the process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation. A certification election is ordered by the Department, while a consent election is voluntarily agreed upon by the parties, with or without the intervention by the Department.

Sec. 25, Rule VIII, D.O. 40-03

Effects of consent election. Where a petition for certification election had been filed, and upon the intercession of the Med-Arbitrator, the parties agree to hold a consent election, the results thereof shall constitute a bar to the holding of a certification election for one (1) year from the holding of such consent election. Where an appeal has been filed from the results of the consent election, the running of the one (1) year period shall be suspended until the decision on appeal has become final and executory.

Where no petition for certification election was filed but the parties themselves agreed to hold a consent election with the intercession of the Regional Office, the results thereof shall constitute a bar to another petition for certification election.

Exam Reminders: Understand lang the important rules and principles. Contract bar rule, the one-year period, etc.; differences between the requirements (25%, double majority rule); how certification election works.

V. COLLECTIVE BARGAINING

A. DUTY TO BARGAIN COLLECTIVELY AND RELATED DUTIES

ART. 261. [250] Procedure in Collective Bargaining.

The following procedures shall be observed in collective bargaining:

- (a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;
- (b) Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request.
- (c) If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue subpoenas requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call;
- (d) During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes; and
- (e) The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitrator.

ART. 262. [251] Duty to Bargain Collectively in the Absence of Collective Bargaining Agreements.

In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of employer and the representatives of the employees to bargain collectively in accordance with the provisions of this Code.

ART. 263. [252] Meaning of Duty to Bargain Collectively.

The duty to bargain collectively means the 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 and 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.

ART. 264. [253] Duty to Bargain Collectively When There

Exists a Collective Bargaining Agreement.

When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties

ART. 265. [253-A] Terms of a Collective Bargaining Agreement.

Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the Collective Bargaining Agreement, the parties may exercise their rights under this Code.

ART. 266. [254] Injunction Prohibited.

No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.²⁰⁹

ART. 267. [255] Exclusive Bargaining Representation and Workers' Participation in Policy and Decision-Making.

The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.

Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and

employers may form labor-management councils: Provided, That the representatives of the workers in such labor-management councils shall be elected by at least the majority of all employees in said establishment.

ART. 268. [256] Representation Issue in Organized Establishments.

In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed by any legitimate labor organization including a national union or federation which has already issued a charter certificate to its local chapter participating in the certification election or a local chapter which has been issued a charter certificate by the national union or federation before the Department of Labor and Employment within the sixty (60)-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter's officers and members.

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

ART. 269. [257] Petitions in Unorganized Establishments.

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

ART. 270. [258] When an Employer May File Petition.

When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the

Bureau shall, after hearing, order a certification election.

All certification cases shall be decided within twenty (20) working days.

The Bureau shall conduct a certification election within twenty (20) days in accordance with the rules and regulations prescribed by the Secretary of Labor.

ART. 271. [258-A] Employer as Bystander.

In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition.

ART. 272. [259] Appeal from Certification Election Orders.

Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.

Duty to bargain collectively

Ren Transport Corp. v. NLRC

Doctrine: It shall be unlawful for an employer to violate its duty to bargain collectively under the Labor Code. The employer cannot refuse to bargain and recognize another union which was not duly appointed as the exclusive bargaining agent of the employees.

SONEDCO Workers Free Labor Union v. Universal Robina Corporation, Sugar Division - SONEDCO

Facts: Universal Robina Corp Sugar Division – Southern Negros Devt Corp (URC-SONEDCO) and Philippine Agricultural Commercial and Industrial Workers Union (PACIWU-TUCP), then exclusive bargaining agent of URC-SONEDCO's rank-and-file employees, entered into a CBA effective Jan 1 2002 to Dec 31, 2006. Under the CBA, the rank and file employees were entitled to a wage increase of P14/day for 2002 and P12/day for the succeeding years until 2006.

Days after the 2002 CBA was signed, a certification election was conducted wherein SONEDCO Workers Free Labor Union (petitioner) won and replaced

PACIWU-TUCP.

When PACIWU-TUCP questioned the results of the certification election, the Med-Arbiter certified the petitioner as the sole exclusive bargaining agent of URC-SONEDCO. This was affirmed by the Labor Secretary. The CA found the certification election valid.

Despite this, URC-SONEDCO consistently refused to negotiate a new CBA with SONEDCO Workers Free Labor Union due to the 2002 CBA it signed with PACIWU-TUCP.

Issue: Whether or not URC-SONEDCO violated its duty to collectively bargain. YES

Ruling: Yes. Art 263 of the Labor Code states that the **duty to bargain collectively means the 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 and 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.

In this case, URC-SONEDCO failed in its duty to bargain since it repeatedly refused to meet and URC-SONEDCO also failed to bargain IN GOOD FAITH.

In this case, the respondent company refused to bargain with the new exclusive bargaining agent that was chosen by the employees in a certification election. The company insisted that the previous bargaining agent and the previous CBA was still in full force and effect.

Remember, that **during the freedom period towards the end of the life of a CBA, the employees can question the majority status of the existing bargaining agent and put into place a new exclusive bargaining agent.**

In this case, the act of the respondent company was a violation of the duty to bargain collectively. Art. 263 of the Labor Code actually provides for the definition of the duty to bargain collectively which basically means both parties, the employer and the union have the mutual obligation to meet and convene in good faith to negotiate wages, hours of work and other terms.

So, if an employer keeps avoiding the demands of the exclusive bargaining agent to meet and discuss new terms and conditions, it is deemed to be a violation of the duty to bargain collectively.

For purposes of discussion, **duty to bargain collectively basically means obligation to meet in good faith and in this case, the presumption was that the respondent company was not in good faith because there was no real reason to justify its failure to meet with the new labor union.**

Conditions under which employer is under a legal duty to negotiate

Kio Loy v. NLRC

Facts: In a certification election, the Pambansang Kilusang Paggawa (Union) won and was subsequently certified as the sole and exclusive bargaining agent of the rank-and-file employees of Sweden Ice Cream Plant (Company).

The union furnished the company with copies of the proposed CBA and requested counter proposals twice. Both requests were ignored and remained unacted upon by the company.

Issue: WON the company is failed its legal duty to negotiate - YES

Ruling: Yes. While it is a mutual obligation of the parties to bargain, the employer, however, is not under any legal duty to initiate contract negotiation. The mechanics of collective bargaining is set in motion only when the following jurisdictional preconditions are present:

1. possession of the status of majority representation of the employees' representative in accordance with any of the means of selection or designation provided for by the Labor Code;
2. proof of majority representation; and
3. a demand to bargain under Article 251, par. (a) of the New Labor Code.

In this case, all the preconditions are present. The union won the election and was certified as the exclusive bargaining agent of the employees. It also made 2 demands to bargain by sending its proposed CBA and asking for counter proposals.

In this case, the Supreme court elaborated on the

conditions to be met before an employer has the duty to negotiate.

First, it has to have majority status;
Second, it has to have proof of such majority status;
Lastly is demand to bargain from the union.

The first two are straightforward because once there is a certification conducted, the BLR issues a certification of who the exclusive bargaining agent is, which resolves the first condition in the form of a letter proposing possible changes or areas where the union wants to negotiate.

As pointed out by the SC, the usual manner by which an employer responds to the demand to bargain is usually with counter-proposals but in this case, it was radio silence on the part of the employer. Even a response letter expressing their disagreement with the proposals was not given by the employer.

Thus, it was held that **the employer violated its duty to bargain collectively, the mere fact that there was no counter-proposal, and answers from the company indicated the absence of sincere desire to negotiate or even hear out the union.**

Remember the three conditions. The third element is very important because there has to be a demand to bargain from the union, for example, if a certain union was certified but after many years, there was no effort on its part to communicate with the employer, then the employer cannot be faulted because according to these conditions, **it has to be the union who has to take the first step, the union must be the one to speak out first or to demand to bargain, otherwise the employer can just use the defense that the union never demanded to bargain.**

In the Lakas case, it focuses more on the majority status element.

an rival union.

The management of Marcelo Steel received a letter requesting negotiation of a new CBA from PSSLU on behalf of UNWU. There were also proposals from the unions in Marcelo Tire and Marcelo Rubber as the existing CBA was about to expire. Same day, the union in Marcelo Tire authorized PSSLU as their agent. Afterwards, the rival union submitted its own proposals.

Another requests were received on May 3, 1967 and May 23, 1967 from two different unions.

As the **management was confused as to which of the union really represents the workers, the president asked for the proof of authorization from the unions and they were informed of the conflicting claims and suggested that they file for certification election and the decision of the court shall be followed and respected.**

Issue: Whether or not the company violated its duty to bargain collectively.

Ruling:No. LAKAS had never been the bargaining representative of any of the local unions then existing in the respondent Marcelo Companies. Contrary to the pretensions of LAKAS, Marcelo Companies did not ignore the demand for collective bargaining. Neither did the companies refuse to bargain at all. What it did was to apprise LAKAS of the existing conflicting demands for recognition as the bargaining representative in the appropriate units involved, and suggested the settlement of the issue by means of the filing of a petition for certification election before the Court of Industrial Relations. This was not only the legally approved procedure but was dictated by the fact that there was indeed a legitimate representation issue.

The clear facts of the case show that a legitimate representation issue confronted the respondent Marcelo Companies. In the face of these facts and in conformity with the existing jurisprudence, there existed no duty to bargain collectively with The complainant LAKAS on the part of said companies.

The employees in a company can have different bargaining units at the same time so each unit would have its own union but, in this case, the two unions demanding to negotiate were actually from the same bargaining unit.

Duty to bargain - Majority union

Lakas ng Manggagawang Makabayan v. Marcelo Enterprises

Facts: Lakas had existing CBAs within the bargaining units in the respective companies comprising Marcelo Companies. The said CBAs were entered into while they were affiliated with a national federation, Phil Social Security Labor Union.

Two of the CBAs were about to expire in May and June 1967. The other one faced conflict as there was

Remember, one of the key conditions for an employer to bargain collectively is that the union has to have majority representation and there has to be proof of those majority representation. **An employer, such as in this case, cannot be faulted for demanding proof of majority representation because it is one of the key elements that give rise to the obligation to bargain collectively.** It's important because what if nag taka-taka lang negotiate ang employer with the union and then the union diay has not been certified as the exclusive bargaining agent or what if the union only represents the minority of the employees so, useless na ang negotiation nuon. **It is reasonable for the employer to ask for the proof of majority representation of the employees.** Now, what would be proof of majority representation? If a certification election has been conducted, **certification from BLR or the signed petition from the employees. The best proof is the certification from BLR.** So again, majority representation, proof of such majority representation and the demand to bargain or negotiate from the union. Remember, it is almost always the union who initiates because the employer stands to benefit man if walay movement ang negotiations. If ang union walay movement, the negotiations can never begin.

unconstitutional and contrary to public policy.

A CBA is "a contract executed upon request of either the employer or the exclusive bargaining representative incorporating the agreement reached after negotiations 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."

The primary purpose of a CBA is the stabilization of labor-management relations in order to create a climate of a sound and stable industrial peace. In construing a CBA, the courts must be practical and realistic and give due consideration to the context in which it is negotiated and the purpose which it is intended to serve

The acts of public respondents in sanctioning the 10-year suspension of the PAL-PALEA CBA did not contravene the "protection to labor" policy of the Constitution. The agreement afforded full protection to labor; promoted the shared responsibility between workers and employers; and the exercised voluntary modes in settling disputes, including conciliation to foster industrial peace.

In the instant case, it was PALEA, as the exclusive bargaining agent of PAL's ground employees, that voluntarily entered into the CBA with PAL. It was also PALEA that voluntarily opted for the 10-year suspension of the CBA. Either case was the union's exercise of its right to collective bargaining. The right to free collective bargaining, after all, includes the right to suspend it.

The assailed PAL-PALEA agreement was the result of voluntary collective bargaining negotiations undertaken in the light of the severe financial situation faced by the employer, with the peculiar and unique intention of not merely promoting industrial peace at PAL, but preventing the latter's closure.

Abaria v. NLRC

Doctrine: A union cannot demand from an employer the right to bargain collectively for the employees if said union is neither a legitimate labor organization (registered) nor the exclusive bargaining representative of the employees as voted in a certification election.

B. COLLECTIVE BARGAINING AGREEMENT

Definition and purpose of CBA

Rivera v. Espiritu

Facts: PAL pilots went on a three-week strike. Faced with bankruptcy, PAL adopted a rehabilitation plan and downsized its labor force by more than one-third. PALEA offered a 10- year moratorium on strikes and similar actions and a waiver of some of the economic benefits in the existing CBA.

Issue: Whether the PAL-PALEA agreement stipulating the suspension of the PAL-PALEA CBA is unconstitutional and contrary to public policy? No

Ruling: No, the PAL-PALEA agreement is not

One of the issues is the suspension of the CBA? How did the Supreme Court rule? Was it valid?

The Supreme Court held that at the end of the day, a **CBA is a contract similar to other contracts. The parties are the employees and the employer.**

The suspension of the CBA does not contravene the state policy to protect labor because protection from labor actually includes voluntary modes of settlement between the employer and

the employee. In this case, the suspension of the CBA for the period of 10 years was actually voluntarily entered into by PAL and majority of the employees. There was no vitiation of consent on the part of the employees. Thus, the suspension of the CBA was valid.

A CBA may actually be suspended by the agreement of the parties. In construing a CBA, the circumstances have to be taken into account. In this case, it was the financial instability of PAL that they were filing for financial rehabilitation. Here, PAL files for bankruptcy. The employees, in order to ease the financial burden, were willing to suspend the CBA as well as the benefits they may have under the agreement para mu stay afloat ang PAL and para naa silay trabaho.

Goya v. Goya, Inc. Employees Union - FFW

Facts: Petitioner Goya, Inc. (Company) hired contractual employees from PESO Resources Development Corporation (PESO) to perform temporary and occasional services in its factory. The Union asserted that the hiring of contractual employees from PESO is not a management prerogative and in gross violation of the CBA tantamount to unfair labor practice (ULP).

Issue: Whether or not the Company is guilty of unfair labor practice. No

Ruling: No, there is no unfair labor practice because although there is a violation of the CBA the same is not gross, but a violation of the CBA still exists. This is because **though the act of hiring is a management prerogative, there was no valid exercise of this prerogative because it was limited by an existing CBA** that required hiring of casual and probationary employees and not the contractual workers of PESO.

ULP is committed only if there is gross violation of the agreement.

To emphasize, **declaring that a particular act falls within the concept of management prerogative is significantly different from acknowledging that such act is a valid exercise thereof.** What the VA and the CA correctly ruled was that the Company's act of contracting out/outsourcing is within the purview of management prerogative. Both did not say, however, that such act is a valid exercise thereof.

This is due to the recognition that **the CBA provisions agreed upon by the Company and the**

Union delimit the free exercise of management prerogative pertaining to the hiring of contractual employees. Indeed, the VA opined that "the right of the management to outsource parts of its operations is not totally eliminated but is merely limited by the CBA.

A collective bargaining agreement or CBA refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. **As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs.**

In this case, the CBA provided a limitation on the power of the employer to hire. Part of the employer's management prerogative is to be able to select its employees.

The CBA contracted away part of the right of the employer to select employees. Under the CBA, it obligated itself to prioritize hiring from among a group of existing employees as opposed to bringing new hires. **This was a valid stipulation because it was not contrary to public policy and therefore was a valid limitation on the management prerogative to select the employees.** At the end of the day, the CBA was still a contract between the employers and employees.

C. WHEN TO BARGAIN - CERTIFICATION YEAR

If the three jurisdictional preconditions are present,¹ the collective bargaining should begin **within the 12 months following the determination and certification of the employees' exclusive bargaining representative.** This period is known as the "**certification year.**"

The employer's duty to bargain during the certification year has been held to extend throughout the entire year. Absent unusual circumstances, an employer commits an unfair labor practice by refusing to bargain with the union during its certification year, notwithstanding the repudiation of the union by a majority of its employees before the expiration of the one-year period. The rule is the same whether the union lost its majority as a result

¹ (1) Possession of the status of majority representation of the employees' representative in accordance with any of the means of selection or designation provided for in the LC; (2) proof of majority representation; and (3) a demand to bargain under Art. [261], par.(a) of the New LC

of the employer's unfair labor practices or through no fault of the employer.

A union which has been certified by the NLRB as a bargaining representative for a particular unit enjoys an irrefutable presumption of a majority status for one year, absent special circumstances. Following the expiration of the one-year certification period, there continues to be a presumption in favor of a union majority, though the presumption is rebuttable. Employee turnover does not constitute "unusual circumstances" shortening the period

D. UNION SECURITY CLAUSES AND "SHOP" AGREEMENTS

Violation of closed shop agreement as a ground for termination

Slorp Development Corporation v Noya

Doctrine: Union security clauses and "shop agreements"; violation of closed shop agreement as a ground for termination.

To validly terminate an employee through the enforcement of the union security clause, the following requisites must concur:

1. the union security clause is applicable;
2. the union is requesting for the enforcement of the union security provision in the CBA; and
3. there is sufficient evidence to support the decision of the union to expel the employee from the union.

Facts:

Noya was hired as a welder by the company. His employment was covered by a CBA between the company and NLM-Katipunan. The CBA had a union security clause (closed shop agreement) stating generally that any new employee covered by the bargaining unit who attains regular status but fails to join or fails to maintain their union membership will be dismissed.

The company claimed that in December 2013, Noya asked several employees to affix their signatures on a blank sheet of paper for the purpose of forming a new union, prompting NLM-Katipunan president to file expulsion proceedings against Noya for disloyalty. Subsequently, Noya organized a new union named Bantay Manggagawa sa SLORD Devt Corp (BMSDC) which he registered with DOLE.

When Noya failed to participate in the hearings before the union, NLM-Katipunan demanded the company to terminate Noya pursuant to the union security clause. Noya filed a complaint for illegal dismissal, unfair labor practice, and illegal deduction against the NLRC asserting that he did not violate the CBA.

Issues: Whether Noya was validly terminated?

Ruling: Yes. To validly terminate an employee through the enforcement of the union security clause, the following requisites must concur:

1. the union security clause is applicable;
2. the union is requesting for the enforcement of the union security provision in the CBA; and
3. there is sufficient evidence to support the decision of the union to expel the employee from the union.

In this case, all requisites were present warranting the termination of Noya's employment.

The CBA contains a closed shop agreement stipulating that the company's employees must join NLM-Katipunan and remain to be a member in good standing; otherwise, through a written demand, NLM-Katipunan can insist the dismissal of an employee.

NLM-Katipunan requested the enforcement of the union security clause by demanding Noya's dismissal

There is sufficient evidence to support the union's decision to expel respondent:

- a. Written statements from various employees stating that Noya convinced them to join in forming another union
- b. Application for registration of BMSDC showing that Noya organized the said union

Is union closed shop agreement a valid stipulation? Is it valid for the employer to interfere with the right to self-organization of the employees?

It is valid. While it is true that the employer is interfering with the right to self-organization, it actually promotes unionism. It is encouraging employees to join unions and labor organizations.

Disloyalty or failure to comply with the closed shop agreement or union security clause is a valid ground for dismissal. However, even if it is stipulated in the CBA, due process must still be followed.

TN: Union security clauses are valid; employees can be dismissed by reason thereof and final compliance thereof; due process still be met.

Malayang Samahan ng mga Manggagawa sa M. Greenfield v Ramos

Facts: Petitioner, MSMG (local union), is an affiliate of the

private respondent, ULGWP (federation). - The collective bargaining agreement between MSMG and M. Greenfield (company) includes a union security clause which provides:

Art. II-Union Security

Sec. 1. Coverage and Scope. All employees who are covered by this Agreement and presently members of the UNION shall remain members of the UNION for the duration of this Agreement as a condition precedent to continued employment with the COMPANY.

On April 17, 1988, the local union held a general membership meeting, however, several union members failed to attend the meeting prompting the Executive Board to create a committee tasked to investigate the non-attendance because under its Constitution and By Laws non-attendance to membership meetings is subject to P50 fine.

- The imposition of the fine became the subject of a bitter disagreement between the Federation and the local union prompting the local union to disaffiliate from the federation.

The union officers were expelled from the ULGWP for committing acts of disloyalty and/or acts inimical to the interest and violative to the Constitution and by-laws of the federation. On the same day, the federation advised the company of the expulsion of the 30 union officers and demanded their separation from employment pursuant to the Union Security Clause in their CBA. This demand was reiterated twice, through the respondent company.

Issue: Whether the dismissal of the union officers was valid? NO

Ruling: THE DISMISSAL OF THE UNION OFFICERS WAS NOT VALID BECAUSE THEY WERE NOT ACCORDED DUE PROCESS. The company terminated petitioners from employment by merely relying upon the federation's allegations without conducting a separate and independent investigation.

While respondent company may validly dismiss the employees expelled by the union for disloyalty under the union security clause of the collective bargaining agreement upon the recommendation by the union, this dismissal should not be done hastily and summarily thereby eroding the employees' right to due process, self-organization and security of tenure.

The enforcement of union security clauses is authorized by law provided such enforcement is not characterized by arbitrariness, and always with due process. Even on the assumption that the federation had valid grounds to expel the union officers, due process requires that these union officers be accorded a separate hearing by respondent company. Although union security clauses embodied in the CBA may be validly enforced and that dismissals pursuant thereto may likewise be valid, this does not erode the

fundamental requirement of due process. The reason behind the enforcement of union security clauses which is the sanctity and inviolability of contracts cannot override one's right to due process.

IN THIS CASE, petitioner union officers were expelled by the federation for allegedly committing acts of disloyalty and/or inimical to the interest of ULGWP and in violation of its Constitution and By-laws. Upon demand of the federation, the company terminated the petitioners without conducting a separate and independent investigation.

As a form of valid discrimination

BPI v. BPI Employees

Doctrine: Although it would be an unfair labor practice for an employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" the employer is, however, not precluded "from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees

The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits all employees in the bargaining unit since such a union would be in a better position to demand improved benefits and conditions of work from the employer.

Tanduay Distillery Labor Union v. NLRC

Facts: A CBA was executed between TDI and TDLU which contained a union security clause. **While the CBA was in effect and within the contract bar period the private respondents joined another union (KAMPIL) and organized its local chapter in TDI, with private respondents.**

KAMPIL filed a petition for certification election to determine union representation in TDI. TDI notified private respondents that it would file clearance to terminate their services on the basis of the union security clause of the CBA. An illegal dismissal complaint was then filed

Issues: WON TDI was justified in terminating private respondents through the union security clause

Ruling: Yes, TDI was justified in terminating private respondents because (1) they are **bound by the**

union security clause which must be enforced under the principle of sanctity and inviolability of contracts guaranteed by the Constitution; (2) Private respondents never questioned the validity of the CBA; (3) That the CBA later expired and a certification election was held with KAMPIL could not cleanse private respondents from the acts of disloyalty committed while the CBA with TDLU was still active.

Article 249 (e) of the Labor Code as amended specifically recognizes the **closed shop arrangement as a form of union security**. The closed shop, the union shop, the maintenance of the membership shop, the preferential shop, the maintenance of the treasury shop, and check-off provisions are valid forms of union security and strength. They do not constitute unfair labor practice nor are they violations of the freedom of association clause of the Constitution.

The very core and as raison d'etre for the doctrine which enforces the closed-shop, the union shop, and other forms of union security clauses in the collective bargaining agreement is the principle of sanctity and inviolability of contracts guaranteed by the Constitution

The action of the respondent company in enforcing the terms of the closed-shop agreement is a **valid exercise of its rights and obligations under the contract**. The dismissal by virtue thereof cannot constitute an unfair labor practice, as it was in pursuance of an agreement that has been found to be regular and of a closed-shop agreement which under our laws is valid and binding.

Having ratified that CBA and being then members of the TDLU, the private respondents owe fealty and are required under the Union Security Clause to maintain their membership in good standing with it during the term thereof, a requirement which ceases to be binding only during the 60-day freedom.

In this case, the dismissal was valid and there was no breach of due process requirements.

The union security clause is a valid form of discrimination between employees. Essentially you are discriminating between union members and non-union members but it is a valid form of discrimination because it actually encourages unionism, as opposed to discriminating against union members (which is an unfair labor practice).

Soriano v. Atienza

Doctrine: The Court holds that there is no factual or legal basis for an order against the company to grant either backwages or financial assistance in the form of separation pay to petitioners. This is because under settled law and jurisprudence, the company is not considered guilty of unfair labor practice if it merely complied in good faith with the request of the certified union for the dismissal of employees expelled from the union pursuant to the union security clause in the Collective Bargaining Agreement (CBA).

Manalang v. Artx Development Co.

Doctrine: UNFAIR LABOR PRACTICE; CLOSED SHOP AGREEMENT, VIOLATION OF; EFFECT. — Where employees were discharged from employment upon recommendation of the union of which they were members by reason of the fact that they had lost their standing as members of the said union because of the closed shop provision of the collective bargaining agreement between the union and the company, said dismissal from the service does not constitute unfair labor practice.

COLLECTIVE BARGAINING AGREEMENT; EMPLOYEES; PRESUMPTION OF KNOWLEDGE OF PROVISION. — Where petitioners started working in the company in December, 1959, and they succeeded in wielding sufficient influence to persuade other employees to join them in forming the Artex Free Workers, it can be reasonably inferred that they knew of the existence of the first collective bargaining between the BBLU and the Company as well especially of the fundamental provisions thereof, which directly, personally and individually affect them. Hence, they can be charged with knowledge specifically of the expiry date of the agreement and, consequently, of the negotiation between the BBLU and the Company before the expiry date toward the execution of a second agreement.

COLLECTIVE BARGAINING AGREEMENT; CLOSED SHOP PROVISION; EFFECT ON EMPLOYEES. — Since petitioner's membership in the BBLU prior to their expulsion therefrom is undenied, there can be no question that as long as the agreement with closed-shop provision was in force, they were bound by it. Neither their ignorance of, nor their dissatisfaction with, its terms and conditions would justify breach thereof or the formation by them of a union of their own.

CLOSED SHOP PROVISION, CONSTITUTIONALITY OF. — Petitioners' contention that the closed shop provision in the collective bargaining agreement is illegal because it is an unreasonable restriction of the right to freedom of association guaranteed by the Constitution is untenable, as this Court has in a number of cases sustained closed-shop as a valid form of union security.

In relation to right to self organization

Manila Mandarin Employees Union v. NLRC

Doctrine: A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of

the contracting union who must continue to remain members in good standing to keep their jobs. It is "the most prized achievement of unionism." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed-shop, it welds group solidarity.

The Court stresses, however, that union security clauses are also governed by law and by principles of justice, fair play, and legality. Union security clauses cannot be used by union officials against an employer, much less their own members, except with a high sense of responsibility, fairness, prudence, and judiciousness.

A union member may not be expelled from her union, and consequently from her job, for personal or impetuous reasons or for causes foreign to the closed-shop agreement and in a manner characterized by arbitrariness and whimsicality.

Liberty Flour Mills Employees v. Liberty Flour Mills

Doctrine: The certification of the collective bargaining agreement by the Bureau of Labor Relations is not required to put a stamp of validity to such contract. Once it is duly entered into and signed by the parties, a collective bargaining agreement becomes effective as between the parties regardless of whether or not the same has been certified by the BLR.

It is the policy of the State to promote unionism to enable the workers to negotiate with management on the same level and with more persuasiveness than if they were to individually and independently bargain for the improvement of their respective conditions. To this end, the Constitution guarantees to them the rights "to self-organization, collective bargaining and negotiations and peaceful concerted actions including the right to strike in accordance with law." There is no question that these purposes could be thwarted if every worker were to choose to go his own separate way instead of joining his co-employees in planning collective action and presenting a united front when they sit down to bargain with their employers. It is for this reason that the law has sanctioned stipulations for the union shop and the closed shop as a means of encouraging the workers to join and support the labor union of their own choice as their representative in the negotiation of their demands and the protection of their interest vis-a-vis the employer.

E. KINDS OF UNION SECURITY AGREEMENTS

1. Closed shop

- A scheme in which, by agreement between the employer and its employees or their representatives, no person is allowed to be employed in any departments of the enterprise unless he/she is, becomes and, for the duration of the agreement, remains a member in good standing of a Sole

Exclusive Bargaining Agent (SEBA) entirely comprised of or of which the employees in interest are a part.

- This kind of agreement stipulates the undertaking by the employer not to hire or employ any person who is not a member of the SEBA. Once employed, it is required that the said person should remain a member of the SEBA in good standing as a condition for his/her continued employment, at least during the whole duration of the CBA. This requirement for employees to become members of the SEBA as a condition for their continued employment redounds to their benefit and advantage because by holding out to loyal members a promise of employment in the closed shop, the union wields group solidarity. In fact, it is said that "the closed shop contract is the most prized achievement of unionism." It adds membership and compulsory dues

2. Union shop

- There is union shop arrangement when all new regular employees are required to join the SEBA within a certain period as a condition for their continued employment. Its role is to compel membership of those who are not yet SEBA members. Under this scheme, the employer is given the freedom to hire and employ any person who is not a member of the SEBA. Once such person becomes an employee, he is required to become a member of the SEBA and to remain as such member in good standing for the whole duration of the effectiveness of the CBA as a condition for his continued employment.

3. Modified union shop

- Employees under this arrangement who are not SEBA members at the time of the signing or execution of the CBA are not required to join it. However, any and all workers hired or employed after the signing or execution of the CBA are required to join the SEBA.

4. Maintenance of membership shop

- There is maintenance of membership arrangement when employees who are SEBA members as of the effective date of the agreement, or who thereafter become its members, must maintain their union membership as a condition for their continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. Its role is to protect the SEBA's current membership. By its express terms, it covers and renders continued union membership compulsory

for: (1) those who were already SEBA members at the time the CBA was signed; and (2) the newly-hired employees who will become regular during the lifetime of the CBA.

- This form of union security clause is considered the mildest because it does not require non-members of the SEBA to join the latter but simply stipulates that those who are its members at the time of the execution of the CBA and those who may, after its execution, on their own, voluntarily join it, should maintain their membership in good standing therein for the whole duration of the CBA as a condition for their continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. Simply put, employees who are not members of the SEBA at the time of the execution of the CBA are not, in any manner, required to become its members. Employees hired after the execution of the CBA are likewise not duty-bound to join it. They may or may not join it

5. Exclusive bargaining shop

- The union which negotiated and concluded the CBA with management is considered and recognized as the SEBA of all the employees covered by the bargaining unit, irrespective of whether they be members or not of the SEBA.

6. Bargaining for members only

- Under this arrangement, the union which negotiated and concluded the CBA with management is recognized as the SEBA only for its own members.^{1*}This kind of union security is not allowed in our jurisdiction since the SEBA is required to represent not only its members but all the employees covered by the collective bargaining unit (CBU) where such SEBA operates and which it represents.

7. Agency/treasury shop

- Under this scheme, there is no requirement for non-members of the SEBA to become its members. However, it is required that such non-SEBA members should pay to the SEBA an agency fee as a condition for their continued employment. The third sentence of Article 259(e) [248(c)] of the Labor Code validates this arrangement

F. EXCEPTIONS TO UNION SECURITY CLAUSES

Article 259 259. [248] Unfair Labor Practices of Employers.

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, That the individual authorization required under Article 242, paragraph (o) of this Code 204 shall not apply to the non-members of the recognized collective bargaining agent;

General Rule: Union Security Clauses are valid. Employers can require the employees to join a union.

Exceptions:

1. RELIGIOUS OBJECTORS

Religious Exemption

Victoriano v. Elizalde Rope Workers' Union

Facts: Petitioner, a member of the religious sect "Iglesia ni Cristo," had been employed by the Elizalde Rope Factory, Inc. since 1958. He was also a member of the Elizalde Rope Workers' Union which had a collective bargaining agreement (CBA) containing a closed shop provision requiring union membership as a condition of employment for all permanent employees of Elizalde Rope Factory, Inc.

Prior to its amendment, Section 4(a)(4) of Republic Act No. 875 (Industrial Peace Act) was later amended by the enactment of Republic Act No. 3350, which reads: ... ***"but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization"***.

Being a member of a religious sect that prohibits the affiliation of its members with any labor organization, petitioner presented his resignation to the Union. The Union then wrote a letter to the company asking the company to separate the petitioner from the service in view of the fact that he was resigning from the Union. The company in turn notified the petitioner that unless he could achieve a satisfactory arrangement with the Union, it would be constrained to dismiss him from

service.

Issue: Whether or not Republic Act No. 3350 violate the constitutional provision on freedom of association.

Ruling: Republic Act No. 3350 does not violate the constitutional provision on freedom of association.

Republic Act No. 3350 merely excludes ipso jure from the application and coverage of the closed shop agreement the employees belonging to any religious sects which prohibit affiliation of their members with any labor organization. What the exception provides, therefore, is that members of said religious sects cannot be compelled or coerced to join labor unions even when said unions have closed shop agreements with the employers; that in spite of any closed shop agreement, members of said religious sects cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union.

It is clear, therefore, that the assailed Act, far from infringing the constitutional provision on freedom of association, upholds and reinforces it. **It does not prohibit the members of said religious sects from affiliating with labor unions. It still leaves to said members the liberty and the power to affiliate, or not to affiliate, with labor unions.** If, notwithstanding their religious beliefs, the members of said religious sects prefer to sign up with the labor union, they can do so. If in deference and fealty to their religious faith, they refuse to sign up, they can do so; the law does not coerce them to join; neither does the law prohibit them from joining; and neither may the employer or labor union compel them to join. Republic Act No. 3350, therefore, does not violate the constitutional provision on freedom of association.

The Act classifies employees and workers, as to the effect and coverage of union shop security agreements, into those who by reason of their religious beliefs and convictions cannot sign up with a labor union, and those whose religion does not prohibit membership in labor unions. The classification rests on real or substantial, not merely imaginary or whimsical, distinctions. There is such real distinction in the beliefs, feelings and sentiments of employees. Employees do not believe in the same religious faith and different religions differ in their dogmas and canons. Religious beliefs, manifestations and practices, though they are found in all places, and in all times, take so many varied forms as to be almost beyond imagination. There are many views that comprise the broad spectrum of religious beliefs among the people. There are diverse manners in which beliefs, equally paramount in the lives of their possessors, may be articulated. Today the country is far more heterogenous in religion than before, differences in

religion do exist, and these differences are important and should not be ignored.

Even from the psychological point of view, the classification is based on real and important differences. Religious beliefs are not mere beliefs, mere ideas existing only in the mind, for they carry with them practical consequences and are the motives of certain rules of human conduct and the justification of certain acts. Religious sentiment makes a man view things and events in their relation to his God. It gives to human life its distinctive-character, its tone, its happiness, or unhappiness, its enjoyment or irksomeness. Usually, a strong and passionate desire is involved in a religious belief. To certain persons, no single factor of their experience is more important to them than their religion, or their not having any religion. Because of differences in religious belief and sentiments, a very poor person may consider himself better than the rich, and the man who even lacks the necessities of life may be more cheerful than the one who has all possible luxuries. Due to their religious beliefs people, like the martyrs, became resigned to the inevitable and accepted cheerfully even the most painful and excruciating pains. Because of differences in religious beliefs, the world has witnessed turmoil, civil strife, persecution, hatred, bloodshed and war, generated to a large extent by members of sects who were intolerant of other religious beliefs. The classification, introduced by Republic Act No. 3350, therefore, rests on substantial distinctions.

The classification introduced by said Act is also germane to its purpose. The purpose of the law is precisely to avoid those who cannot, because of their religious belief, join labor unions, from being deprived of their right to work and from being dismissed from their work because of union shop security agreements.

Republic Act No. 3350, furthermore, is not limited in its application to conditions existing at the time of its enactment. The law does not provide that it is to be effective for a certain period of time only. It is intended to apply for all times as long as the conditions to which the law is applicable exist. As long as there are closed shop agreements between an employer and a labor union, and there are employees who are prohibited by their religion from affiliating with labor unions, their exemption from the coverage of said agreements continues.

Finally, the Act applies equally to all members of said religious sects; this is evident from its provision. The fact that the law grants a privilege to members of said religious sects cannot by itself render the Act unconstitutional, for as We have adverted to, the Act only restores to them their freedom of association which closed shop agreements have taken away, and puts them in the same plane as the other workers who are not prohibited by their religion from joining labor unions. The circumstance, that the other employees, because they are differently situated, are not granted the same privilege, does not render the law unconstitutional, for every classification allowed by the Constitution by its nature involves inequality.

The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal

protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid. A classification otherwise reasonable does not offend the constitution simply because in practice it results in some inequality.

Conscientious religious objector

- He is exempted ipso jure without need of any positive act on his part. A conscientious religious objector need not perform a positive act or exercise the right of resigning from the labor union — he is exempted from the coverage of any closed shop agreement that a labor union may have entered into. |||

In this case, the SC talked about freedom of religion and the SC held that there is a religious objector, a person who does not want to join a union based on religious grounds, who ought to be respected and the union security clause should not be strictly applied to them. Obviously, if they want to join a union, they can but they cannot be compelled to join a union against her religion.

Equal protection

SC held that there is a valid ground to discriminate this case before different groups because a religious right or religious belief is not a simple belief, it is complex and can deeply impact a person psychologically, and so there is a valid ground to distinguish persons of different religion. This is especially in the case of unionism where applying a union security clause may force a person to put their job before their faith or religion doctrine. While union security clauses are definitely valid, a contentious religious objector is considered an exception to their general rule.

Anucension v. National Labor Union

Facts: United Luisita Workers' Union (union) and Tarlac Development Corporation (Hacienda) entered into a collective bargaining agreement which embodies union security provisions.

In a letter to the union president, a group of more than 150 person representing themselves to be members of the United Luisita Union, and followers of a religious sect known as the Iglesia ni Cristo, made manifest their 'irrevocable resignation' from the United Luisita Workers' Union.

The evidence discloses that the followers of Iglesia ni Cristo were prompted to resign from the union because of the circular from the Iglesia ni Cristo,

enjoining all members of the sect not to join any outside association or organization of whatever kind or nature or that if they are already members of such association or organization that they disaffiliate themselves, otherwise they would be expelled from the church.

The Union demanded from the Hacienda the immediate lay-off of employment of those mentioned laborers as provided for in the CBA.

Issues: WON the Iglesia ni Cristo workers who resigned from the union can be summarily dismissed from their employment in the Hacienda.

Ruling: No, Iglesia ni Cristo workers who resigned from the union cannot be summarily dismissed from their employment in the Hacienda because members of religious sects cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union.

The right of an employee to refrain from joining labor organizations is curtailed and withdrawn if the labor union and the employer have agreed on a closed shop, by virtue of the collective bargaining unit, and the employer have agreed on a closed shop, in such case, the employees must continue to be members of the union for the duration of the contract in order to keep their jobs.

However, there is an exception, as provided in the Industrial Peace Act, **closed shop agreement does not cover members of any religious sects which prohibit affiliation of their members with any labor organization.** What the exception provides, therefore, is that members of said religious sects cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union.

To compel persons to join and remain members of a union to keep their jobs in violation of their religious scruples, would hurt, rather than help, labor unions, **Congress has seen it fit to exempt religious objectors lest their resistance spread to other workers, for religious objections have contagious potentialities more than political and philosophic objections.**

The employees resigned from the union but not from their jobs. The SC held that contentious religious objectors cannot be compelled to join a union even through a union security clause. A contract cannot prevail over the Constitutional right of Freedom of

Expression and Religion. Being constitutional rights, they must prevail over a contract between employers and employees, even if that contract is a CBA.

2. MEMBERS OF MINORITY UNIONS

Kapisanan nga mga Manggagawa ng Alak (NAFLU) v. Hamilton Distillery, Co.

Facts: Petitioner NAFLU and respondent Hamilton Workers' Union were the registered labor unions of respondent company. Hamilton Workers' Union entered into a CBA with the respondent company. The company then gave the non-members of the union 30 days to join the union or else they would be dismissed.

NAFLU's president and founder was urged to dissolve the union or else he would be dismissed. Since he did not concede, he was refused to admit to work and some of his members resigned and joined the HWU.

NAFLU Contends that they were illegally dismissed due to unfair labor practice. However Respondent argues that there is a "closed shop" clause in the collective bargaining agreement between the Company and the Workers' Union

Issue: Whether or not the closed shop agreement is applicable to employees already in service who are members of another union

Ruling: No, in the absence of a manifest intent to the contrary, "closed shop" provisions in a collective bargaining agreement "apply only to persons to be hired or to employees who are *not* yet members of any labor organization" and that said provisions of the agreement are "not applicable to those *already* in the service at the time of its execution"

The language of the above quoted "closed shop" clause is not such as to bar necessarily the limitation of its application to new employees or laborers, or, at least, to those who were not as yet affiliated to any labor organization.

In this case, the SC held that a union security clause cannot apply to members of the minority union (like registered labor organizations who did not win the certification elections, other labor organizations in the bargaining unit)

Why? A union security clause is originally intended to apply to employees where there are new hires or those who are not member of unions. Second, the rationale behind exempting minority members is because it would contradict the purpose behind union security clause. The purpose of a union security clause is to encourage employees to join unions, to promote unions. This cannot be tantamount to strictly enforcing union security clauses against minority members.

This will defeat the purpose because you are trying to get the employees to organize and if you are trying to enforce a union security clause such that minority members will be forced to join a union, you are not enforcing the right to self-organization; you are forcing the employees to just join a single organization. You are not encouraging the employees to freely and voluntarily choose and join a union, you are forcing them to a single union. You are shooting down the diversity of organizations in your bargaining unit.

Minority employees cannot be compelled to join the majority union. Eventually, during the freedom period, the majority union will lose its status as exclusive bargaining agent, so eventually the minority union could have the potential to become the majority union as well. This is also to keep the options of the employees open because maybe the majority union will actually lose its majority status from the next certification elections and the minority union might actually get favor from the majority of the employees and will be the next majority union. This will also promote diversity of the choices of the employees as to who their exclusive bargaining agent will be.

Findlay Millar Timber Co. v. PLASLU

Doctrine:

The closed-shop agreement should apply only to persons **to be hired** or to **employees who are not yet members of any labor organization**.

It is inapplicable to those already in the services who are members of another union. To hold otherwise, i.e., that the employees in a company who are members of a minority union may be compelled to disaffiliate from their union and join the majority or contracting union, would render nugatory the right of all employees to self-organization and to form, join or assist a labor organization of their own choosing.

3. CONFIDENTIAL EMPLOYEES

Exposure to internal business operations does not necessarily mean they are a confidential employee excluded from the bargaining unit.

Coca-Cola Bottlers Philippines, Inc. v. Ilocos Professional and Technical Employees Union.

Facts: Ilocos Professional and Technical Employees Union (IPTEU) filed a verified Petition for certification election seeking to represent a bargaining unit consisting of approximately 22 rank-and-file professional and technical employees of Coca-Cola Bottlers Philippines, Inc. (CCBPI) Ilocos Norte Plant. CCBPI prayed for the denial and dismissal of the petition, arguing that 8 Financial Analysts, 5 Quality Assurance Specialists, Maintenance Manager Secretary, Trade Promotions and Merchandising Assistant (TPMA), Trade Asset Controller and Maintenance Coordinator (TACMC), Sales Information Analyst (SIA), Sales Logistics Assistant, Product Supply Coordinator, Buyer, Inventory Planner, and Inventory Analyst are confidential employees; hence, ineligible for inclusion as members of IPTEU.

Issue: Whether or not the 16 voters sought to be excluded from the appropriate bargaining unit are confidential employees? (NO)

Ruling: The employees encounter and handle financial as well as physical production data and other information which are considered vital and important from the business operations' standpoint. Nevertheless, it was opined that such information is not the kind of information that is relevant to collective bargaining negotiations and settlement of grievances as would classify them as confidential employees. An employee must assist or act in a confidential capacity and obtain confidential information relating to labor relations policies. Exposure to internal business operations of the company is not *per se* a ground for the exclusion in the bargaining unit.

Q: What are the elements of confidential employees?
A: Confidential employees are those who:

1. **assist or act in a confidential capacity**
2. **to persons who formulate, determine, and effectuate management policies in the field of labor relations.**

The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee — that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed

responsibilities relating to labor relations.

Q: What was the basis for Coca-Cola in saying that the employees in this case were confidential employees?

A: Because the employees in this case handled trade secrets and financial information.

Q: Confidential information must be connected to labor relations. How did the SC rule in this case?

A: The employees encounter and handle financial as well as physical production data and other information which are considered vital and important from the business operations' standpoint, but such information is not the kind of information that is relevant to collective bargaining negotiations and settlement of grievances as would classify them as confidential employees.

TN: the confidential information must relate to labor relations.

Example: There are different kinds of confidential information that the employee might encounter. If you are in a school, information pertaining to students.

In this case, it was trade secrets or confidential information related to business operations – these are not information related to labor relations. Even if they are handling confidential information, it does not necessarily mean that they are confidential employees at least confidential employees who are excluded from labor organizations and because they are excluded from labor organizations, this means that the union security clause cannot apply to them because they are excluded from their right to self-organize.

4. EMPLOYEES EXPRESSLY EXCLUDED BY CBA STIPULATION

According to Azucena, employees who are excluded by virtue of a CBA stipulation. Azucena cited American books or cases but as of now, there is no jurisprudence highlighting this kind of exception but for purposes of discussion, we can include this exception wherein a CBA stipulation excludes certain employees from the union security clauses. Since this is a contract, it might not be invalidated even if it excludes certain groups of employees from the union security clause.

G. OTHER EFFECTS OF UNION SECURITY AGREEMENTS

1. Who May Invoke

- Union Only

Only the union and not the federation may invoke the union security clause.

Ergonomic Systems Philippines, Inc. v. Enaje

Doctrine: Even assuming that the union officers were disloyal to the Federation and committed acts inimical to its interest, such circumstance did not give the Federation the prerogative to demand the union officers' dismissal pursuant to the union security clause which, in the first place, only the union may rightfully invoke. Certainly, it does not give the Federation the privilege to act independently of the local union. At most, what the Federation could do is to refuse to recognize the local union as its affiliate and revoke the charter certificate it issued to the latter.

In fact, even if the local union itself disaffiliated from the Federation, the latter still has no right to demand the dismissal from employment of the union officers and members because concomitant to the union's prerogative to affiliate with a federation is its right to disaffiliate therefrom

2. Merger Of Employer Corporations

Merger vis-a-vis exemption of "absorbed" employees from union shop clause in CBA.

Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank

Doctrine: There are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a merger, for purposes of applying the Union Shop Clause.

Both employees were hired/employed only after the CBA was signed. At the time they are being required to join the Union, they are both already regular rank and file employees of BPI.

They belong to the same bargaining unit being represented by the Union. They both enjoy benefits that the Union was able to secure for them under the CBA. When they both entered the employ of BPI, the CBA and the Union Shop Clause therein were already in effect and neither of them had the opportunity to express their preference for unionism or not.

The effect or consequence of BPI's so-called "absorption" of former FEBTC employees should be limited to what they actually agreed to, i.e., recognition of the FEBTC employees' years of service, salary rate and other benefits

with their previous employer.

The effect of BPI's absorption of former FEBTC employees should not be stretched so far as to exempt former FEBTC employees from the existing CBA terms, company policies and rules which apply to employees similarly situated. If the Union Shop Clause is valid as to other new regular BPI employees, there is no reason why the same clause would be a violation of the "absorbed" employees' freedom of association.

3. Disaffiliation

Disaffiliation

Malayang Samahan ng mga Maggagawa sa M Greenfield (MSMG-WP) v. Ramos

Doctrine: Disaffiliation of the local union from the federation to which it is affiliated is not an act of disloyalty because there is nothing in ULGWP's constitution which specifically prohibits disaffiliation or declaration of autonomy. A local union which has affiliated itself with a federation is free to sever such affiliation anytime and such disaffiliation cannot be considered disloyalty. **In the absence of specific provisions in the federation's constitution prohibiting disaffiliation or the declaration of autonomy of a local union, a local may dissociate with its parent union.**

Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.

Doctrine: The union security clause was limited by the provision in the Unions' Constitution and By-Laws, which states: *"That the Liberty Cotton Mills Workers Union-PAFLU shall be affiliated with the PAFLU, and shall remain an affiliate as long as ten (10) or more of its members evidence their desire to continue the said local unions affiliation."*

Record shows that only 4 out of its members remained for 32 out of the 36 members of the Union signed the resolution of disaffiliation. The disaffiliation was, therefore, valid under the local's Constitution and By-Laws which, taken together with the Collective Bargaining Agreement, is controlling. The Court of Industrial Relations likewise held in its decision that the act of disaffiliation did not have any effect as the workers retracted from such act.

Disaffiliation by a minority vote

Villar v. Inciong

Doctrine: Petitioners numbering 10, were among the 96 who signed the "Sama-Samang Kapasiyahan" whereas there are 234 union members in the Amigo Employees Union-PAFLU. Hence, petitioners constituted a small minority for which reason they could not have successfully disaffiliated the local union from PAFLU. Since only 96 wanted disaffiliation, it can be inferred that the majority wanted the union to

remain an affiliate of PAFLU and this is not denied or disputed by petitioners. The action of the majority must, therefore, prevail over that of the minority members.

H. NEGOTIATIONS

1. Mandatory Proposals

Caltex Refinery Employees Association v Brillantes

Doctrine: Mandatory subjects of CBA are those that the parties are compulsorily required to bargain if either party has made a proposal thereon. It bears emphasis however that despite their being mandatory, the parties need not arrive at an agreement thereon; what is simply required is that they should bargain in good faith on the proposals although a deadlock may ultimately result from them and if a deadlock remains unsolved the parties may resort to such concerted activities such as strike or lockout. Considered mandatory or proposals concerning the terms and conditions of employment.

2. Voluntary Benefits

Union of Filipro Employees v. Nestle Phil., Inc.

Doctrine: In thinking to exclude the issue of Retirement Plan from the CBA negotiations, Nestlé, cannot be faulted for considering the same benefit as unilaterally granted, considering that eight out of nine bargaining units have allegedly agreed to treat the Retirement Plan as a unilaterally granted benefit. This is not a case where the employer exhibited an indifferent attitude towards collective bargaining, because the negotiations were not the unilateral activity of the bargaining representative. Nestlé's desire to settle the dispute and proceed with the negotiation being evident in its cry for compulsory arbitration is proof enough of its exertion of reasonable effort at good-faith bargaining. In the case at bar, Nestle never refused to bargain collectively with UFE-DFA-KMU. The corporation simply wanted to exclude the Retirement Plan from the issues to be taken up during CBA negotiations, on the postulation that such was in the nature of a unilaterally granted benefit.

3. Coverage Of Renegotiation

Dela Salle University v. Dela Salle University Employment Association

Doctrine: The express exclusion of the computer operators and discipline officers from the bargaining unit of rank-and-file employees in the 1986 collective bargaining agreement does not bar any re-negotiation for the future

inclusion of the said employees in the bargaining unit. During the freedom period, the parties may not only renew the existing collective bargaining agreement but may also propose and discuss modifications or amendments thereto.

I. RATIFICATION AND PUBLICATION REQUIREMENTS

ART. 237. [231] Registry of Unions and File of Collective Bargaining Agreements. – The Bureau shall keep a registry of legitimate labor organizations.

The Bureau shall also maintain a file of all collective bargaining agreements and other related agreements and records of settlement of labor disputes and copies of orders and decisions of voluntary arbitrators or panel of voluntary arbitrators. The file shall be open and accessible to interested parties under conditions prescribed by the Secretary of Labor and Employment, provided that no specific information submitted in confidence shall be disclosed unless authorized by the Secretary, or when it is at issue in any judicial litigation, or when public interest or national security so requires.

Within thirty (30) days from the execution of a Collective Bargaining Agreement, the parties shall submit copies of the same directly to the Bureau or the Regional Offices of the Department of Labor and Employment for registration accompanied with verified proofs of its posting in two conspicuous places in the place of work and ratification by the majority of all the workers in the bargaining unit. The Bureau or Regional Offices shall act upon the application for registration of such Collective Bargaining Agreement within five (5) calendar days from receipt thereof. The Regional Offices shall furnish the Bureau with a copy of the Collective Bargaining Agreement within five (5) days from its submission.

The Bureau or Regional Office shall assess the employer for every Collective Bargaining Agreement a registration fee of not less than one thousand pesos (P1,000.00) or in any other amount as may be deemed appropriate and necessary by the Secretary of Labor and Employment for the effective and efficient administration of the Voluntary Arbitration Program. Any amount collected under this provision shall accrue to the Special Voluntary Arbitration Fund.

The Bureau shall also maintain a file, and shall undertake or assist in the publication of all final decisions, orders and awards of the Secretary of Labor and Employment, Regional Directors and the Commission.

Associated Trade Unions v. Trajanom

Doctrine: The application for CBA registration shall be accompanied by the original and 2 duplicate copies of the following documents which must be certified under oath by the representative(s) of the employer and labor union(s) concerned:

1. The collective bargaining agreement;

2. A statement that the collective bargaining agreement was posted in at least 2 conspicuous places in the establishment/s concerned for at least 5 days before its ratification
3. A statement that the CBA was ratified by the majority of the employees in the bargaining unit of the employer/s concerned.

No other document shall be required in the registration of CBAs.

Associated Trade Union v. Ferrer-Calleja

Doctrine: A collective bargaining agreement that was not posted in at least two (2) conspicuous places in the establishment at least five days before its ratification is deemed defective. The fact that there was an illegal strike does not justify the impossibility to comply with the posting requirement in so far as the realization of its purpose is concerned as there were no impartial members of the unit who could be apprised of the CBA's contents". In the first place, the posting of copies of the collective bargaining agreement is the responsibility of the employer which can easily comply with the requirement through a mere mechanical act. The fact that there were "no impartial members of the unit" is immaterial. The purpose of the requirement is precisely to inform the employees in the bargaining unit of the contents of said agreement so that they could intelligently decide whether to accept the same or not.

Another potent reason for annulling the disputed collective bargaining agreement is the finding of respondent director that 181 of the 281 workers who "ratified" the same now "strongly and vehemently deny and/or repudiate the alleged negotiation and ratification of the CBA". Although petitioner claims that only 7 of the repudiating group of workers belong to the total number who allegedly ratified the agreement, nevertheless such unsubstantiated contention weighed against the factual findings of the respondent director cannot negate the fact that the controverted contract will not promote industrial stability. Basic to the contract bar rule is the proposition that the delay of the right to select representatives can be justified only where stability is deemed paramount. Excepted from the contract bar rule are certain types of contracts which do not foster industrial stability, such as contracts where the identity of the representative is in doubt. Any stability derived from such contracts must be subordinated to the employees' freedom of choice because it does not establish the type of industrial peace contemplated by the law.

J. FIVE YEAR PERIOD OF CBA AND FREEDOM PERIOD

General Rule: Under the Labor Code, the CBA has a lifespan of 5 years

1. FOR REPRESENTATION ASPECT

Representation aspect refers to the election of the exclusive bargaining agent.

General Rule: A collective bargaining agreement, when it comes to the representation aspect, lasts for 5 years.

2. RENEGOTIATIONS FOR OTHER ASPECTS: THREE YEARS

Exception: A collective bargaining agreement can be renegotiated **within 3 years from the last CBA** if it pertains to other aspects such salaries, benefits, working conditions, etc.

Representation Aspect vs. All Other Provisions

San Miguel Corporation Employees Union - PTGWO v. Hon. Confesor

Facts: Petitioner-union San Miguel Corporation Employees Union — PTGWO entered into a CBA with private respondent San Miguel Corporation (SMC) to take effect upon the expiration of the previous CBA or on June 30, 1989. This CBA provided, among others, that it shall become effective and shall remain in force and effect until June 30, 1992.

Meanwhile, effective October 1, 1991, Magnolia and Feeds and Livestock Division were spun-off and became two separate and distinct corporations: Magnolia Corporation (Magnolia) and San Miguel Foods, Inc. (SMFI). Notwithstanding the spin-offs, the CBA remained in force and effect.

After June 30, 1992, the CBA was renegotiated in accordance with the terms of the CBA and Article 253-A of the Labor Code. Negotiations started sometime in July, 1992 with the two parties submitting their respective proposals and counterproposals.

During the negotiations, the petitioner-union insisted that the bargaining unit of SMC should still include the employees of the spun-off corporations: Magnolia and SMFI; and that the renegotiated terms of the CBA shall be effective only for the remaining period of two years or until June 30, 1994.

SMC, on the other hand, contended that the members/employees who had moved to Magnolia and SMFI, automatically ceased to be part of the bargaining unit at the SMC. Furthermore, the CBA should be effective for three years in accordance with Art. 253-A of the Labor Code.

Issue: Whether or not the duration of the renegotiated terms of the CBA is to be effective for three years.

Ruling: YES. In this case, the SC highlighted the two

aspects of a CBA:

(1) Representation Aspect - which is basically who the exclusive bargaining agent is or who is authorized to transact or negotiate on behalf of the employees. For that, the period is 5 years according to Article 253-A of the Labor Code. In other words, the majority status of the union can be questioned only after 5 years from the execution

(2) Economic and other aspects of the CBA - the period is 3 years. Hence, salaries, employee benefits, etc. have to be renegotiated 3 years after the execution of the CBA.

In the instant case, it is not difficult to determine the period of effectiveness for the non-representation provisions of the CBA. Taking it from the history of their CBAs, SMC intended to have the terms of the CBA effective for three (3) years reckoned from the expiration of the old or previous CBA which was on June 30, 1989.

This is a scenario where the employees can renegotiate the conditions of their work after three years, but they can only file for a petition for certification election questioning the majority status of the representative after 5 years.

Majority Status - 5 years

Other aspects of the CBA (e.g. working conditions, salaries) - 3 years

K. CONTRACT BAR RULE AND AUTOMATIC RENEWAL OF EXISTING CBA

ART. 264. [253] Duty to Bargain Collectively When There Exists a Collective Bargaining Agreement.

When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

Effect of lapse of freedom period and no petition was filed, renewal of which aspects of CBA

Picop Resources, Inc. v. Dequilla

Facts: Respondents had a collective bargaining agreement with the petitioner which would expire on May 22, 2000.

PICOP served a notice of termination due to acts of disloyalty to 31 of the 46 employees because they supported and signed a petition with the rival union, the Federation of Free Workers Union (FFW) before the 60-day "freedom period" and during the effectiveness of the CBA. Based on the CBA, the freedom period would start on March 20, 2000. Acts of disloyalty were construed to be a valid cause for termination under the terms and conditions of the CBA. Hence, this petition.

Issue: Whether an existing CBA can be given its full force and effect in all its terms and conditions including its union security clause, even beyond the 5-year period when no new CBA has yet been entered into?

Ruling: YES. The employer to continue to recognize the majority status of the incumbent bargaining agent even after the expiration of the freedom period, they could only do so when no petition for certification election was filed. The reason is, with a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative. The provision for status quo is conditioned on the fact that no certification election was filed during the freedom period.

Moreover, the last sentence of Article 253 which provides for automatic renewal pertains only to the economic provisions of the CBA, and does not include the representational aspect of the CBA. An existing CBA cannot constitute a bar to a filing of a petition for certification election. When there is a representational issue, the status quo provision in so far as the need to await the creation of a new agreement will not apply. If we apply it, there will always be an issue of disloyalty whenever the employees exercise their right to self-organization. The holding of a certification election is a statutory policy that should not be circumvented, or compromised.

We will emphasize anew that the power to dismiss is a normal prerogative of the employer. This, however, is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective

Bargaining Agreement. Considering that private respondents were illegally dismissed, basic law provides that they shall be entitled to the benefit of full backwages and reinstatement unless the latter is no longer viable, in which case, a grant of separation pay shall be awarded equivalent to one month salary for every year of service.

First of all, let's revisit: the freedom period is the last 60 days of the CBA with which the certification election can be filed. The contract bar rule refers to the freedom period. It talks about how no petition for certification election should be filed unless it is within the freedom period.

If there is no petition for certification election filed within the freedom period, the employer will continue to recognize the majority status of the incumbent exclusive bargaining agent because no one questioned the representative.

What if they filed for a petition for a certification election?

A: It means that someone or group of people is questioning the labor organization that is representing them. They are claiming that they are not anymore the majority representation of the majority. By virtue of that, the employer is no longer required to recognize the majority status.

The holdover principle means that the parties are obliged to maintain the status quo of the situation between the parties. If there was no certification election filed during the freedom period.

What if a new exclusive bargaining agent is chosen but there is no new CBA?

A: Maintain the status quo. Continue applying the old CBA until a new CBA is entered into. But this is only with regard to the other aspects or the economic aspects

To illustrate, a certification election was filed within the freedom period. Hence, the representation aspect is about to change. The employer then cannot maintain the status quo of the representation aspect because there is a possibility that the exclusive bargaining agent will change. But the employer is obliged to maintain the status quo insofar as the other aspects of the CBA are concerned such as the salaries, benefits, and working conditions. Until a new CBA is entered into, the employer is required to maintain the CBA as it is. Even with a new exclusive bargaining agent, there's a possibility that the new agent might not want a new CBA because maybe the employees are

already content with the old CBA. So there's a possibility that while there is a new agent, there's a possibility that the other aspects of the CBA might not change at all.

Again, the CBA has 2 aspects: Representation and everything else. Representation will always be affected by the freedom period, the contract bar rule, the filing of a certification election, etc. And because of that, an employer is not obligated to maintain the status quo especially during the freedom period because the representation aspect may always change with the filing of the petition. But with regard to the other aspects, the economic and non-economic aspects that benefit the employee, the employer is obligated to maintain the status quo until a new CBA is entered into.

But remember, always keep in mind that representation is different from other aspects. So when you're thinking about CBA, about status quo, about Freedom Period, about Petition for Certification Election, always remember that there are two aspects of the CBA so the rules do not always apply the same to both aspects. You have to keep in mind when you are looking at a problem, try to figure out first: "what aspect is being affected here?" "Is the representation the issue or is it the other aspects - the economic or non-economic aspects?" From there, you go from there.

So if its representation, is it the Freedom Period? Can a Petition for Certification Election now be filed? Was there a new representative chosen? If its economic, non-economic, or other aspects, has it now been three years? Is there a new agent? Is there a new CBA? So when you encounter a problem about CBA, ask yourself first which aspect does it involve.

There's also a possibility that the representative is the same. Let's say the Freedom Period came and went, no one filed a Petition for Certification Election. So the old agent is still the new agent because no one questioned the majority status. But there's still a possibility that a new CBA will be entered into. Maybe the employees want better benefits so it will be renegotiated. So again you can see the difference between representation status and the other aspects. So remember that just because nothing changed in one aspect doesn't mean that the other aspect won't change too. Even if there's a new representative, there's a chance that the CBA may continue as is. Maybe they don't want to change it. It may also be that the old representative will continue to represent but they may want to change the CBA. Representation aspect and other aspects do not necessarily go together. They are different things and may change.

One may change without the other or maybe both will change at the same time or maybe neither of them will change at all. So do not treat them as the same thing because they are really different. Let's go to the case of Oriental Tin Can Labor Union v. Secretary of Labor.

Ratification of CBA vs. Filing of Petition for Certification Election

Oriental Tin Can Labor Union v. Secretary of Labor

Facts: The company entered into a CBA with Oriental Tin Can Labor Union (OTCLU) on March 3, 1994 as the existing CBA was due to expire on April 15, 1994.

Four days later, 248 of the company's rank-and-file employees authorized the Federation of Free Workers (FFW) to file a petition for certification election. Three days later, however, this petition was repudiated via a written waiver by 115 of the signatories who, along with other employees totalling 897, ratified the CBA on the same date.

Oriental Tin Can Workers Union — Federation of Free Workers (OTCWU-FFW) filed a petition for certification election.

The petition for certification election was opposed by the OTCLU. For its part, the company filed a comment alleging that the new CBA was ratified by 897 out of the 1,020 rank-and-file employees within the bargaining unit. The OTCLU argued that the new CBA was a bar to a certification election.

Issue: Whether the ratification of a new CBA on the timely filing of the petition for certification election does nullifies the petition?

Ruling: NO. **Ratification of a new CBA on the timely filing of the petition for certification election does not nullify the petition because the filing of a petition for certification election during the 60-day freedom period gives rise to a representation case that must be resolved even though a new CBA has been entered into within that period.**

This is clearly provided for in the aforequoted Section 4, Rule V, Book V of the Omnibus Rules Implementing the Labor Code. The reason behind this rule is obvious. **A petition for certification election is not necessary where the employees are one in their choice of a representative in the bargaining process.** Moreover, said provision of the Omnibus Rules manifests the intent of the legislative authority to allow, if not encourage, the contending unions in a

bargaining unit to hold a certification election during the freedom period.

Hence, the Court held in the case of Warren Manufacturing Workers Union (WMWU) v. Bureau of Labor Relations, that **the agreement prematurely signed by the union and the company during the freedom period does not affect the petition for certification election filed by another union.**

The benefits that may be derived from the implementation of the CBA prematurely entered into between the OTCLU and the company shall, therefore, be in full force and effect until the appropriate bargaining representative is chosen and negotiations for a new collective bargaining agreement is thereafter concluded. **A struggle between contending labor unions must not jeopardize the implementation of a CBA that is advantageous to employees.**

In this case, you have a CBA that was newly-ratified and then shortly after there was a filing of a Petition for Certification Election during the Freedom Period. The two events happened very closely together.

What about the provisions of the new CBA, were they ever implemented or was the CBA itself struck down (the second CBA)? Was the new CBA that they entered into during the Freedom Period ever implemented?

A: In this case, the Supreme Court held that the new CBA, the one that was apparently rushed into during the Freedom Period, was implemented until a new CBA could be entered into between the new bargaining representative. So you see the difference between the representation aspect and the other aspects of the CBA.

During the Freedom Period, the company entered into a new CBA with the existing representative. However, a Petition for Certification Election was also filed during the Freedom Period. So how would you reconcile that? New CBA and a Petition for Certification Election.

A: In this case, it is an example that the two aspects do not necessarily contradict each other. You can see in this case that the Petition for Certification Election was allowed to be filed, however, the new CBA was also recognized. How do you harmonize this? Basically the new CBA and the second CBA was implemented up until a new CBA could be entered into with the new representative chosen during the certification election.

It's similar to the status quo thing we talked about earlier. Until a new CBA is entered into with a new representative, the existing CBA will be respected by the parties even if the new CBA was rushed towards the end of the life of the old CBA. You can now see how the representation aspect and the other aspects of the CBA do not necessarily have to go hand in hand. In this case, rushed CBA was still implemented. But it was implemented until a new CBA will be entered into with the new representative.

Is it correct to say that a rushed CBA is a temporary CBA? There was also a case that there was a CBA that was temporary status pending the execution of a new CBA with the new exclusive bargaining agent that was certified in the certification election.

A: I would say that it would depend on the intent of the parties if they really intend it to be temporary only. But again there's also a possibility that they may not enter into a new CBA at all. In this case there's a new representative and the Supreme Court if kinda implying that maybe they'll enter into a new CBA. So the rushed CBA is sort of made as a stand-in until there will be a new CBA that will be entered into. Similar to that kind of situation.

But there is always a possibility that maybe negotiations will fall through, and maybe they don't want to enter into a new CBA because they might have realized that the temporary CBA actually suits their needs. All that they have to do is NOT ENTER into a new CBA at all and because the parties are obligation to maintain the status quo until a new CBA is entered into, there's a possibility that the rush/temporary CBA will just live on until they change their minds or there's a new petition for certification election.

For purposes of discussion, remember that the representation aspect and the other aspects of the CBA are very different things. If ever you encounter a problem, just take it one step at a time. If the representation aspect changed, is there a new CBA or not? If the representation aspect did not change, is there a new CBA or not? Just ask yourself what is happening. Is there a new CBA? Is there a new representative. Just go from there.

L. HOLD-OVER PRINCIPLE

ART. 265. [253-A] Terms of a collective bargaining agreement.

Any Collective Bargaining Agreement that the parties

may enter into, shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the collective bargaining agreement, the parties may exercise their rights under this Code. (As amended by Section 21, Republic Act No. 6715, March 21, 1989)

Extension of CBA vs. Extension of exclusive bargaining status

FVC Labor Union - Philippine Transport and General Works Organization v. Sama-Samang Nagkakaisang Manggagawa sa FVC

Facts: Petitioner FVCLU-PTGWO and FVC Philippines, Incorporated (company) signed a five-year collective bargaining agreement. Pursuant to the CBA, at the end of the 3rd year of the term, the petitioner and the company will enter into the renegotiation of the CBA. Come 3rd year, they modified, among other provisions, the CBA's duration. They decided to extend the term for four (4) months. Nine days before the date of the expiration of the ORIGINALLY-AGREED five-year CBA (or four [4] months and nine [9] days away from the expiration of the amended CBA period), the respondent Sama-Samang Nagkakaisang Manggagawa sa FVC-Solidarity of Independent and General Labor Organizations (SANAMA-SIGLO) filed before the DOLE a petition for certification election for the same rank-and-file unit covered by the FVCLU-PTGWO CBA. FVCLU-PTGWO moved to dismiss the petition on the ground that the certification election petition was filed outside the freedom period or outside of the sixty (60) days before the expiration of the CBA.

Issue: Whether or not SANAMA-SIGLO could properly file a petition for certification election sixty

days prior to the expiration of the ORIGINALLY-AGREED five-year CBA.

Ruling: Yes. The Court ruled that "while the parties may agree to extend the CBA's original five-year term together with all other CBA provisions, any such amendment or term in excess of five years will not carry with it a change in the union's exclusive collective bargaining status. By express provision of the above-quoted Article 253-A, the exclusive bargaining status cannot go beyond five years and the representation status is a legal matter not for the workplace parties to agree upon. In other words, despite an agreement for a CBA with a life of more than five years, either as an original provision or by amendment, the bargaining union's exclusive bargaining status is effective only for five years and can be challenged within sixty (60) days prior to the expiration of the CBA's first five years."

In the present case, the CBA was originally signed for a period of five years, with a provision for the renegotiation of the CBA's other provisions at the end of the 3rd year of the five-year CBA term. Thus, prior to the expiration of the CBA, the parties sat down for renegotiation but instead of confining themselves to the economic and non-economic CBA provisions, also extended the life of the CBA for another four months. As discussed above, this negotiated extension of the CBA term has no legal effect on the FVCLU-PTGWO's exclusive bargaining representation status which remained effective only for five years ending on the original expiry date.

Thus, sixty days prior to the expiration of the ORIGINALLY-AGREED five (5)-year CBA, SANAMA-SIGLO could properly file a petition for certification election.

Here, they decided to extend the life of the CBA to 5 years and four months.

The Court held that this extension really only applied to other aspects of the CBA: the terms and conditions of employment. However, it did not affect the five (5)-year period on the representational aspect because the representation aspect is actually provided for by law under Art. 253-A and it cannot be subject to the stipulation by the parties. So you see again the difference between the representational aspect and other aspects of the CBA. Here, the SC said that it's okay to extend the life of the CBA but only with respect to the other aspects of the CBA. You cannot extend the representational aspect of the CBA

because the law is clear that the representational aspect is only for a period of five (5) years.

Here the Supreme held that since you cannot extend the representation aspect, there really should have been a petition for certification election that should have been filed within the freedom period of the original five years rather than the last 60 days of the extended period of the CBA.

Duty to bargain collectively, and maintaining status quo

General Milling Corporation v. Hon. Court of Appeals

Facts: GMC had received collective and individual letters from workers who stated that they had withdrawn from their union membership, on grounds of religious affiliation and personal differences. Believing that the union no longer had standing to negotiate a CBA, GMC did not send any counter-proposal. On December 16, 1991, GMC wrote a letter to the union's officers, stating that it felt there was *no basis to negotiate with a union which no longer existed*, but that management was nonetheless always willing to dialogue with them on matters of common concern and was open to suggestions on how the company may improve its operations.

Issue: Whether or not the general rule mandating the parties to keep the status quo during the existence of a CBA should apply.

Ruling: NO. The general rule mandating the parties to keep the status quo during the existence of a CBA should not apply.

Parties must keep the status quo while they are still in the process of working out their respective proposal and counter proposal. The general rule is that when a CBA already exists, its provision shall continue to govern the relationship between the parties, until a new one is agreed upon. The rule necessarily presupposes that all other things are equal. That is, that **neither party is guilty of bad faith**. However, when one of the parties abuses this grace period by purposely delaying the bargaining process, a departure from the general rule is warranted.

In this case, it would be unfair to the union and its members if the terms and conditions contained in the old CBA would continue to be imposed on GMC's

employees for the remaining two (2) years of the CBA's duration.

The Court is not inclined to gratify GMC with an extended term of the old CBA after it resorted to delaying tactics to prevent negotiations. Since it was GMC which violated the duty to bargain collectively, based on the cases of *Kiok Loy and Divine Word University of Tacloban*, it had lost its statutory right to negotiate or renegotiate the terms and conditions of the draft CBA proposed by the union.

Under ordinary circumstances, **it is not obligatory upon either side of a labor controversy to precipitately accept or agree to the proposals of the other. But an erring party should not be allowed to resort with impunity to schemes feigning negotiations by going through empty gestures.**

Thus, by imposing on GMC the provisions of the draft CBA proposed by the union, in our view, the interests of equity and fair play were properly served and both parties regained equal footing, which was lost when GMC thwarted the negotiations for new economic terms of the CBA.

In this case, GMC failed to send counter-proposal because members have withdrawn from the union, employees/members sent the employers letters stating that they were withdrawing from the union because of religious reasons or personal differences.

If you were the employer, and you receive those letters from the employees stating that they will withdraw from the union and you have a reasonable ground to believe that they already don't have the majority status. What would you have done as the employer to avoid this allegation of failing to bargain in good faith?

To determine which union has the majority status, a Certification election must be conducted. Remember, an employer can file for a certification election but it can only be filed at a certain time, i.e. freedom period, **so if you are the employer, the best move would be to wait for the freedom period and question the majority status of the union because in this case, the employer was declared in bad faith, although there is a possibility that they are just not aware but in this case, it is not about the intention of the employer but rather it is about the impact of their action on the union.** So, even assuming that the employer really meant well, the fact remains that they failed to bargain collectively with the union so it's not

about what your intentions are but how it impacts the other party.

Q: What about the issue on CBA? Are the provisions of the CBA still applicable during the events that took place?

In this case, the SC said that the status quo should not be maintained because it would be unjust on the part of the union who waited for 2 years because of the delaying tactics of the employer.

Q: What did the SC apply instead of the old CBA?

The SC applied the draft CBA. The economic provisions of the CBA and the other provisions not related to the representation aspect, pending the negotiations, the old CBA will continue to subsist even if the negotiations will last long or maybe the parties will never make a new CBA, so the old CBA will continue to govern, however, in this case, it was held that the company was in bad faith, and the employed delaying tactics to the point that the union waited over 2 years for feedback or action from the employer.

In this case, they already have a draft CBA/proposal, the SC held that it would be unfair to apply the old CBA because in this case, the company was in bad faith and the union was force to wait, so it was an act of justice and equity that they apply the provisions of the draft CBA not only to vindicate the union but also as a way to punish the company for its delaying tactics because if the company had not delayed, they could have entered into proper negotiations with a proper CBA but in this case there was none, so the employees should not have been made to suffer because of the dilatory tactics of the union, so this one exception to the hold-over principle.

Q: Why is the hold-over principle so important?

Without a CBA, you have your default/standard salary, leave, working environment, etc. When you enter into a CBA, it presupposes better working conditions.

If for example, negotiations took a while, it would be unfair to revert back to pre-CBA conditions like let's say you're enjoying higher salary or a better working environment under a CBA, it would be unfair to revert to the original at the end of the life of the CBA, so maubos imong sweldo, benefit, ang working conditions mabati.

Remember non-diminution of benefits in Labor 1, it is kinda similar to that an employee should not suffer. The hold-over principle is somewhat similar to that. So an employee should not revert back to the old system just because negotiations lasted for years.

SC also held that the **parties are not obligated to**

accept each other's proposals, that's the nature of negotiations, however, they must be in good faith while they are negotiating. As long as both parties are in good faith, the duration of the negotiation will not matter, the negotiations are perfectly acceptable.

In this case, one of the parties is in bad faith, so the SC said that in essence the negotiations are invalid.

Q: Assuming that GMC was in good faith and they continue to bargain which lasted for years, is it valid?

Yes, negotiation is perfectly valid because remember in the duty to bargain collectively, the parties must convene in good faith. **As long as the parties are in good faith, duration of the negotiation will not matter, negotiations are valid.** So, it's possible that the old CBA may be extended for two to three years pending negotiations as long as both parties are in good faith.

New Pacific Timber & Supply Company, Inc. v. NLRC

Doctrine: The terms and conditions of a collective bargaining agreement continue to have force and effect even beyond the stipulated term when no new agreement is executed by and between the parties to avoid or prevent the situation where no collective bargaining agreement at all would govern between the employer company and its employees.

Effect of prospective effect according to ULF: Union members were deprived of substantial amount of monetary benefits which they could enjoy if the CBA had retroactive effect

Issue: Whether or not the CBA should have retroactive effect.

Ruling: NO, the CBA should not have retroactive effect. The CBA to be signed by the parties shall be effective upon the promulgation of the NLRC resolution.

Article 253 and 253-A of the Labor Code mandates that the parties keep the status quo and continue in full force and effect the terms and conditions of the existing CBA during the 60-day freedom period prior to the expiration of the old CBA and/or until a new agreement is reached by the parties.

In this case, there was no new agreement entered into by the parties who were subject of a CBA deadlock. The automatic renewal clause in the law provides the reason why the new CBA can only be given new effect.

Holdover principle – in the absence of a new CBA, the parties must maintain the status quo and must continue in full force and effect the terms and conditions of the existing agreement until a new agreement is reached.

In this case, SC said that CBA can only be prospective, it cannot retroact, that's why we have the hold-over principle.

The hold-over principle fills in the gap while there is no new CBA. The old CBA cannot retroact to the time the previous CBA ended. The previous/old CBA was temporarily resurrected for the purpose of filling in the gap but in no way the old CBA can retroact to the time the previous period ended otherwise it will defeat the purpose of the holdover principle.

Another thing I'd like to point out, **the terms and conditions of a CBA** especially the economic and beneficial provisions **are enjoyed by all the employees of the bargaining unit, not just the union members** because the exclusive bargaining agent (the majority representative) is negotiating on behalf of all the employees of the unit and not just their members.

The union is not just representing itself or negotiating for itself but for all the members of the bargaining unit.

Union of Filipro Employees v. NLRC

Facts: When Nestle did not negotiate with UFE, UFE filed a Notice of Strike raising the issue of CBA deadlock and unfair labor practice. ULF argued that the CBA should have a retroactive effect (to the time when parties had a CBA deadlock).

Remember, not all employees of the bargaining unit are majority members of the union because there are minority unions or those who did not win in the certification election – they are not members of the majority union. However, members of the minority union — those who are not members of any labor organization at all but are still members of the bargaining unit — will enjoy the benefits of the CBA. So, if the CBA provides for a better salary, all the employees of the unit enjoy a better salary regardless of whether or not they are members of the majority union.

It is not unfair that the minority union (non-members) will benefit from the negotiations made by the exclusive bargaining agent. Union members pay for union dues while **non-union members pay for agency fees. In a way, the minority unions still contribute** even if they are not members of the exclusive bargaining agent.

Remember: All employees of the unit, not necessarily the employees of the bargaining agent.

over, i.e., that in the absence of a new CBA, the parties must maintain the status quo and must continue in full force and effect the terms and conditions of the existing agreement until a new agreement is reached. In this manner, the law prevents the existence of a gap in the relationship between the collective bargaining parties. Another legal principle that should apply is that in the absence of an agreement between the parties, then, an arbitrated CBA takes on the nature of any judicial or quasi-judicial award; it operates and may be executed only respectively unless there are legal justifications for its retroactive application.

Lopez Sugar Corporation v. Federation of Free Workers

Doctrine:

Although a CBA has expired, it continues to have legal effects as between the parties until a new CBA has been entered into. It is the duty of both parties to the CBA to keep the status quo, and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

Manila Electric Co. v. Quisumbing

Doctrine:

The 5-year term requirement is specific to the representation aspect. What the law additionally requires is that a CBA must be re-negotiated within 3 years "after its execution." It is in this re-negotiation that gives rise to the present CBA deadlock.

If no agreement is reached within 6 months from the expiry date of the 3 years that follow the CBA execution, the law expressly gives the parties — not anybody else — the discretion to fix the effectiveness of the agreement.

Significantly, the law does not specifically cover the situation where 6 months have elapsed but no agreement has been reached with respect to effectiveness. In this eventuality, we hold that any provision of law should then apply for the law abhors a vacuum. One such provision is the principle of hold

Union of Filipro Employees v. NLRC

Doctrine:

Articles 253 and 253-A mandate the parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period prior to the expiration of the old CBA and/or until a new agreement is reached by the parties.

Consequently, there being no new agreement reached, the automatic renewal clause provided for by the law which is deemed incorporated in all CBAs, provides the reason why the new CBA can only be given a prospective effect.

Arbitral Award v. CBA

St. Luke's Medical Center, Inc. v. Torres

Doctrine:

Article 253-A of the Labor Code does not apply to arbitral awards such as those involved in the instant case. Article 253-A of the Labor Code is clear and plain on its face as referring only to collective bargaining agreements entered into by management and the certified exclusive bargaining agent of all rank-and-file employees therein within six (6) months from the expiry of the old CBA.

Therefore, in the absence of a specific provision of law prohibiting retroactivity of the effectiveness of arbitral awards issued by the Secretary of Labor pursuant to Article 263(g) of the Labor Code, such as herein involved, public respondent is deemed vested with plenary and discretionary powers to determine the effectiveness thereof.

M. SUSPENSION OF CBA

Suspension of CBA and representation vis-a-vis freedom to contract

Rivera v. Espiritu

Doctrine: A CBA is "a contract executed upon request of either the employer or the exclusive bargaining representative incorporating the agreement reached after negotiations 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."

The acts of public respondents in sanctioning the 10-year suspension of the PAL-PALEA CBA did not contravene the "protection to labor" policy of the Constitution.

- It is valid for a CBA to be suspended because it is a contract. The parties may agree to suspend it as long as it is voluntary.

N. COVERAGE OF CBA (BENEFITS (EXTENDS TO NON-UNION MEMBERS)

Capitol Medical Center v. Trajano

Doctrine:

A pending cancellation proceedings against the respondent Union is not a bar to set in motion the mechanics of collective bargaining. If a certification election may still be ordered despite the pendency of a petition to cancel the union's registration certificate more so should the collective bargaining process continue despite its pendency.

The majority status of the respondent Union is not affected by the pendency of the Petition for Cancellation pending against it. Unless its certificate of registration and its status as the certified bargaining agent are revoked, the Hospital is, by express provision of the law, duty bound to collectively bargain with the Union.

The Supreme Court already ordered the Hospital to collectively bargain with the Union when it affirmed the resolution of this Office directing the management of the Hospital to negotiate a collective bargaining agreement with the Union.

Furthermore, the discretion to assume jurisdiction may be exercised by the Secretary of Labor and Employment without the necessity of prior notice or hearing given to any of the parties. The rationale for his primary assumption of jurisdiction can justifiably rest on his own consideration of the exigency of the situation in relation to the national interests.

O. EFFECTIVITY OF CBA

Liberty Flour Mills Employees v. Liberty Flour Mills

Doctrine:

Evidence on record show that after the cancellation of the registration certificate of the Federation of Democratic Labor Unions, no other union contested the exclusive representation of the Philippine Labor Alliance Council (PLAC), consequently, there was no more legal impediment that stood on the way as to the validity and enforceability of the provisions of the collective bargaining agreement entered into by and between respondent corporation and respondent union. **The certification of the collective bargaining agreement by the Bureau of Labor Relations is not required to put a stamp of validity to such contract. Once it is duly entered into and signed by the parties, a collective bargaining agreement becomes effective as between the parties regardless of whether or not the same has been certified by the BLR.**

P. EFFECT OF PENDING PETITION FOR CANCELLATION OF UNION REGISTRATION

New Pacific Timber & Supply Company, Inc. v. NLRC

Doctrine:

Until a new Collective Bargaining Agreement has been executed by and between the parties, they are duty-bound to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement. The law does not provide for any exception nor qualification as to which of the economic provisions of the existing agreement are to retain force and effect; therefore, it must be understood as encompassing all the terms and conditions in the said agreement. In the case at bar, no new agreement was entered into by and between petitioner Company and NFL pending appeal of the decision in NLRC Case No. RAB-IX-0334-82; nor were any of the economic provisions and/or terms and conditions pertaining to monetary benefits in the existing agreement modified or altered. Therefore, the existing CBA in its entirety, continues to have legal effect. To rule otherwise, i.e., that the economic provisions of the existing CBA in the instant case ceased to have force and effect in the year 1984, would create a gap during which no agreement would govern, from the time the old contract expired to the time a new agreement shall have been entered into. Consequently, the employees from the year 1985

onwards would be deprived of a substantial amount of monetary benefits which they could have enjoyed had the terms and conditions of the CBA remained in force and effect. Such a situation runs contrary to the very intent and purpose of Articles 253 and 253-A of the Labor Code.]

Q. EFFECT OF REFUSAL TO BARGAIN - UNFAIR LABOR PRACTICE

Article ARTICLE 259. [248] Unfair Labor Practices of Employers.

(g) To violate the duty to bargain collectively as prescribed by this Code;

VI. UNFAIR LABOR PRACTICE

A. NATURE OF ULP; MUST BE RELATED TO WORKERS' RIGHT TO ORGANIZE

ART. 258. [247] Concept of unfair labor practice and procedure for prosecution thereof.

Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided.

Subject to the exercise by the President or by the Secretary of Labor and Employment of the powers vested in them by Articles 263 and 264 of this Code, the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters. The Labor Arbiters shall give utmost priority to the hearing and resolution of all cases involving unfair labor practices. They shall resolve such cases within thirty (30) calendar days from the time they are submitted for decision.

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code.

No criminal prosecution under this Title may be instituted without a final judgment finding that an unfair labor practice was committed, having been first obtained in the preceding paragraph. During the pendency of such administrative proceeding, the running of the period of prescription of the

criminal offense herein penalized shall be considered interrupted: Provided, however, that the final judgment in the administrative proceedings shall not be binding in the criminal case nor be considered as evidence of guilt but merely as proof of compliance of the requirements therein set forth.

ART. 259. [248] Unfair labor practices of employers.

It shall be unlawful for an employer to commit any of the following unfair labor practice:

- a. To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- b. To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
- c. To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
- d. To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;
- e. To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement.

Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

- f. To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;
- g. To violate the duty to bargain collectively as prescribed by this Code;
- h. To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or
- i. To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

ART. 260. [249] Unfair labor practices of labor organizations.

It shall be unfair labor practice for a labor organization, its officers, agents or representatives:

- a. To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;
- b. To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;
- c. To violate the duty, or refuse to bargain collectively with the employer, provided it is the representative of the employees;
- d. To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for fee for union negotiations;
- e. To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or
- f. To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

Unfair Labor Practice is any action against the employer against the right of the workers to self-organize. It must be related to the right of the workers to self-organize. **Not all unfair actions of the employer will be categorized as unfair labor practices.** ULP is a technical term with a very specific definition. It cannot be easily labeled. It has a technical meaning. If it is not related to the right to self-organize then it is not ULP.

ULP v. ordinary contractual breach

National Labor Union v. Insular-Yebana Tobacco Corporation

Facts: The National Labor Union (NLU) filed charges against Insular-Yebana Tobacco Corp for illegally dismissing Juana Torres, Dominador Gonzales, and Honorato Gabriel. The Judge found that the dismissal is not caused by union activities hence, not ULP.

Issue: Whether or not a court can grant a remedy even if the complaint is to be dismissed because the ULP alleged has not been proven. No.

Ruling:

ULP	Ordinary contractual breach
Involve violations of public right or policy to be prosecuted like criminal offenses	Breach of obligation of the employer to his employee to be redressed like an ordinary contract or obligation
CIR has jurisdiction	Statutory courts have jurisdiction since no ULP

In this case, there is no finding of ULP, hence, the CIR cannot grant the remedy of reinstatement and back pay.

The Supreme Court pointed out the nature of ULP. ULP actually has a criminal aspect to it but keep in mind that the criminal aspect will not prosper unless it is proven in the labor court that there is ULP. ULP has a criminal aspect as opposed to a breach of contract where the parties are only the employer and employee. In an ordinary labor case – even an illegal dismissal case, there is normally no criminal aspect. For example, if the employee was terminated, usually you cannot hold the employer criminally liable. But in this case, if there is ULP, there is a criminal aspect to it, so it can be filed later on in regular courts to sue the employer.

Specific denomination of act is irrelevant

Republic Bank v Court of Industrial Relations

Facts: Republic Bank dismissed several employees for having **written and published a patently libelous letter** tending to cause the dishonor, discredit, or contempt of the officers and employees of the bank and the bank itself. The prosecutor filed a complaint with the CIR alleging that under the Industrial Peace

Act, it is a ULP if an employer dismisses an employee for filing charges or giving a testimony under the act. Bank contended that the employees were not discharged for union activities but for having written a libelous letter against the bank president.

Issue: Whether or not the dismissal of the employees is a ULP. YES

Ruling: The dismissal of the employee must be related to his right to self-organization to give rise to unfair labor practice on the part of the employer. **It is not necessary that union activity be involved or that collective bargaining be contemplated.**

When the employees in this case wrote the letter-charge complaining against nepotism, favoritism, and other management practices, they were protected under the law. They were engaged in concerted activity for mutual aid and protection in the exercise of their right to self-organization.

In the enumeration of ULP under the Labor Code, does it include dismissing an employee for the reason that they wrote libelous letters? Does the Supreme Court cite the Labor Code? Did the SC specifically identify the kind of ULP involved in this case?

No. The Supreme Court merely said that there was interference to the right to self-organization.

Were these actions of the employer ULP?

A: No, because the Supreme Court held that the retirement of the retirees was only incidental to the case and it is not the real issue at hand with regard to the legality of the organization of supervisor's union because the petitioner satisfactorily showed that it has been a management policy to apply the provisions of the CBA between the petitioners and the rank and file union, and also to the supervisors. Hence, under the CBA, the retirement of the may be done upon initiative and option of the management and where there are cases of voluntary retirement, the same is effective upon approval of the management so there should be no ULP committed by the management if the retirement of the private respondents were made in accord with the agreed option.

TN: In this case, the retirement was pursuant to the CBA which is actually a contract between the union itself and the management. Hence, the union cannot back out from the provisions of the contract that it itself executed with the management. In other words,

the union is estopped from questioning the validity of the optional retirement of the CBA.

As to the promotion of the employees to managerial or executive positions:

It was held that it was a management prerogative because managerial position is an office of trust, it is only the prerogative of the management to promote any individual working with the company to a higher position and it should not be inhibited or prevented.

With regard to the retirees, did they refuse or accept the retirement?

A: The retirees accepted the retirement fees. It was the union who questioned such retirement benefits.

TN: In this case, the retirement was pursuant to the CBA. Retirement, when you turn 60, is actually voluntary. Compulsory retirement is at the age of 65. Here, in the CBA it said that if the employee reaches 60 years old, the employer has the option to retire them. The case might have been a little different if there was no CBA and the employer forced the employees to retire at the age of 60 because again, retirement at the age of 60 is voluntary. One could argue that those employees were forced to retire. Definitely, in this case, the CBA was in favor of the employer.

Articles 258-260 of the Labor Code do not actually provide specifically that dismissal of employees or union members as a form of ULP. However, in this case, the SC categorized it as a form of interference to the right of self-organization. It is not necessary that the specific denomination of the ULP is not relevant. Even acts outside the enumeration can be considered ULP, as long as in a way, it interfere or inhibit the rights of the employees to self-organization.

Enumeration of ULP in LC is not exclusive

The Hongkong and Shanghai Banking Cor Employees Union v NLRC

Doctrine: Enumeration of ULP is not exclusive

Facts: The case at bar arose from the issuance of a non-executive job evaluation program (JEP) lowering the starting salaries of future employees, resulting from the changes made in the job grades and structures, which was unilaterally implemented by the Bank. In a letter, the Union objected to the Bank's unilateral decision to devise and put into effect the said program because it allegedly was in violation of the existing collective bargaining agreement (CBA)

between the parties and thus constituted unfair labor practice.

Issue: Whether or not the dismissal of the complaint for unfair labor practice against the union was correct?

Ruling: NO . It bears emphasizing that by the very nature of an unfair labor practice, it is not only a violation of the civil rights of both labor and management but is also a criminal offense against the State which is subject to prosecution and punishment. Essentially, a complaint for unfair labor practice is no ordinary labor dispute and therefore, requires a more thorough analysis, evaluation and appreciation of the factual and legal issues involved.

The Labor Code does not undertake the impossible task of specifying in precise and unmistakeable language each incident which constitutes an unfair labor practice. Rather, it leaves to the court the work of applying the law's general prohibitory language in light of infinite combinations of events which may be charged as violative of its terms.

In this case, the labor arbiter, in finding that the Union was not motivated by any criminal intent in resorting to said concerted activities, merely gave a sweeping statement without bothering to explain the factual and evidentiary bases therefor. The declaration that there was no damage caused to the Bank by reason of such Union activities remains unsubstantiated. Nowhere is there any showing in the labor arbiter's order of dismissal from which it can be fairly inferred that such a statement is supported by even a preponderance of evidence. What purportedly is an adjudication on the merits is in truth and in fact a short discourse devoid of evidentiary value but every liberal with generalities and hasty conclusions.

Was there ULP in this case?

There was no ULP against the union. In this case, there is no per se test of good faith in bargaining. Good faith or bad faith is an inference to be drawn from the facts. To some degree, the question of good faith may be a question of credibility. The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole, and the inferences fairly drawn therefrom collectively may offer a basis for the finding of the NLRC.

What about the management prerogative of the employer?

JEP was an exercise of management prerogative.

Was it ever proven that it was discriminatory to the union members?

JEP applies to only new employees. It was not meant to discriminate against union members. Presumably, it will only apply to future employees, regardless whether they are members of the union or not. It will not interfere with their right to self-organize.

The enumeration of the ULP in the Labor Code is not exclusive. Most of the enumerated ones are generic. The people or commission who drafted the labor code cannot contemplate every single possibility of ULP. The Labor Tribunals can further determine ULP.

ULP in general

Bankard, Inc v NLRC

Facts: Bankard Employees Union-AWATU (Union) filed before the National Conciliation and Mediation Board (NCMB) its first Notice of Strike (NOS), alleging commission of unfair labor practices by petitioner Bankard, Inc. (Bankard), to wit:

- 1) job contractualization;
- 2) outsourcing/contracting-out jobs;
- 3) manpower rationalizing program; and
- 4) discrimination.

This is pursuant to their application of the Manpower Rationalization Program.

NLRC issued a resolution declaring that the management committed acts considered as unfair labor practice (ULP) under Article 248(c) of the Labor Code.

Issue: Whether or not Bankard, Inc. committed any act constituting Unfair Labor Practice under Article 248 of the Labor Code

Ruling: No. The Court has ruled that the prohibited acts considered as ULP relate to the workers' right to self-organization and to the observance of a CBA. It refers to "acts that violate the workers' right to organize." Without that element, the acts, even if unfair, are not ULP. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. In this case, aside from the bare allegations of the Union, nothing in the records strongly proves that Bankard intended its program, the MRP, as a tool to drastically and deliberately reduce union membership. Contrary to the findings and conclusions of both the NLRC and the CA, there was no proof that the program was meant to encourage the employees to disassociate themselves from the Union or to restrain them from joining any union or organization. There was no showing that it

was intentionally implemented to stunt the growth of the Union or that Bankard discriminated, or in any way singled out the union members who had availed of the retirement package under the MRP.

The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well recognized. Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business. The Court has always respected a company's exercise of its prerogative to devise means to improve its operations

What is the quantum of evidence needed for ULP?

Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.

In this case, unfortunately, the Union, which had the burden of adducing substantial evidence to support its allegations of ULP, failed to discharge such burden.

Was it fair to give the job of former employees to contractual workers?

Yes, no ULP. Business judgment v. alleged ULP. Sometimes employers, in the exercise of their business judgment, will do things that will seem unfair to the employees.

Contracting out workers does seem unfair (not the issue in this case), but the issue here is not about constructive dismissal, reduction of work or non-diminution of benefits. The issue is ULP.

ULP has something to do with the right of employees to self-organization. In this case, it was **not proven that the manpower rationalization program impacted the right to self-organization**. It would have been different if the issue was constructive dismissal, rights of regular employees, etc.

The SC held that it was a management prerogative. There was no substantial evidence showing that the program was intended to discriminate against union employees. If the program targeted specifically union employees or union leaders, this can be argued as ULP.

Prejudice to public interest not an element

National Labor Union v. Insular-Yebana Tobacco Corporation

ULP	Ordinary contractual breach
Involve violations of public right or policy to be prosecuted like criminal offenses	Breach of obligation of the employer to his employee to be redressed like an ordinary contract or obligation
CIR has jurisdiction	Statutory courts have jurisdiction since no ULP

B. CRIMINAL AND CIVIL ASPECTS

BOOK SEVEN TRANSITORY AND FINAL PROVISIONS

Title I PENAL PROVISIONS AND LIABILITIES

ART. 303. [288] Penalties.

Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.

In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.

Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Courts and the Courts of First Instance.

ART. 304. [289] Who are liable when committed by other than natural person.

If the offense is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership, association or entity.

Title II PRESCRIPTION OF OFFENSES AND CLAIMS

ART. 305. [290] Offenses.

Offenses penalized under this Code and the rules and regulations issued pursuant thereto shall prescribe in three (3) years.

All unfair labor practice arising from Book V shall be filed with the appropriate agency within one (1) year from accrual

of such unfair labor practice; otherwise, they shall be forever barred

C. UNION MUST BE REGISTERED

If Chapter is unregistered

Abaria v. NLRC

Doctrine: A local union which is not independently registered cannot, upon disaffiliation from the federation, exercise the rights and privileges granted by law to legitimate labor organizations; thus, it cannot file a petition for certification election.

THE HOSPITAL IS NOT GUILTY OF UNFAIR LABOR PRACTICE because the local union in this case is not a legitimate labor organization, it is also not the certified exclusive bargaining representative of the hospital's rank-and-file employees, consequently, it cannot demand from the hospital the right to bargain collectively. The court further said that a local union which is not independently registered cannot, upon disaffiliation from the federation, exercise the rights and privileges granted by law to legitimate labor organizations, so, even assuming that the local union had validly disaffiliated from its mother union, the local union still did not possess the legal personality to enter into CBA negotiations. Thus, the hospital's refusal to bargain with the local union cannot be considered an unfair labor practice.

Respondent company and Domingo entered into compromise agreement. Petitioner asserts that he was illegally dismissed because his actual participation in the illegal acts during the strike invoked by GREPALIFE as basis for his dismissal was not adequately established. He also complains that he was later on forced to resign by management

Issues: Whether or not the act or decision of the employer GREPALIFE constitutes unfair labor practice.

Ruling: No, the act or decision of the employer GREPALIFE does not constitute unfair labor practice.

It bears emphasis that the employer is free to regulate all aspects of employment according to his own discretion and judgment. This prerogative flaws from the established rule that labor laws do not authorize substitution of judgment of the employer in the conduct of his business. Recall of workers clearly falls within the ambit of management prerogative. The employer can exercise this prerogative without fear of liability so long as it is done in good faith for the advancement of his interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or valid agreements. It is valid as long as it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.

That respondent company opted to reinstate all the strikers except Domingo and de la Rosa is an option taken in good faith for the just and lawful protection and advancement of its interest. Readmitting the union members to the exclusion of Domingo and de la Rosa was nothing less than a sound exercise of management prerogative, an act of self-preservation in fact, designed to insure the maintenance of peace and order in the company premises. The dismissal of de la Rosa who had shown his capacity for unmitigated mischief was intended to avoid a recurrence of the violence that attended the fateful strike in November.

The right to strike, while constitutionally recognized, is not without legal constrictions. The Labor Code is emphatic against the use of violence, coercion and intimidation during a strike and to this end prohibits the obstruction of free passage to and from the employer's premises for lawful purposes. The sanction provided in par. (a) of Art. 262 thereof is so severe that "any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment

D. MANAGEMENT PREROGATIVE VS. ULP

Dismissal of Union Officer

Great Pacific Life Employees Union v. Great Pacific Life Assurance

Facts: GREAT PACIFIC LIFE EMPLOYEES led by its President Isidro Alan B. Domingo and Vice President Rodel P. de la Rosa went on strike.

The company directive was apparently triggered by some violent incidents that took place while the strike was in progress. Strikers reportedly blocked all points of ingress and egress of the company premises in Makati City thus preventing GREPALIFE employees reporting for work from entering their respective offices. These employees and third persons doing business with the company, including lessees of the GREPALIFE building, were allegedly forced by the strikers to submit their cars/vehicles, bags and other belongings to illegal search.

Domingo and de la Rosa sue GREPALIFE for illegal dismissal, unfair labor practice and damages.

status."

Respondent company did not unreasonably single out the top officers of the UNION as unfit for reinstatement. While an act or decision of an employer may be unfair, certainly not every unfair act or decision constitutes unfair labor practice (ULP) as defined and enumerated under Art. 248 Of the Labor Code.

There should be no dispute that all the prohibited acts instituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may be held liable under this provision if his conduct affects in whatever manner the right of an employee to self-organize.

Q: What were the illegal acts?

A: Strikers reportedly blocked all points of ingress and egress of the company premises in Makati City thus preventing GREPALIFE employees reporting for work from entering their respective offices.²

Management prerogative includes the right to discipline employees and maybe even dismiss them. This is grounded on the principle that an employer cannot be compelled to retain the services of an employee when the acts are patently inimical to the interests of the employer. So if you have employees who act out and are dangerous to the business or other employees, you have the right, subject to due process, to dismiss that employee.

When an employee commits illegal acts during a strike or lockout, the employer has the option to dismiss them. In this case, the employee who was dismissed was a union member (only union members may participate in a strike). The fact remains that there were valid grounds to dismiss the employee.

It would have been different if the EE did not do anything wrong and he was dismissed. – that could be construed as a ULP as an interference to the right to self-discrimination because it will cripple the union by reducing its members. But in this case, there was a valid ground for discrimination, and it just so happened that the EE was a member of the union so the SC held that there was a valid ground to dismiss, and they cannot interfere with the management prerogative as long as there are grounds to dismiss him and there is due process. The EE just happened to be a member of the union but this is not a case of

unfair labor practice.

Q: What about mass dismissal or mass retrenchment?

A: Retrenchment is basically letting go of a large number of EEs because the company can no longer sustain the operations. This happened during the pandemic where it was no longer financially viable for the ER to retain the same number of EEs. But can this be construed as ULP? This was the issue in the case of Pepsi Products Philippines Inc. v. Molon.

Promotion of Employee

Philcom Employees Union v. Philippine Global Communications

Facts: Upon the expiration of the CBA between petitioner Philcom Employees Union (PEU or union) and private respondent Philippine Global Communications, Inc. (Philcom, Inc.) the parties started negotiations for the renewal of their CBA.

While negotiations were ongoing, PEU filed a Notice of Strike, due to perceived unfair labor practice committed by the company.

In view of the filing of the Notice of Strike, the company suspended negotiations on the CBA.

In its position paper, the union raised the issue of the alleged unfair labor practice of the company and one of which is **(g) Economic inducement by promotion during CBA negotiation**".

Issue: WON the offer or promotions to a few union members is considered unfair labor practice

Ruling: No, the offer or promotions to a few union members is not considered unfair labor practice. **Unfair labor practice** refers to acts that violate the workers' right to organize. The **prohibited acts are related to the workers' right to self-organization** and to the observance of a CBA. Without that element, the acts, no matter how unfair, are not unfair labor practices.

In this case, the court ruled that the offer or promotions to a few union members is neither unlawful nor an economic inducement because these offers were made in accordance with the legitimate need of the company for the services of these employees to fill positions left vacant by either retirement or resignation of other employees. Besides, a promotion is part of the career growth of employees found competent in their work.

² On strikes and Lock-outs: You can strike but you cannot block the entry way or exits to the place of business and you have to allow non-striking employees to go in and out.

In *Bulletin Publishing Corporation vs. Sanchez*, the Supreme Court held that "(T)he promotion of employees to managerial or executive positions rests upon the discretion of management. Managerial positions are offices which can only be held by persons who have the trust of the corporation and its officers. It is the prerogative of management to promote any individual working within the company to a higher position. It should not be inhibited or prevented from doing so. A promotion which is manifestly beneficial to an employee should not give rise to a gratuitous speculation that such a promotion was made simply to deprive the union of the membership of the promoted employee, who after all appears to have accepted his promotion." That the promotions were made near or around the time when CBA negotiations were about to be held does not make the company's action an unfair labor practice. As explained by the company, these promotions were based on the availability of the position and the qualification of the employees promoted.

Q: Who are covered by this promotion?

A: The promotion was from rank-and-file to managerial.

Q: Were all the employees promoted union members?

A: Yes.

Rule: Managerial employees cannot be members of a union.

So in this case the consequence was that these promoted rank-and-file employees were ejected from the union because they were protected as managerial employees.

Q: What other grounds?

Petitioner's allegations	Court Decision
Compelling employees to render flexible labor and additional work without additional compensation	It is the company's explanation that the employees themselves voluntarily took on work pertaining to other assignments but closely related to their job description when there was slack in the business which caused them to be idle.
Misimplementation and/or non-implementation of employees' benefits	The employees at CTSS were given One Thousand Pesos (P1,000.00) cash or its equivalent in purchase orders because it was their own demand that they be given the option to buy the pair of leather boots they want.

	<p>leather boots they want.</p> <p>As a result of the abolition of the position of counter clerks, there was no more reason for granting the subject allowance.</p> <p>The company more than satisfied the provision in the CBA to engage the services of a physician and provided adequate medical services.</p> <p>The Union demands that a full-time physician to be assigned at the Head Office. This practice, is not provided in the CBA and, moreover is too costly to maintain.</p>
Non-payment, discrimination and/or deprivation of overtime, restday work, waiting/stand by time and staff meeting allowance, suffice it to state that there is nothing on record to prove the same.	Petitioner did not present evidence substantial enough to support its claim.
Allegation of PABX transfer and contractualization of PABX service and position, these were done in anticipation of the company to switch to an automatic PABX machine which requires no operator.	<p>This cannot be treated as ULP since management is at liberty, absent any malice on its part, to abolish positions which it deems no longer necessary</p> <p>Perceived massive contractualization of the company, said charge cannot be considered as ULP since the hiring of contractual workers did not threaten the security of tenure of regular employees or union members.</p>

Was the promotion ULP?

A: No, the offer or promotions to a few union members is neither unlawful nor an economic inducement. These offers were made in accordance with the legitimate need of the company for the services of these employees to fill positions left vacant by either retirement or resignation of other employees. Besides, a promotion is part of the career growth of employees found competent in their work.

That the promotions were made near or around the time when CBA negotiations were about to be held does not make the company's action an unfair labor practice. As explained by the company, these promotions were based on the availability of the position and the qualification of the employees promoted.

What could have made the promotion ULP?

A: If the promotions were not made with the legitimate need of the company such as sudden job openings or if there were a lot of job vacancies but these vacancies were filled up by union leaders.

This is an underhanded strategy some companies use to eject union leaders.. They promote the union leaders to managerial positions so that they will be incapable of leading because they will be disqualified from the union.

However in this case, there was no proof that the promotions were done in bad faith. So presumably, it was **an exercise of management prerogative** (the prerogative to move around your employees as necessary business judgment). There were legitimate vacancies in the company due to retirement and resignation.

There should be clear evidence to see the bad faith of the employer to interfere with the right to self-organization.

Republic Savings Bank v. Court of Industrial Relations

Management Prerogative	ULP
Employer's right to dismiss employees for just cause	Employer dismisses employees to interfere with their right to self-organization
Valid dismissal	Invalid dismissal

Standard Chartered Bank Employees Union v. Confesor

Doctrine: The circumstances that occurred during the negotiation do not show that the suggestion made by Diokno to Divinagracia is an anti-union conduct from which it can be inferred that the Bank consciously adopted such act to yield adverse effects on the free exercise of the right to self-organization and collective bargaining of the employees, especially considering that such was undertaken previous to the commencement of the negotiation and simultaneously with Divinagracia's suggestion that the bank lawyers be excluded from its negotiating panel. The records show that after the initiation of the collective

bargaining process, with the inclusion of Umali in the Union's negotiating panel, the negotiations pushed through. The complaint was made only on August 16, 1993 after a deadlock was declared by the Union on June 15, 1993. It is clear that such ULP charge was merely an afterthought. The accusation occurred after the arguments and differences over the economic provisions became heated and the parties had become frustrated.

The Union did not engage in Blue-Sky Bargaining or making exaggerated or unreasonable proposals. The Bank failed to show that the economic demands made by the Union were exaggerated or unreasonable. The minutes of the meeting show that the Union based its economic proposals on data of rank and file employees and the prevailing economic benefits received by bank employees from other foreign banks doing business in the Philippines and other branches of the Bank in the Asian region.

Retrenchment as union busting

Pepsi Products Philippines Inc. v. Molon, G.R. No. 175002, 18 February 2013

Facts: Pepsi adopted a company-wide retrenchment program denominated as Corporate Rightsizing Program. To commence with its program, it sent a notice of retrenchment to the DOLE as well as individual notices to the affected employees informing them of their termination from work. Subsequently, Pepsi notified the DOLE of the initial batch of forty-seven (47) workers to be retrenched. Among these employees were six (6) elected officers and twenty-nine (29) active members of the LEPCEU-ALU. LEPCEU-ALU claimed that Pepsi's adoption of the retrenchment program was designed solely to bust their union so that come freedom period, Pepsi's company union, the Leyte Pepsi-Cola Employees Union-Union de Obreros de Filipinas — which was also the incumbent bargaining union at that time — would garner the majority vote to retain its exclusive bargaining status.

Issue: Whether Pepsi committed ULP in the form of union busting.

Ruling: NO. **Unfair labor practice refers to acts that violate the workers' right to organize.** The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, no matter how unfair, are not unfair labor practices. The Court finds it difficult to attribute any act of union busting or ULP on the part of Pepsi considering that it retrenched its

employees in good faith. **Pepsi tried to sit-down with its employees to arrive at mutually beneficial criteria which would have been adopted for their intended retrenchment.** In the same vein, Pepsi's cooperation during the NCMB-supervised conciliation conferences can also be gleaned from the records. Furthermore, the fact that Pepsi's rightsizing program was implemented on a company-wide basis dilutes respondents' claim that Pepsi's retrenchment scheme was calculated to stymie its union activities, much less diminish its constituency.

Q: How did Pepsi determine which employees to retrench? How did they determine the criteria for which employees to let go?

A: Pepsi tried to sit-down with its employees. During the sit-down, they agreed on a criterion for which EEs to retrench.

Q: How many employees were dismissed?

A: 6 out of 47 were union members. It would have been different if the majority or all of the 47 employees were union members.

Q: Is the retrenchment a form of ULP?

A: The SC said that this is not a form of union busting.

They let go 47 of its employees – 6 of whom were union leaders. The SC said that there was an intended discrimination on the part of the employer especially since it was actually proven that they had conferences with the EEs to determine the criteria for which employees to let go. Nothing in this case indicates that there is ULP – nothing indicates that they intended to discriminate against the union members. It would have been different if most or all of the retrenched employees were union members. Usually in retrenchment cases, the first one that the ER would let go are the temporary employees or the non-regular employees but in this case, it was never proven by substantial evidence that there was intended discrimination against the union.

as stock clerk. Because of the reported discrepancies in the stock cards, Malabanan was dismissed by the company. Malabanan filed a complaint for unfair labor practice and illegal dismissal against the company alleging that they were members of the monthly salaried employees' union affiliated with TUPAS; that the company forced them to disaffiliate from the union; and that due to their refusal to resign from the union, they were ultimately dismissed from employment by the company.

Issue 1: Whether or not the transfer or demotion of employees to other positions is an unfair labor practice? (NO)

Issue 2: Whether or not a just and valid cause exists for the dismissal of Malabanan? (NO)

Ruling 1: As a rule, it is the prerogative of the company to promote, transfer or even demote its employees to other positions when the interests of the company reasonably demand it. Unless there are instances which directly point to interference by the company with the employees' right to self-organization, the transfer of private respondent should be considered as within the bounds allowed by law. Furthermore, although private respondent was transferred to a lower position, his original rank and salary remained undiminished. Hence, petitioner company did not commit any unfair labor practice in transferring and thereafter dismissing private respondent.

Ruling 2: It does not appear that private respondent Malabanan is an incorrigible offender or that what he did inflicted serious damage to the company so much so that his continuance in the service would be patently inimical to the employer's interest. Assuming, that the private respondent had indeed committed the said mistakes in the posting of accurate data, this was only his first infraction with regard to his duties. It would thus be cruel and unjust to mete out the drastic penalty of dismissal, for it is not proportionate to the gravity of the misdeed. In fact, the promotion of the private respondent from the position of ordinary clerk to production scheduler establishes the presumption that his performance of his work is acceptable to the company. The petitioner even admitted that it was due to heavy financial and business reverses that the company assigned the private respondent to the position of Stock Clerk and not because of his unsatisfactory performance as production scheduler.

Q: Was it proven that union membership was a factor in the dismissal or demotion?

Transfer, Demotion

Rubberworld (Phils), Inc. v. NLRC, G.R. No. 75704, 19 July 1989

Facts: Nestor Malabanan was employed by Rubberworld (Phils.), Inc. as an ordinary clerk. He was eventually promoted to the position of Production Scheduler with a corresponding salary increase. He was again transferred to the Inventory Control Section

A: the SC held that there was no ULP because it was never proven that the transfer or the demotion of the EE was intended to the right of the EEs to organize. The transfer and the demotion was part of the management prerogative of the ER. However, the subsequent dismissal of the EE was illegal because the action of the EE was not proportionate to dismissal. It shows that even if there is illegal dismissal, it does not necessarily mean that there is ULP.

TN: There is a difference between illegal dismissal and ULP.

It was reiterated in this case that illegal dismissal is a dispute between ER and the EE whereas ULP is vested with public interest, there is a civil and criminal aspect to it so the charge is heavier. If there is a ruling of ULP by the Labor Tribunal, the ER could be prosecuted for it, hence the penalty is heavier. The burden of proof in ULP is heavier because the ER will prove not only the acts itself but also that it affected the employees' right to organize. In illegal dismissal, If you prove the fact of dismissal by itself, most of the time it is sufficient in itself while in ULP you have to prove the implied intention of the ER.

Illegal Dismissal	Unfair Labor Practice
Illegal dismissal is a dispute between ER and the EE	ULP is vested with public interest, there is a civil and criminal aspect to it so the charge is heavier. If there is a ruling of ULP by the Labor Tribunal, the ER could be prosecuted for it, hence the penalty is heavier.
In illegal dismissal , If you prove the fact of dismissal by itself, it is already sufficient.	The burden of proof in ULP is heavier because the ER will prove not only the acts itself but also that it affected the employees' right to organize. → you have to prove the implied intention of the ER.

Bulletin Publishing Corporation v. Sanchez, G.R. No. 74425, 07 October 1986

Doctrine:

Petitioner has satisfactorily shown that it has been management policy to likewise apply the provisions of the Collective Bargaining Agreement (CBA) between petitioner and the rank-and-file union (BEU), also to supervisors. Under the CBA, the retirement of an employee may be done upon initiative and option of the management. And where there are cases of voluntary retirement, the same is effective only upon the approval of management. There should be no unfair labor practice committed by management if the retirement of private respondents were made in accord with the agreed option.

The court finds nothing improper in the promotions made by the petitioner company. These were only implementation of petitioner's well-considered policy on retirement and promotions intended to improve the morale of lower and middle management ranks by promoting those specially deserving before they are eventually retired. This then would allow subsequent promotions of their replacements from lower ranks. Similarly, the management does not commit unfair labor practice if it exercises the option given to it in the CBA to retire an employee who either rendered 25 years of service or reached the age of 60.

Non-Promotion

Bondoc v. Court of Industrial Relations

Facts: Petitioner Bondoc charged private respondents Philippine National Railways with having discriminated against him in the giving of promotions to its employees because he was not a member of any labor organization. He alleged that private respondents discriminated against him by promoting and appointing Mendoza despite petitioner's seniority, rank, and competence.

On the other hand, private respondents alleged that petitioner was not next-in-rank to the position of Road Foreman; that based on individual work merits and the Revised Civil Service Rules, Mendoza and Malinay obtained higher ratings than the petitioner

Issue: WON Philippine national railways is guilty of unfair labor practice

Ruling: NO. PNR is not guilty of ULP because there is no basis in his argument that he was being discriminated against because he chose not to join a union.

Retirement Pursuant to CBA

It shall be unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization

Petitioner's allegation that he was discriminated against to force him to join a labor organization is unconvincing since no specific union was mentioned in his complaint. It is unbelievable that the private respondents would harass and oppress him to force him to join any labor union for We do not see how that can possibly be advantageous to the former

The petitioner does not show how or why the CIR Order allegedly conflicts with the evidence presented at the trial. We have, time and again, ruled that findings of fact of the CIR are accorded full respect by the Supreme Court if supported by substantial evidence.

Did the case explain why he felt discriminated

A: He merely alleged that he was discriminated against from joining a labor organization but he did not substantiate or specify as to what labor organization he was prohibited from joining.

Was he a union member at this time?

A: No. He alleged that he was being discriminated against to force him to join a labor union. It runs counter to the very concept of ULP which is to inhibit the right to organize. Here, he is claiming that he was forced to join a labor union. He also claims that he should be promoted because he has higher ratings than Mendoza. Hence, it was unfair labor practice. Maybe, in practice, it can be considered as ULP but it must also be noted that not all instances can be considered as ULP. There can be unfair practices on the part of the employer but it does not immediately fall under ULP within the meaning of the Labor Code. Here, he felt that he was discriminated against but definitely, ULP was not the appropriate charge to claim against his employer.

Notwithstanding the order to maintain the status quo issued by the CIR, some of the officers and majority of the members of ALPAP submitted their respective retirement or resignation letters to PAL, which the latter accepted.

Ecarma and Enriquez returned to PAL. Before their re-admission, PAL required them to accept two conditions, namely: that they sign conformity to PAL's letter of acceptance of their retirement and/or resignation and that they submit an application for employment as new employees without protest or reservation.

Issue: WON petitioners are entitled to their seniority rights?

Ruling: NO. An employee has no inherent right to seniority. He has only such rights as may be based on a contract, a statute, or an administrative regulation relative thereto.

Seniority rights, which are acquired by an employee through long-time employment, are contractual and not constitutional. Hence, the discharge of such employee, thereby terminating such rights, would not violate the Constitution.

When the pilots tendered their respective retirement or resignation and PAL immediately accepted them, both parties mutually terminated the contractual employment relationship between them thereby curtailing whatever seniority rights and privileges the pilots had earned through the years.

Contrary to petitioners' contention, loss of seniority rights was not a penalty for their precipitate retirement or resignation. Rather, it was the expected consequence of the acceptance of their retirement or resignation.

There's a lot to unpack from this case. Let's touch first on the concept of resignation. Resignation, generally, is a voluntary act. We're not contemplating of a resignation that was forced by the employer. When you resign, the employer accepts your resignation and from then on your ER-EE relationship will be terminated. When the ER-EE terminates, you will lose your seniority rights.

What are seniority rights? It's like this. When you are a regular employee, you have something called seniority. Meaning, when there are benefits, you will be prioritized compared to the people who came in

Acceptance of Resignation

Enriquez v. Zamora

Facts: Enriquez and Ecarma were employed by Philippine airlines (PAL) and joined the Air Lines Pilot Association of the Philippines (ALPAP). The board of directors of ALPAP condemned PAL's alleged "continued acts of harassment and other unfair labor practices."

after you. You will notice that those employees who came in first in the company will be prioritized in the granting of benefits compared to the others. If there's a mass retrenchment, usually the ones who will be prioritized to be retained by the company are the ones who have seniority as opposed to those who came in later. Even in retirement, seniority will still matter. If you have been employed for a long time, that will count towards your retirement pay later on. If your employment will be cut short, it will no longer count in your retirement later on because retirement is cumulative.

So in this case, when you resign, you're giving up your seniority rights. Meaning you're back to square one. For example, if you resign from Company A and you decide to go back, it's as if you're starting from zero. You don't have seniority. It's as if you're a junior employee. So that's why in this case, when they resigned, they lost their seniority rights. They went back to zero.

What about ULP? Obviously there was no ULP. Why? For one thing, and most importantly, the resignation was voluntary. If it's voluntary on the part of the employees, you cannot say that the employer interfered with their right to self-organize because they themselves removed themselves from the bargaining unit by resigning. So the one who reduced the membership of the union were those who resigned and not because the employer told them to resign.

Furthermore, the employees were never on strike. As we'll find out later on, dismissing employees based on the fact that they were on strike can be considered an unfair labor practice assuming that the strike was legal because later on we will talk about legal vs. illegal strike. If it is a legal strike, an employer cannot dismiss the employee. A striking employee is still considered an employee. They are considered as temporarily on leave or something like that. But in this case the employees didn't strike. What they did was they resigned as an act of protest. If they were merely striking, they would still be considered employees and if they were dismissed, they can be considered as ULP. Why? Because it's interfering with acts of the union. Striking is an act by the union. If you dismiss a striking employee without valid grounds, it's considered ULP. But in this case there was no strike - valid or invalid. They merely resigned and it was even voluntary. So here in this case there was no interference by the employer. The employees themselves removed themselves from the bargaining unit by resigning. There was never an interference by the employer.

Wise and Co., Inc. v. Wise and Co., Inc. Employees Union

Facts: Wise and Co. issued a memorandum circular introducing a profit-sharing scheme for its managers and supervisors. The union wrote petitioner through its president asking for participation in this scheme. This was denied by petitioner on the ground that it had to adhere strictly to the CBA.

Later on, petitioner distributed the profit-sharing benefit not only to managers and supervisors but also to all other rank and file employees not covered by the CBA. This caused the union to file a notice of strike alleging that petitioner was guilty of unfair labor practice because the union members were discriminated against in the grant of the profit sharing benefits.

Issue: WON the grant by management of profit-sharing benefits to its non-union member employees is discriminatory against its workers who are union members?

Ruling: NO. There can be no discrimination committed by petitioner thereby as the situation of the union employees are different and distinct from the non-union employees. Indeed, discrimination per se is not unlawful. There can be no discrimination where the employees concerned are not similarly situated.

Respondent union cannot claim that there is grave abuse of discretion by the petitioner in extending the benefits of profit sharing to the non-union employees as they are two (2) groups not similarly situated. These non-union employees are not covered by the CBA. They do not derive and enjoy the benefits under the CBA.

The grant by petitioner of profit sharing benefits to the employees outside the "bargaining unit" falls under the ambit of its managerial prerogative. It appears to have been done in good faith and without ulterior motive.

However, the court serves notice that it will not hesitate to strike down any act of the employer that tends to be discriminatory against union members. It is only because of the peculiar circumstances of this case showing there is no such intention that this court ruled otherwise.

In this case the ones who benefitted were managers and supervisors. Managers cannot exercise the right to self-organize. Supervisors can, but they cannot join the union of the rank-and-file employees. But in this

case the union was made entirely of rank-and-file employees. So in this case the ones who were covered by the profit-sharing arrangement (meaning they can get a bonus whenever there are increase in profits in the company) were those employees who, by law, could not join the union. So in a way there is a valid discrimination because it's not discriminating against the union itself. It's not trying to inhibit the right to self-organize. But in a way it's trying to even out the playing field. The company might have thought that the managerial and supervisory employees were at a disadvantage because they cannot join the union. Maybe they made the profit-sharing agreement so they could receive even a small amount. Plus, the members of the bargaining unit were already receiving benefits under the CBA. So in this case there was no ULP, no discrimination against union members or even interference with their right to self-organize because the ones who were given the benefit were outside the bargaining unit. Remember, there can be more than one bargaining unit for one employer. There can be multiple bargaining units depending on their mutual interest. Maybe the rank-and-file, supervisory, academic employees or non-academic employees would group together.

But here there was no discrimination because all the members in the bargaining unit were treated equally. And all the other members in a different bargaining unit were also treated equally. Admittedly both bargaining units were not treated equally but this is because there were definite reasons not to treat them equally. One cannot organize, but the other can has already been organized so there was definite reason to treat them equally.

Philippine Graphic Arts, Inc. v. NLRC

Facts: Private respondents filed a complaint for unfair labor practice on grounds of discrimination, forced leave and reduction of working days because the employer, petitioner corporation required its workers to go on a MANDATORY vacation leave due to economic circumstances.

The conditions were that the workers will be in 7 or 9 batches ranging from 15, 30, to 45 days and that the leaves are paid but charged to their respective earned leaves.

Labor Arbiter dismissed the complaint. Respondents filed a partial appeal with the NLRC but the NLRC affirmed the LA's decision

Issue: WON the forced vacation leave without pay is

an unfair labor practice?

Ruling: NO. The private respondents never questioned but admitted the existence of the economic crisis.

There is basis for the petitioner's contentions that the reduction of work schedule was temporary, that it was taken only after notice and consultations. There was a consensus.

Because of the existence of the economic crisis, the Court reasoned that temporary reduction of working days was a more humane solution instead of a retrenchment and reduction of personnel.

The temporary reduction of the working days is also stated in the CBA. Forced leave was enforced neither in a malicious, harsh, oppressive, vindictive nor wanton manner, or out of malice or spite.

Was there any discrimination against union members when the forced vacation leave was implemented? Was the company more inclined to force the union members to take vacation as opposed to none-union members? Or did the case never mentioned it?

A: The case never mentioned it. So we can assume that all employees were treated equally. Their major concern was the practice of forced vacation leave itself.

So in this case there are two points. First, if there is no showing that the forced vacation leaves were applied discriminatorily against union employees. As far as we can tell, it was applied equally to all employees. Second, the forced vacation leaves were legitimate exercise of management prerogative justified by the economic crisis. It was an act on the part of the employer to preserve or to keep the business afloat. This is preferable compared to retrenchment of employees. Financial losses is actually a valid reason to retrench employees or to let them go subject to separation pay. This usually happens a lot during the pandemic. Businesses are suffering so what happens is that they do skeletal force: meaning they do alternate work days; they get to keep their jobs despite a shortened number of workdays. In this case, there is no unfair labor practice.

Policies and marketing strategies

San Miguel Brewery Sales Force Union (PTGWO) v. Ople

Facts: A CBA was entered into by petitioner San Miguel Corporation Sales Force Union (PTGWO), and the private respondent, San Miguel Corporation which included a provision which paid them extra based on respective sales. The company introduced a marketing scheme known as the "Complementary Distribution System" (CDS) whereby its beer products were offered for sale DIRECTLY to wholesalers through San Miguel's sales offices. The labor union (herein petitioner) filed a complaint for unfair labor practice on the ground that the CDS was contrary to the existing marketing scheme, and that the CDS would reduce the take-home pay of the salesmen.

Issue: WON the "Complementary Distribution System" is a valid exercise of management prerogatives.

Ruling: Yes, the CDS is a valid exercise of management prerogatives because it was designed to improve efficiency and profit and not to circumvent the rights of an employee. This is made evident by the company's offer to pay the employees a back adjustment commission as compensation for the money the employees lose without the commissions.

Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work. So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, they are valid.

In this case, San Miguel Corporation's offer to compensate the members of its sales force who will be adversely affected by the implementation of the CDS by paying them a so-called "back adjustment commission" to make up for the commissions they might lose as a result of the CDS proves the company's good faith and lack of intention to bust their union.

When something seems so unfair, would it automatically be an unfair labor practice?

A: No. The Supreme Court said that as long as the marketing scheme was executed in good faith by the

employer, with the intent of improving the business as opposed to defeating the rights of the employees, it is a valid exercise of management prerogative. It is interesting to note in this case that there was never any mention of discriminating against the union or union membership. **Just because something seems unfair, doesn't mean that it is an unfair labor practice. Unfair labor practice has a technical meaning in the Labor Code.** If a lawyers helping your clients, just because something is inconvenient or discriminatory against the employees itself, doesn't necessarily mean that it is an unfair labor practice. That is something you could teach to your clients, "this is not ULP, we can file an illegal dismissal or labor complaint with the DOLE, but definitely not ULP."

E. DUTY TO BARGAIN IN GOOD FAITH; BAD FAITH BARGAINING

Bargaining to point of stalemate - not necessarily bad faith

Samahang Manggagawa sa Top Forum Manufacturing - United Workers of the Philippines v. NLRC

Facts: A collective bargaining negotiation was held. In the minutes of the meeting, across the board wage increase was tackled but it was not stated anymore in the CBA since the union dropped such proposals relying to the undertakings made by the officials of the company

As expected, the union requested the implementation of said wage orders. However, they demanded that the increase be on an across-the-board basis. Private respondent refused to accede to that demand.

Issue: Whether or not the private respondent was in bad faith.

Ruling: No. The purpose of collective bargaining is the reaching of an agreement resulting in a contract binding on the parties; but **the failure to reach an agreement after negotiations continued for a reasonable period does not establish a lack of good faith.** The statutes invite and contemplate a collective bargaining contract, but they do not compel one. **The duty to bargain does not include the obligation to reach an agreement.** The CBA is proof enough that the private respondent exerted "reasonable effort at good faith bargaining." Indeed, **the adamant insistence on a bargaining position to the point where the negotiations reach an impasse does not establish bad faith.** Neither can

bad faith be inferred from a party's insistence on the inclusion of a particular substantive provision unless it concerns trivial matters or is obviously intolerable. **Private respondent's firm stand against the proposal did not mean that it was bargaining in bad faith. It had the right "to insist on (its) position to the point of stalemate."**

Q: In this case, the employer was very insistent on their stand to the point that the bargaining reached an impasse or a stalemate where both parties are not giving into the proposals or the counter-proposal of the other side. Is this an indicator of bad faith when the employer refuses to give in, stubborn, they refuse to give up their stands of the issue. **Can we construe that as an indicator of bad faith?**

A: No. The subject wage increases were not part of the CBA, they were merely part of the negotiations, what should govern is the CBA and since the CBA does not include the wage increase the employer cannot be faulted for not adhering to that promise.

The employer is the one trying to enforce the provisions of the CBA, that is an indicator of good faith here. Duty to bargain collectively is where the parties must convene in good faith, a very important element. Here both parties have their own stand on the issue and neither was giving in.

The SC said that just because the negotiation reaches an impasse or stalemate or deadlock i.e. neither of the parties is giving into the demand of the other party, it does not automatically mean that the union or employer was in bad faith because it is a necessary consequence of negotiation.

It would be a different story if the company did not want to negotiate but here it seems that they were open to communication with the union, but they just don't want to give in.

TN: bargaining stalemate is not necessarily a sign of bad faith.

Union of Filipro Employees v. Nestle Philippines

Facts: Nestlé underscored its position that "unilateral grants, onetime company grants, company-initiated policies and programs, which include Retirement Plan are by their very nature not proper subjects of CBA negotiations and therefore shall be excluded therefrom. So Nestle was setting a precondition to bargaining — the non-inclusion of the Retirement Plan as an issue in the collective bargaining negotiations.

Issue: Whether or not Nestle was in bad faith.

Ruling: No. In the case at bar, Nestle never refused to bargain collectively with the union. Nestle simply wanted to exclude the Retirement Plan from the issues to be taken up during CBA negotiations, on the postulation that such was in the nature of a unilaterally granted benefit.

An employer's steadfast insistence to exclude a particular substantive provision is no different from a bargaining representative's perseverance to include one that they deem of absolute necessity. Indeed, **an adamant insistence on a bargaining position to the point where the negotiations reach an impasse does not establish bad faith.** It is but natural that at negotiations, management and labor adopt positions or make demands and offer proposals and counter-proposals. On account of the importance of the economic issue proposed by UFE-DFA-KMU, Nestle could have refused to bargain with the former – but it did not. And the **management's firm stand against the issue of the Retirement Plan did not mean that it was bargaining in bad faith. It had a right to insist on its position to the point of stalemate.**

There is no per se test of good faith in bargaining. Good faith or bad faith is an inference to be drawn from the facts, to be precise, the crucial question of whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case.

The union was asking for retirement benefits to be included in the new CBA but the employer insisted that they don't want that kind of provision. In this case, it is similar to the previous case but this case is more explicit saying that they did not want this kind of provision in the CBA. The SC said that it is a reasonable stance because you cannot expect the employer to give in to every demand of the employee and at the same time you cannot expect the employees to give into the demand of the employer.

Nestle did not want to give in, this is **still in good faith because they still convene and it is their right to refuse a particular provision because that is expected in any kind of negotiation.**

The SC said that there is **no per se test of good faith. In determining good faith, there is no particular principle or test that we can apply, it's all about looking at the facts, effect to union and**

the right to self-organization.

Colegio De San Juan De Letran v. Association of Employees and Faculty of Letran

Facts: Colegio unilaterally suspended the ongoing negotiations for a new CBA upon mere information that a petition for certification has been filed by another legitimate labor organization.

Issue: Whether or not the company was in bad faith.

Ruling. Yes. This can be seen in how it continuously devised ways to prevent the negotiation and how it refused to make counter proposals. The fact that a certification election was filed is of no moment since it was done outside the freedom period.

The company's refusal to make a counter-proposal to the union's proposed CBA is an indication of its bad faith. Where the employer did not even bother to submit an answer to the bargaining proposals of the union, there is a clear evasion of the duty to bargain collectively.

Petitioner's utter lack of interest in bargaining with the union is obvious in its failure to make a timely reply to the proposals presented by the latter. **More than a month after the proposals were submitted by the union, petitioner still had not made any counter-proposals.**

What we can infer from this case is that **never ignore communication from the union, give the union the courtesy of a reply because at least you are offering a counter-proposal**. Convening in good faith does not necessarily mean you should meet face to face but it means there is communication between the parties. In this case, it was clear that the company was refusing to communicate so the SC held that the company was in bad faith.

There are different kinds of ULP under the Labor Code. The list of ULP is not exclusive, these are just examples of some potential ULP because probably the drafters of the labor code wanted to keep it open because they could not predict what kind of ULP might be committed especially with technology, maybe a new ULP will evolved from the new normal working environment.

F. TYPES OF ULP BY EMPLOYER

1. INTERFERENCE

To interfere with, restrain or coerce employees in the exercise of their right to self-organization [Art. 259 (a)].

Interference is a very general term. There is no specific definition as to what interference is.

Testifying

Dabuet v. Roche Pharmaceuticals, Inc

Facts: The CBA was due for renegotiation within one month and so they wrote their grievances and sought a formal conference with the management regarding the previous dismissal of the union's president and VP.

In the meeting, instead of discussing the problems affecting the labor union and management, the general manager allegedly berated the petitioners for the letter and called the act as "stupid".

Counsel for the labor union filed a case for grave slander against Mr. Mentha based on the affidavit executed by the petitioners. The company and Mentha filed a complaint for perjury against petitioners and alleged that the affidavits were false statements and a breach of trust and confidence and inimical to the interest of the company.

Petitioners were suspended. Respondent company filed a petition for clearance to terminate their employment. Petitioners on the other hand filed charges of unfair labor practice, union busting, and harassment.

Issue: WON the respondent company, in terminating the employment of the petitioners without just and lawful cause, committed unfair labor practice

Ruling: Yes, the respondent company committed unfair labor practice in dismissing the petitioners.

There was unfair labor practice when the employees were dismissed by writing a letter which was, according to the employer, patently libelous for alleging immorality.

Assuming that the workers acted in their individual capacities when they wrote the letter-charge they were nonetheless protected for they were engaged in concerted activity, in the exercise of their right to self-organization that includes concerted activity for mutual aid and protection, interference with which constitutes an unfair labor practice under section 4(a) (1).

The letter was written by the union officers on behalf of the union. It was something about the CBA. In this case, the employees testified about the alleged ULPs in the affidavit. In this case, it is an indication of testimony where the employees were dismissed because they complained about the treatment of the union officers. They filed grievances and executed affidavits.

Q: What was the ruling of the SC?

A: Respondent company's act in dismissing the Petitioners, who then constituted the remaining and entire officialdom of the Roche Products Labor Union, after the union's president and vice-president had been earlier dismissed and when the collective bargaining agreement in the company was about to be renegotiated, was an unfair labor practice under Sec. 4(a) (1) of the Industrial Peace Act. Their dismissal, under the circumstances, amounted to **interference with, and restraint or coercion of, the petitioners in the exercise of their right to engage in concerted activities for their mutual aid and protection**

Were they able to allege the causes/grounds for dismissing the employees?

A: Yes, breach of trust and confidence, the grounds alleged for herein petitioners' dismissal. But breach of trust and confidence, the grounds alleged for herein petitioners' dismissal, "must not be indiscriminately used as a shield to dismiss an employee arbitrarily"

In the affidavits the employees talked about the letter about being called "stupid", did they talk about something that should've been confidential?

A: No, there was nothing confidential. The letter written by and for the union addressed to management referred to employee grievances and/or, labor-management issues and the employees concerned were all officers of the union, then seeking a renegotiation of the CBA. The letter was an act for the mutual aid, protection, and benefit of the employees concerned.

This is a form of interference because you are trying to interfere with or trying to prevent the union from acting upon a legitimate grievance. They were trying to act on a legitimate grievance but the company interfered by dismissing those who executed affidavits. They were trying to cripple the union by trying to get rid of the more active members.

Phil. Steam Navigation v. Phil. Marine Officers Guild

Doctrine: An employer is not denied the privilege of interrogating its employees as to their union affiliation, provided the same is for a legitimate purpose and

assurance is given by the employer that no reprisals would be taken against unionists. Nonetheless, any employer who engages in interrogation does so with notice that he risks a finding of unfair labor practice if the circumstances are such that his interrogation restrains or interferes with employees in the exercise of their rights to self-organization.

The rule in this jurisdiction is that **subjection by the company of its employees to a series of questionings regarding their membership in the union or their union activities, in such a way as to hamper the exercise of free choice on their part, constitutes unfair labor practice**

Samahan ng mga Manggagawa sa Bandolino-LMLC v. NLRC

Doctrine: The labor arbiter's observation during the hearing that the private respondents had shown hostility towards petitioners for their union activities is a determination of fact which is based on the totality of private respondents' conduct, indicating anti-union bias. Nor is it disputed that private respondents opposed petitioners' petition for certification election when this matter should be the sole concern of the workers. Private respondents' interest belies their claim that they were not aware of petitioners' organizational and union activities prior to the union's registration. **An employer may be guilty of ULP in interfering with the right to self-organization even before the union has been registered.**

Manila Pencil Company, Inc. v. Court of Industrial Relations

Facts: The union filed a complaint with CIR charging the company and its president and general manager, Canlas, with unfair labor practice, consisting of the dismissal of 17 employees by reason of their union membership.

At the hearing, 11 testified that their employment had been terminated because of refusal to disaffiliate from the union.

The Company claims that it suffered severe cuts in its dollar allocations, resulting in the reduction of available raw materials. It temporarily laid off a number of the employees, some of whom were union members, and permanently dismissed others for allegedly legal cause.

Issue: Whether Manila Pencil Company is guilty of unfair labor practice

Ruling: Yes. Manila Pencil Company is guilty of unfair labor practice. It is supported by substantial evidence.

The three organizers of the union namely, Galang, Parwan and Torres were dismissed even before the Union was registered with DOLE. The Union presented a list of demands to the Company, but it did not even bother to answer. The lay-off was effected after the member refused to heed the demand of President Canlas to give up his union membership.

The Company did not openly deal with the unionists as a group, but called them individually, one at a time, thus preventing them from presenting a united front.

The importation of raw materials had been reduced. As a result, it was constrained to lay off some employees temporarily, both union members and non-union members. However, the explanation does not by any means account for the permanent dismissal of five of the unionists, when it does not appear that non-unionists were similarly dismissed.

The discrimination shown by the Company strongly is confirmed by the fact that during the period from October 1958 to August 17, 1959 **it hired from fifteen to twenty new employees and ten apprentices. It says these employees were for its new lead factory**, but is not shown that the five who had been permanently dismissed were not suitable for work in that new factory. On the whole we find no reason to disagree with the factual findings of the respondent Court.

Q: Were all the employees dismissed union members?

A: Yes

The fact that all those that were dismissed were union members was already suspicious. Also, the fact that the company opened a new lead factory and hired new employees but never showed that the five who had been permanently dismissed were not suitable for work in that new factory.

Q: What were the grounds for their dismissal?

A: It was due to union membership: the Company dismissed the Union President even before the Union was registered with the DOLE and affiliated itself with the PAFLU. Then the Union presented a list of demands to the Company, but the latter did not even bother to answer them. Instead it dismissed eight more union members, including Vice-President and the other organizer. In each case, **the lay-off was effected after the member refused to heed the demand of the general manager to give up his union membership.**

Was there no allegation of fraud, breach of confidence, etc; did the company just dismiss them due to union membership?

A: There was none.

In this case, a lot of those who were dismissed were the President and VP. They were dismissed because of their union membership and that in itself is clear interference with the union. You may even classify this as **union-busting**.

An employee's dismissal should always be based on just and authorized causes

CLLG E.G. Gochangco Workers Union v. NLRC

Facts: The CLLC national president wrote the general manager of the respondent firm informing him of the organization of the union and requesting for a labor management conference to normalize employer-employee relations. Later, the union sent a written notice to the respondent firm requesting permission for certain member officers and members of the union to attend the hearing of the petition for certification election. The management refused to acknowledge receipt of said notice. Then private respondent preventively suspended the union officers and members who attended the hearing on the ground of "abandonment of work". Likewise, all the gate passes of the attending employees were confiscated by a Base guard.

Petitioner union and its members filed a complaint for constructive lockout and unfair labor practice against private respondent

Issue: Whether or not the respondent company is guilty of an unfair labor practice. YES

Ruling: Respondent company is guilty of unfair labor practice. It is no coincidence that at the time said respondent issued its suspension and termination orders, the petitioners were in the midst of a certification election preliminary to a labor-management conference, purportedly, "to normalize employer-employee relations." It was within the legal right of the petitioners to do so, the exercise of which was their sole prerogative, and in which management may not as a rule interfere. In this connection, the respondent company deserves our strongest condemnation for ignoring the petitioners' request for permission for some time out to attend to the hearing of their petition before the med-arbiter. It is not only an act of arrogance, but a brazen interference

as well, with the employees' right to self-organization, contrary to the prohibition of the Labor Code against unfair labor practices. But as if to add insult to injury, the company suspended the petitioners on the ground of "abandonment of work", the date on which, apparently, the pre-election conference had been scheduled. What unfolds here is a clear effort by management to punish the petitioners for their union activities.

In finding the petitioners' suspension illegal, with more reason do we hold their subsequent dismissal to be illegal. The petitioners were regular employees and as such, their tenure did not end with the expiration of the contract. As regular employees, the petitioners' tenure are secure, and their dismissal must be premised on a just cause. There is none here. What the court finds instead, are flimsy attempts by the respondent company to discredit the person of the petitioners' counsel, or their officers, and other resorts to argumenta ad hominem.

There is also no merit in the claim that the petitioners' terms were coterminous with the duration of the contract. There is nothing in the records that would show that the petitioners were parties to that contract. It appears furthermore that the petitioners were in the employ of the respondent company long before that contract was concluded. They were not contract workers whose work terms are tied to the agreement, but were, rather, regular employees of their employer who entered into that contract. But even if dismissal were warranted, the same nonetheless faces our disapproval in the absence of a proper clearance then required under the Labor Code. It is true that efforts were undertaken to seek such a clearance, yet there is no showing that it was issued. That still taints the dismissal with the vice of illegality.

Q: Were the dismissed or suspended employees all union members?

A: Yes, they were union members. Private respondents preventively suspended the union officers and members who attended the hearing. In this case, the dismissal of the employees coincided with the filing of the petition for certification election, so this is also another badge of ULP in this case. The time frame was considered.

Q: What was the ground for their dismissal?

A: The company suspended the petitioners on the ground of abandonment of work.

Q: Were these regular employees?

A: Yes, the petitioners were regular employees

(drivers, packers and mechanics). They were not contract workers whose work terms are tied to the agreement, but were, rather, regular employees of their employer who entered into that contract.

Not only was there ULP in this case but there is also illegal dismissal. The expiration of the contract of the client is never a ground for dismissing an employee. It is the prerogative of the management to look for other clients.

Velez v. Watchmen's Union

Doctrine: The acts of petitioner in interfering with and restraining the organization of respondent labor union; in requiring, as a condition of employment, withdrawal from the said union, and discriminating against some of its members in regard to the term and/or condition of employment to discourage membership therein; and initiating and assisting in the formation of and supporting a labor association for the purpose of frustrating the demands of a legitimate labor organization, constitute unfair labor practices.

The record shows that before the petitioner had learned that Jesus Cabagnot, Ildefonso Aguirre and Isaac de Castro were members of the respondent union, these watchmen used to have regular work assignments. However, when he failed to dissuade them from pursuing their union activities, they were bypassed in the work assignments. Petitioner would have us believe that watchmen work on rotation basis and that his policy was to give preference in the assignment of work to those who have no other job than that of the Agency. However, it appears that there were sufficient vessels necessitating the services of all of the watchmen of the Agency. In fact, its working force had to be augmented, to meet the increasing demands of shipping companies. It is clear, therefore, that the aforementioned members of respondent union were discriminated against in regard to the term and/or condition of employment owing to their union activities. Also, the organizational meeting of the Manila Bay Watchmen's Association (MBWA) was held in the Agency. When Aguirre inquired whether he could join this union, the petitioner replied that he should first resign from the respondent union. The fact that MBWA was organized by him to offset the influence of respondent union is further evidenced by the fact that he advised Aguirre: "tell them that we also have a frame like yours," referring to the certificate of registration of the MBWA. The foregoing acts of petitioner herein clearly constitute unfair labor practices.

Visayan Bicycle Manufacturing Co., Inc. v. National Labor Union

Doctrine: Besana and Rodiel were provoked by Reyes and Pacia into a pre-arranged fight pursuant to a strategy of the company designed to provide an apparently lawful cause for their dismissal. Besana and Rodiel were not shown any previously figured in similar incidents before or to have violated company rules and regulation in their many years with the company. The company did not investigate the incident. The manager admitted that Besana was dismissed because he was a "hard headed leader of the union". The manager warned the union that if they will not withdraw from NLU, he would "take steps in order to dismiss them from work." They were dismissed because of their union activities and not because of their violation of a company rule against fighting in the premises or during working hours. Since the only reason or basis for Besana and Rodiel's dismissal was in fact their actuation as officers of VIBEMWU, the dismissal is clearly discriminatory.

"Totality of Conduct" Doctrine

Taking into account not just the acts of the employer or even the union, but also the incidental or collateral events such as the history of the parties, their previous communication, the effects of their actions, etc. In other words, it means taking into account everything that happens, not just taking things into isolation.

inimical to the interest of the respondents," without however stating the specific acts allegedly committed.

Issue: Whether or not the Companies are guilty of unfair labor practice when they sent individual letters to the strikers with the promise of additional benefits, and notifying them to either return to work, or lose their jobs. YES

Ruling: YES. If the employer interferes with the strike, it is considered as ULP because a strike is basically an action of the union, and if the employer interferes with that, it amounts to limiting the rights of the employees to self-organize because striking is an expression of the will of the union.

In this case, they hired men to break up the union through violence, they sent letters to convince the employees from striking and lured them into free movies and snacks. Instead of negotiating through the union, they tried to break it up. Hence, it is clearly a form of ULP.

The Supreme Court discussed termination. It is always imperative that when you dismiss the EE, you give the notice. In the notice, you have to elaborate the specific acts of the EEs because you are giving the EE an opportunity to defend themselves.

This case talks about the "**totality of conduct doctrine**." It means taking into account not just the acts of the employer or even the union, but also the incidental or collateral events such as the history of the parties, their previous communication, the effects of their actions, etc. In other words, it means taking into account everything that happens, not just taking things into isolation.

Strikes can only be performed by a union. It is the right of the union to strike under the particular circumstances. If the ER interferes with the strike like in this case, it is considered as ULP because a strike is basically an action of the union and if the ER interferes with that, it amounts to limiting the rights of the EEs to self-organize – because strike is an expression of the will of the union. Here, they hired men to break up the strike with violence, they sent letters to the EEs to lure them away from striking such as free movies and snacks, overtime pay, etc. So they tried to break the union first through violence and second through bribery. Instead of negotiating with the union, they tried to break them up using these means so the Supreme Court said that this is a form of ULP.

Test of interference; "Totality of Conduct" doctrine

The Insular Life Assurance Co., Ltd. Employees Association-ATU v. The Insular Life Assurance Co., Ltd.

Facts: Petitioner union went on a strike protest alleging that respondent company was guilty of ULP. Respondents then offered them free coffee, movies, overtime pay, and accommodations urging them to abandon their strike. They also threatened the petitioners that they would be dismissed if they did not go back to work.

When eventually, the strikers called off their strike to return to their jobs, they were subjected to a screening process by a management committee, among the members were Garcia and Enaje. After screening, eighty-three (83) strikers were rejected due to pending criminal charges, and the Companies adamantly refused readmission of thirty-four (34) officials and members of the Unions who were most active in the strike, on the ground that they committed "acts

The dismissal of a union member or a union leader can be legitimate provided that there is clear and convincing grounds to dismiss the employee. However, in this case, there is none. A notice was sent but such notice did not indicate the grounds for dismissal. Presumably, the ground is the mere fact that they are members of the union and that they staged a strike.

T/N: If the employee happens to be a union member or a leader who is terminated without clear just cause, there is a strong chance that there is interference and they are being dismissed on the account of their membership.

Mass lay-off

Madrigal and Company, Inc. v. Zamora

Doctrine: A company who reduces capital reductions is considered ULP especially if done to camouflage the fact that it had been making profits, and consequently, to justify the mass layoff in its employee ranks, especially of union members. They were nothing but a premature and plain distribution of corporate assets to obviate a just sharing to labor of the vast profits obtained by its joint efforts with capital through the years.

In the case of People's Bank and Trust Company v. People's Bank and Trust Co. Employees Union, the mass lay-off or dismissal of employees under the guise of retrenchment policy of the Bank is a lame excuse and a veritable smoke-screen of its scheme to bust the Union and thus unduly disturb the employment tenure of the employees concerned, which act is certainly an unfair labor practice

Rizal Memorial Colleges Faculty Union v. NLRC

Doctrine: If the employer feels that the action is tainted with illegality, the law provides the employer with ample remedies to protect his interests. Dismissal of employees in anticipation of an exercise of a constitutionally protected right is not one of them.

Threats of Closure

Sy Chie Junk Shop v. Federacion Obrero de la Industria

Facts: The respondent-employees worked for the petitioner in his junk shop business until they were allegedly dismissed from their jobs because of their affiliation with the respondent union.

In their unfair labor practices case before the Court of Industrial Relations in Manila, the private respondents

claimed, among others, that the petitioner interfered with their right to self-organization; that petitioner Sy refused to bargain in good faith with their union; and that they were indiscriminately terminated without due notice.

The petitioner denied having committed any of the ULP acts charged. Petitioner alleged that the separation of the private respondents from their work was with due notice and for a justifiable cause which was the closure of the business establishment in view of the repeated demands of the owner of the leased business premises to vacate the site.

Issue: Whether or not the closure of the petitioners' business establishment constituted a just cause for terminating the private respondents

Ruling: NO. Here, the company was closed but the Supreme Court took into the fact the history of the parties, specifically that the junk shop did not even bother to reply to the letters of the union, as well as the fact that the timing of the decision to close the company was suspicious because it was coincided with the time when the union communicated with the junk shop.

Also, in this case, there were two letters—the first was sent the year before the closure, and the other was sent on the year of the closure. Hence, the notice to vacate was only a mere afterthought and was used as an excuse not to reply with the letter from the union. Here, the company did not suffer losses, it only decided to vacate. Hence, they were only using it as an excuse to shut down the union since the junk shop was forced to vacate.

It would have been a different scenario if they were shutting down because of legitimate financial reasons, not only because they were vacating. In this case, the business itself was not closing, only the physical location.

TN: You do not need to have a physical store to operate as a company/business just like online stores. The fact that the physical store closed does not mean that the responsibility of the employer with its employees also ends.

Me-Shurn Corporation v. Me-Shurn Workers Union-FSM

Doctrine: To justify the closure of a business and the termination of the services of the concerned employees, the law requires the employer to prove that it suffered substantial actual losses. The cessation of a company's operations shortly after the organization of a labor union, as

well as the resumption of business barely a month after, gives credence to the employees' claim that the closure was meant to discourage union membership and to interfere in union activities. These acts constitute unfair labor practices.

Simulated Sale of Business

Moncada Bijon Factory v. Court of Industrial Relations

Doctrine: An employer could be held guilty of discrimination, even if the preferred union was not company-dominated

Cruz v. PAFLU

Facts: Respondents entered into negotiations for their CBA with the Tan spouses, former owner of the Quality Container Factory. However, less than a month thereafter, the factory was sold to respondent Carlos Cruz. According to Mrs. Tan, she adequately informed the buyer of the existence of the complainant union. The respondents counterargued that the sale of the Quality Container Factory was designed to avoid bargaining collectively with it as the duly chosen representative of such employees and thus constituted unfair labor practice.

Issues: Whether or not the spouses were guilty of ULP in selling the factory to evade the negotiations/Whether or not the spouses were in bad faith in selling the factory

Ruling: Yes. In this case, the timing was suspicious. The sale was transacted immediately, despite the fact that sales of business would take months usually. The spouses did not even provide evidence to refute the allegation of bad faith.

What would you change about the facts so that the sale will be in good faith? What do you think could help the spouses?

A: The negotiations with the union should have been properly documented. It would have been helpful if the employees were aware of the sale.

Philippine Land-Air-Sea Labor Union v. Sy Indong Rice and Corn Mill

Facts: Petitioner contends that respondent Sy Indong was guilty of unfair labor practice because they restrained and coerced them by intimidating and threatening them with bodily harm unless they gave up their jobs as workers or laborers by reason of their PLASLU affiliation. They also alleged that

respondents discriminated against them by refusing to admit them to work, when they reported for duty, on account of their aforementioned affiliation. Respondents denied the allegations.

However, Sy Indong sold its assets in Tubod, Lanao del Sur, to Sen Chiong Rice & Corn Mill Co. which was organized on the same date, in view of which an amended complaint was filed including Sen Chiong and its manager Ang Han Tiong as respondents, upon the ground that Sen Chiong and Sy Indong are one and the same entity.

The trial court held that the transfer or assignment of the Tubod branch of Sy Indong to Sen Chiong had been made in order that Sy Indong could evade the liability that might arise from the present case.

Issue: Whether Sen Choing, the newly created organization, is liable for unfair labor practice

Ruling: YES. Sen Chiong was organized on the very same day on which the assignment thereto of the assets of Sy Indong in Tubod took place, and Ang Han Tiong the managing partner of Sy Indong is the same managing partner of Sen Chiong. Again, Tiu E Tek is, likewise, a partner of both enterprises. These circumstances, when considered in relation to the fact that the present unfair labor practice case had been pending in the CIR for about 18 months prior to February 4, 1957, lead to no other conclusion than that the organizers of Sen Chiong were aware of said case when they established the company and acquired the assets of Sy Indong in Tubod, and that they either organized Sen Chiong in an attempt to relieve Sy Indong of the consequences or effects of the present litigation, or acquired said assets assuming the risks of having to bear the liabilities or part of the liabilities that said litigation may eventually entail.

This case is probably even more suspicious than the previous case. The assets were transferred on the same day as when the Tubod branch was assigned to Sen Chiong. That in itself is a red flag. Plus we also have to apply the Totality of Conduct Doctrine - the very rocky history with the labor organization like threats against the employees, against the members of the union. So taking that into account, the sale itself is already tainted with suspicion. There was also a pending ULP with the CIR at the time of the transfer. All these circumstances really show that there is intent on the part of the business to evade their obligations to the union and to avoid the consequences of the ULP case. The fact remains that the sale was

fraudulent or simulated to avoid the obligations that came with the ULP charges.

H. Aronson Co., Inc. v. Associated Labor Union

Doctrine: The shortening of the corporate life or dissolution of Aronson, and the subsequent incorporation of the other two petitioners were part and parcel of a plan, or were intended to accomplish the dismissal of the individual respondents. Their contention that the dissolution of Aronson was due to "poor business" is, upon the record, clearly without merit.

2. "YELLOW DOG" CONTRACTS

To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs [Art. 259 (b)].

A yellow dog condition is a promise exacted from workers as a condition of employment that they are not to belong to, or attempts to foster, a union during their period of employment.

It is the opposite of a closed-shop or a union agreement. In a closed-shop agreement, you are encouraging the employees to join the union. Yellow dog contract is the opposite because you are trying to discourage the employees from joining the union. The employer will probably tell the employees "you won't be hired if you join the union" "you won't be promoted or get benefits if you join the union." It is similar to "blackmail" in a sense that the employer blackmails the employees to discourage them from joining the union.

3. CONTRACTING OUT

To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization [Art. 259 (c)]

Giving less work to the employees and hiring outsiders. Hiring contractors to do the work that would normally go to the employees.

Bankard v. NLRC

Facts: Bankard Employees Union-AWATU (Union) filed before the NCMB its first Notice of Strike alleging

commission of unfair labor practices by petitioner Bankard, Inc. (Bankard), to wit: 1) job contractualization; 2) outsourcing/contracting-out jobs; 3) manpower rationalizing program; and 4) discrimination.

It was Bankard's position that job contractualization or outsourcing or contracting-out of jobs was a legitimate exercise of management prerogative and did not constitute unfair labor practice. It had to implement new policies and programs, one of which was the Manpower Rationalization Program (MRP) in December 1999, to further enhance its efficiency and be more competitive in the credit card industry. The MRP was an invitation to the employees to tender their voluntary resignation, with entitlement to separation pay equivalent to at least 2 months salary for every year of service. Those eligible under the company's retirement plan would still receive additional pay. Thereafter, majority of the Phone Center and the Service Fulfillment Division availed of the MRP. Thus, Bankard contracted an independent agency to handle its call center needs.

The Union claims that Bankard, in implementing its MRP which eventually reduced the number of employees, clearly violated Article 248(c) of the Labor Code. Because of said reduction in the number of employees, Bankard subsequently contracted out the jobs held by former employees to other contractual employees.

Issue: Whether or not Bankard committed acts considered as ULP?

Ruling: NO. In ULP cases, the alleging party has the burden of proving the ULP; and in order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.

Nothing in the records strongly proves that Bankard intended its program, the MRP, as a tool to drastically and deliberately reduce union membership. MRP was implemented as a valid cost-cutting measure, well within the ambit of the so-called management prerogatives.

In the absence of any showing that Bankard was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize, it cannot be said to have committed an act of unfair labor practice. Unfortunately, the Union, which had the burden of adducing substantial evidence to support its allegations of ULP, failed to discharge such burden.

What was the Manpower Rationalization Program about? What did this mean for the employees?

A: It meant that the tasks of the regular employees would be assigned to the contract workers. In essence, they would be constructively removed from their jobs because some of their tasks would be assigned to these contractual employees when in fact these employees who are currently employed in Bankard have regular employment status.

What was the rationale for contracting out? Did they ever explain why they need to outsource labor for specific tasks?

A: They wanted to implement the MRP so that the efficiency of Bankard in handling their operations would increase by contracting out these other tasks.

What did the Supreme Court say? Was it ULP?

A: It wasn't ULP. It was found to be a valid exercise of management prerogative. The Court further explained here that absent any proof that the management acted in a malicious or arbitrary manner in contracting out their services, the Court will not interfere with the exercise of the management prerogative of the employer.

Was the MRP applied equally to all employees or was it only union members?

A: It was applied equally to all employees. There was also no discussion that it was limited only to union members.

Even if the employees were attacking this program as an inequitable measure, ULP was probably not the right charge because it was never clear that it was applied discriminately against union members.

What would you have changed for the charge of ULP to prosper?

A: If it was alleged in the facts that the scope of application of the MRP would be limited to the union members and officers. It would be a form of discrimination against them, you're trying to single out union members.

Later on in the succeeding cases, discrimination is even a form of ULP. Not necessarily that you will remove the employees, not even necessarily that you will actively interfere with the union activities. The mere fact that you discriminate against union members is already enough to constitute ULP whether in terms of salary or working environment (e.g., making it more toxic for the union members). But again, this has to be proven clearly. It might be the same with the employee who was claiming ULP because of the fact that he wasn't promoted but didn't have evidence. He just suspected that it was ULP.

If the discrimination was not against the members like what if the employer was trying to entice them by giving them benefits in order to convince them to leave the union because allegedly its not anymore needed because they already have more benefits? The employer is giving more benefits to the union members with the ulterior motive of convincing them to leave the union (assuming that non-union members are not getting the same benefits).

A: It could probably be considered a ULP if you can clearly show that you are trying to entice them out of the union. It's kind of similar to the case recited a while ago where movie tickets or snacks were offered. Basically you're trying to entice them away from the union, it's still a form of interfering with the activities of the union. Interference doesn't necessarily mean violence, intimidation, or coercion. But it's any action on the part of the employer that you're trying to wedge yourself unto the goings-on of the union even if it's in a positive light. This is because the goal of self-organization is for them to be left alone by the employer, leave them to their own devices so they can empower themselves better. If the employer goes in and interferes with that, even if it's beneficial for union members, it might still be construed as ULP. Most likely the union itself will not complain about that. Maybe the other employees will. It's very unlikely in that kind of scenario that the union members themselves will complain about a ULP. I would say it would still constitute interference on the part of the company. But in practicality, I don't know how the employees would complain about something like that unless there is some other form of ULP; like there is some form of violence, interference, etc.

Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.

Doctrine: Management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. To it belongs the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. It is the opinion of the Court, that while management has the final say on such matter, the labor union is not to be completely left out.

What was done by Shell Company in informing the Union as to the step it was intending to take on the proposed dissolution of the security guard section to be replaced by an outside agency is praiseworthy. There should be mutual consultation even if eventually deference is to be paid to what management decides.

However, in this particular case though, what was stipulated in an existing collective bargaining contract certainly precluded Shell Company from carrying out what otherwise

would have been within its prerogative if to do so would be violative thereof. A collective bargaining contract was entered into which, as indicated above, did assure the continued existence of the security guard section. The Shell Company did not have to agree to such a stipulation. Or it could have reserved the right to effect a dissolution and reassign the guards. It did not do so. Instead, when it decided to take such a step resulting in the strike, it would rely primarily on provisions in the collective bargaining contract couched in general terms, merely declaratory of certain management prerogatives.

4. "RUNAWAY SHOP"

Refers to business relocation animated by anti union *animus*. It is a plant removed to a new location in order to discriminate against employees at the old plant because of their union activities.

The employer packed up or closed up his business and ran away because he did not want to deal with the union. In order to avoid dealing with the union, the employer decides to close his business.

Complex Electronics Employees Association v. NLRC

Facts: Complex Electronics Corporation (Complex) was engaged in the subcontracting for the manufacture of electronic products. Their customers are foreign-based companies with different product lines and specifications requiring the employment of workers with specific skills for each product line. One of them is the Lite-On Line for Lite-On Philippines Electronics Co. The rank-and-file workers of Complex Electronics Corporation (Complex) were organized into a union known as the Complex Electronics Employees Association. Unfortunately, Complex informed the employees that business is not anymore doing well, hence, they had no choice but to close down the operations of the Lite-On Line. But the company promised that they will be given separation pay and even provide them jobs from another line. Since Complex refused to grant the demands of the laborers, the latter vandalized the equipment of the former, picketing the company premises, and even threatening to lock out company officers. Complex had no choice but to pull-out the machinery, equipment and materials during night time.

Ionics was impleaded as a party defendant in an unfair labor practice complaint filed by the union against Complex because the officers and management personnel of Complex were also holding office at Ionics with Lawrence Qua as the President of

both companies.

Ionics Incorporated contended that it was an entity separate and distinct from Complex and had been in existence since July 5, 1984 or eight (8) years before the labor dispute arose at Complex.

Issue: Whether or not Ionics Incorporated is a runaway shop.

Ruling: No. A "runaway shop" is defined as an industrial plant moved by its owners from one location to another to escape union labor regulations or state laws, but the term is also used to describe a plant removed to a new location in order to discriminate against employees at the old plant because of their union activities. It is one wherein the employer moves its business to another location or it temporarily closes its business for anti-union purposes. A "runaway shop" in this sense, is a relocation motivated by anti-union animus rather than for business reasons.

In this case, however, Ionics was not set up merely for the purpose of transferring the business of Complex. At the time the labor dispute arose at Complex, Ionics was already existing as an independent company. Ionics has been in existence since July 5, 1984 eight (8) years before the labor dispute arose at Complex. It cannot, therefore, be said that the temporary closure in Complex and its subsequent transfer of business to Ionics was for anti-union purposes. The Union failed to show that the primary reason for the closure of the establishment was due to the union activities of the employees.

What is a run-away shop?

The Supreme Court defines what a run-away shop is. Basically, you are closing your business and setting up somewhere else to avoid the responsibility of dealing with the union. But in this case, it is a management prerogative. There was no clear showing that it was done to avoid dealing with the union. And in fact, bad faith was negated when the company paid them their separation pay.

Was there bad faith?

None. In this case, the company pulled out their machineries and equipment due to the fact that the laborers were already vandalizing them. The equipment did not even belong to the company; it was only lent to them, maybe by a client or an affiliate. The union contended that there was bad faith on the part of Complex for sneaking out the equipment during the night. This holds no water because the company was only trying to protect the equipment because of some

unauthorized operation or vandalism. It was an act of self-preservation on the part of the company.

Is it true that employers are always in bad faith?

You have to contextualize the actions of both parties. Sometimes, we ordinary people have the free disposition to assume that the employer is in bad faith because we are more likely to emphasize the rights of the employees because we are employees ourselves, but we have to contextualize the acts of the employer, too.

There are some people who would tend to side with the employees no matter how clear it is that the employer's action is justifiable. Note that employees also commit mistakes. Just like in the case at hand, they are vandalizing the equipment which are not owned by the company.

Is the mere fact that the other shop (second company) was already existing an indicator that the acts committed by the company is actually NOT ULP? Would there still be ULP if there are other circumstances to be considered other than the fact of having another existing shop?

Interestingly in the present case at hand, the second company is previously existing (the Ionics Incorporated). It will always depend on the circumstances. I definitely would think that it is not an indicator of ULP. It would depend on a lot of factors like the history of the bargaining between the parties. Was the employer dealing well with the employees? Or are there even dealings to begin with? In the previous cases, the closure of the shops were done pending an unfair labor case. It would be an indicator. Not necessarily an absolute indicator, but definitely it would hint towards ULP. Having the mere fact of an existing shop or second company, it is not necessarily by itself, isolated from the other circumstances, an indicator of ULP. As discussed in this case, even a closure of a business or a branch is a management prerogative. There is nothing to stop an employer from closing a business provided that they pay the employees with termination or separation pay.

Is non-payment of termination or separation pay constitute ULP?

No. It might be illegal dismissal, not necessarily an indicator of ULP. There are other actionable labor practices that can be filed with DOLE, but not necessarily ULP. It would depend on other actions.

including the giving of financial or other support to it or its organizers or supporters[Art. 259 (d)].

Forms of company domination:

1. Initiation of the company union idea
2. Financial support to the union
3. Employer encouragement and assistance
4. Supervisory assistance

A very common practice but its prohibition is not well-enforced. A company will tell its trusted (favorite) employees to form a union and will manipulate their actions.

Sometimes, there will be an existing labor organization and the employer will tell its trusted employees to join the union making the trusted employees the majority so, all the decisions of the union will end up being the company's decision. This is prohibited because the company is trying to manipulate the union.

Oceanic Air Products, Inc. v. Court of Industrial Relations

Doctrine: The circumstances show that the union is company dominated:

- (1) several employees were forced by officers of the company into joining a union;
- (2) no member of that union had been dismissed by the company despite its alleged retrenchment policy, which resulted in the **dismissal of other employees who were officers and members of another union**; and
- (3) after said dismissals the company engaged the services of several laborers.

Progressive Development Corp. v. Court of Industrial Relations

Doctrine: Indicators of company-dominated unions:

- 1) Due to the formation of a new union, the company refuses to meet with an existing union;
- 2) The newly established union never collected dues from its members;
- 3) All of the members of the new union are already regular employees;
- 4) After exerting efforts to win in the Certification Election, the new union did not conclude and enter into a collective bargaining agreement with the management;
- 5) the reasons for dismissing an employee:
 - a) One is an active member of another union; or
 - b) One refused to join the union <the one preferred by the company>.

5. COMPANY-DOMINATED UNIONS

To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization,

6. DISCRIMINATION

To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization[Art. 259 (e)].

If you discriminate against union members or union leaders in terms of wages, benefits, working environment, it is obviously ULP. If you dismiss the union leaders without just cause, that is already a sign of discrimination. The discrimination has to be clear in order for it to be considered as ULP.

Wise and Co., Inc. v. Wise and Co., Inc. Employees Union

Doctrine: Under the CBA between the parties that was in force and effect from May 1, 1985 to April 30, 1988 it was agreed that the "bargaining unit" covered by the CBA "consists of all regular or permanent employees, below the rank of assistant supervisor." Also expressly excluded from the term "appropriate bargaining unit" are all regular rank and file employees in the office of the president, vice-president, and the other offices of the company — personnel office, security office, corporate affairs office, accounting and treasury department. It is to this class of employees who were excluded in the "bargaining unit" and who do not derive benefits from the CBA that the profit sharing privilege was extended by petitioner. There can be no discrimination committed by petitioner thereby as the situation of the union employees are different and distinct from the non-union employees.

Discrimination *per se* is not unlawful. There can be no discrimination where the employees concerned are not similarly situated. Respondent union can not claim that there is grave abuse of discretion by the petitioner in extending the benefits of profit sharing to the non-union employees as they are two (2) groups not similarly situated. These non-union employees are not covered by the CBA. They do not derive and enjoy the benefits under the CBA.

AHS/Philippine Employees Union v. NLRC

Doctrine: The quadrupling of the union president's area sales quota was an act of discrimination and hence a valid ground for strike.

The court said that NLRC overlooked a very important and crucial factor: that unlike the other field representatives whose quotas were increased by an average of 98%, that of the union president and vice-president were increase 400% and 300%, respectively. No valid explanation was advanced by respondent company for such marked difference.

It has previously been indicated that an employer may treat freely with an employee and is not obliged to support his actions with a reason or purpose. However, where the **attendant circumstances, the history of employer's past conduct and like considerations, coupled with an intimate**

connection between the employer's action and the **union affiliations or activities of the particular employee or employees** taken as a whole raise a suspicion as to the motivation for the employer's action, the failure of the employer to ascribe a valid reason therefor may justify an inference that his unexplained conduct in respect of the particular employee or employees was inspired by the latter's union membership or activities.

Manila Hotel Company v. Pines Hotel Employees Association

Doctrine: Where a company contrary to previous practice of dividing equally to all employees a certain percentage of its net profits as Christmas bonus allocated 50% thereof only to its Manila Hotel employees, some of whom were granted yearend bonus, while its Pines Hotel employees where there exists a labor union did not receive any year-end bonus; where only 25% of said percentage of net profits was distributed to its Pines Hotel employees and 25% to its Taal Vista Lodge employees, these circumstances constitute a clear case of discrimination, it appearing that there is no union at the Manila Hotel or the Taal Vista Lodge and considering further that the company had been besieged with demands for better living conditions from the union as well as strikes of said union.

There being unfair discrimination found in the distribution of bonuses to its employees, the industrial court's order that the company distribute said bonus pro rata among all its employees regardless of their place of work, as was consistently done in previous years, does not constitute reversible error. It is a proper exercise of its power under section 5 of R.A. 875 to grant affirmative relief whenever it has adjudged the existence of an unfair labor practice.

Manila Pencil Co. v. CIR

Doctrine: According to petitioner company, it was construed to lay off some employees temporarily, both union members and non-union members, due to the reduction of the company's dollar allocations for the importation of raw materials. The explanation, however, does not by any means account for the permanent dismissal of five of the unionists, when it does not appear that non-unionists were similarly dismissed. And the discrimination shown by the company is strongly confirmed by the fact that during the period it hired new employees.

Bataan Shipyard and Engineering Co., Inc. v. NLRC

Doctrine: It is not disputed that the retrenchment undertaken by the Company is valid. However, the manner in which this prerogative is exercised should not be tainted with abuse of discretion. Labor is a person's means of livelihood. He cannot be deprived of his labor or work without due process of law. Retrenchment very heart of one's employment. While the right of strikes at the very heart of an employer to dismiss an employee is

conceded in a valid retrenchment, the right differs from and should not be confused with the manner in which such right is exercised. It should not be oppressive and abusive since it affects one's person and property. Due process of law demands nothing less.

Under the circumstances obtaining in this case, We are inclined to believe that the Company had indeed been discriminatory in selecting the employees who were to be retrenched. All of the retrenched employees are officers and members of the NAFLU. The record of the case is bereft of any satisfactory explanation from the Company regarding this situation. As such, the action taken by the firm becomes highly suspect. It leads Us to conclude that the firm had been discriminating against membership in the NAFLU, an act which amounts to interference in the employees' exercise of their right of self-organization. Under Article 249 of the Labor Code of the Philippines, such interference is considered an act of Unfair Labor Practice on the part of the Company.

Manila Railroad Co. v. Kapisan ng mga Manggagawa sa Manila Railroad, Co.

Doctrine: Where it appears that complainants are pre-war employees, not having committed any improper act or behaviour, and their positions as laborers do not require any civil service eligibility, it is held that the refusal of their employer to give them permanent appointments because of their union affiliation is considered as an unfair labor practice.

Philippine American Cigar & Cigarette Factory Workers Union v. Philippine American Cigar & Cigarette Mfg. Co.

Facts: Apolonio San Jose's brother, Francisco San Jose, who is also a regular worker of the respondent and a member of the complainant union, filed a charge for unfair labor practice against herein respondent. Subsequent to the filing of the said charge, the respondent, by its manager Chua Yiong, summoned and advised union president Lazaro Peralta that if Francisco San Jose will not withdraw his charge against the company, the company will also dismiss his brother Apolonio San Jose, to which the union president replied that that should not be the attitude of the company because Apolonio has nothing to do with his brother's case. Then, respondent did dismiss Apolonio San Jose without just and valid cause and in gross violation of the operative collective bargaining agreement between the complainant union and respondent corporation. CIR, however, said that what the respondent did was not an actionable offense. CIR explained that since the one dismissed by reason of said charge of unfair labor practice was, not the complainant therein, Francisco San Jose, but

his brother Apolonio San Jose, the latter's dismissal does not constitute another unfair labor practice.

Issue: Whether or not Philippine American Cigar & Cigarette Manufacturing Co., Inc. is guilty of unfair labor practice.

Ruling: Yes. Section (5) (a) of RA No. 875 provides that (a) It shall be unfair labor practice for an employer: (5) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under this Act.

It is a well settled rule of law that what is prohibited to be done directly shall not be allowed to be accomplished indirectly. Although subdivision (5) of paragraph (a) of said Section 4 would seem to refer only to the discharge of the one who preferred charges against the company as constituting unfair labor practice, the aforementioned subdivision (5) should be construed in line with the spirit and purpose of said Section 4 and of the legislation of which forms part — namely, to assure absolute freedom of the employees and laborers to establish labor organizations and unions, as well as to prefer charges before the proper organs of the Government for violation of our labor laws.

Now, then, if the dismissal of an employee due to the filing by him of said charges would be and is an undue restraint upon said freedom, the dismissal of his brother owing to the non-withdrawal of the charges of the former, would be and constitute as much a restraint upon the same freedom. In fact, it may be a greater and more effective restraint thereto.

Hence, the court held that Philippine American Cigar & Cigarette Manufacturing Co., Inc. is guilty of unfair labor practice.

What are the kinds of ULP involved in this case?

- 1) Interference
- 2) Discrimination
- 3) Discrimination based on testimony

Here, there was a threat to dismiss his brother if he did not withdraw his charge against the company (blackmailing). As to interference, filing of a ULP is an action of by the union; planning to prevent them from doing so is not only a form of interference but also a form of discrimination on account of testimony because basically, you are attesting to certain facts. In a way, they are trying to inhibit the union members from giving out testimonies. In fact, there are actual

U.S. cases where employees were threatened to dismiss their loved ones if they would join a union.

Cainta Catholic School v. Cainta Catholic School Employees Union

Doctrine: For the purpose of determining whether or not a discharge is discriminatory, it is necessary that the underlying reason for the discharge be established. The fact that a lawful cause for discharge is available is not a defense where the employee is actually discharged because of his union activities.

7. DISCRIMINATION BECAUSE OF TESTIMONY

Dismissing or prejudicing an employee who is about to give or has given testimony under this Code.

NOTE: The subject matter of the testimony is anything under the Labor Code.

ULP also applies to refusal to testify because it is analogous to giving of testimony.

Itogon-Suyoc Mines, Inc. v. baldo

Doctrine: Considering that Baldo's case was pending before the grievance committee when he was asked not to testify, and soon after he had testified adversely to the petitioner his case was dropped by the grievance committee, the conclusion is inescapable that the management of the petitioner herein had much to do with the dropping of Baldo's case, and because of the dropping of that case the petitioner never reinstated Baldo to his work. The petitioner had committed unfair labor practices.

8. UNION BUSTING

The codal definition has specific elements:

1. The union officers are being dismissed
2. Those officers are the ones duly elected in accordance with the union constitution and bylaws; and
3. The existence of the union is threatened.

Form of discrimination. Getting rid of the union leaders hoping that the union won't have a leg to stand on if it has no officers.

Elements of union busting

Bigg's Inc. v. Boncacas

Doctrine: To constitute union busting under Article 263 of the Labor Code, there must be:

- 1) a dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws; and
- 2) the existence of the union must be threatened by such dismissal.

Pepsi-Cola Products Philippines, Inc. v. Molon

Doctrine: Absent any perceived threat to a union's existence or a violation of an employee's right to self-organization, an employer cannot be said to have committed union busting or ULP.

In this case, the Court finds it difficult to attribute any act of union busting or ULP on the part of Pepsi considering that *it retrenched its employees in good faith*.

9. BOULWARISM

Boulwarism is a violation of good faith in bargaining. It includes the failure to execute the CBA (Bad Faith Bargaining).

It occurs when the employer directly bargains with the employee disregarding the union; the aim was to deal with the labor union through the employees rather than with the employees thru the union. Employer submits its proposals and adopts a take-it-or-leave-it stand.

This is a term from American common law. A take-it-or-leave-it mentality. "This is our stance, take it or leave it." No case has explicitly applied Boulwarism. Azucena cites American jurisprudence.

In the cases that we've discussed, it is okay for either the employer or the union to be stubborn about their stance on something because this is expected in negotiations.

I am not sure if this is appropriate in the Philippines. Maybe, later on, there will be a case explicitly prohibiting Boulwarism in the Philippines.

10. BLUE SKY BARGAINING

It is defined as making exaggerated or unreasonable proposals.

Giving proposals or counter proposals that are so ridiculously unachievable that the other party will have to give up. For example, if the union says that "we want better hours of work or better working environment" and the employer gives a counter proposal intended to discourage the employees. Because the counterproposal is so ridiculous and so unachievable, the employees have no choice but to give up.

11. SURFACE BARGAINING

It is the act of "going through the motions of negotiating" without any legal intent to reach an agreement.

Surface bargaining is a question of intent of the party concerned and usually such intent can only be inferred from the totality of the challenged party's conduct both at and away from the bargaining table.

A sophisticated pretense in the form of apparent bargaining does not satisfy the statutory duty to bargain. The duty is not discharged by merely meeting together or simply manifesting a willingness to talk. An employer's proposals which could not be offered with any reasonable expectation that they would be accepted by the union constitute surface bargaining.

Basically you are going to the motions, talking to the union, etc but in reality you do not have plans of negotiating at all. This kind of ULP is hard to prove, unless there is a clear communication. There is appearance in negotiation, but no intent to negotiate.

For example, text message or email.

Aboitiz Power Renewables, Inc

Doctrine: Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization.

An employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. To prove the existence of unfair labor practice, substantial evidence has to be presented.

Labor Relations Commission, we described in more detail the limitations on the right of management to transfer employees:

x x x [I]t cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits, xxx.

A transfer is a movement from one position to another which is of equivalent rank, level or salary, without break in service. Promotion, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Conversely, demotion involves a situation where an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.³⁵ (Citations omitted and emphasis and underscoring ours)

For promotion to occur, there must be an advancement from one position to another or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee.

An employee is not bound to accept a promotion, which is in the nature of a gift or reward. Refusal to be promoted is a valid exercise of a right. Such exercise cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer, hence, it cannot be the basis of an employee's dismissal from service.

In the instant case, the right not to accept an offered promotion pertained to each of the respondents. However, they exhibited disrespectful behavior by their repeated refusal to receive the memoranda issued by Echo and by their continued presence in their respective areas without any work output. The Court thus finds that although the respondents' dismissal from service for just cause was unwarranted, there is likewise no basis for the award of moral and exemplary damages in their favor. Echo expectedly imposed disciplinary penalties upon the respondents for the latter's intransigence. Albeit the Court is not convinced of the character and extent of the measures taken by Echo, bad faith cannot be inferred solely from the said impositions.

The respondents allege that their transfer/promotion was intended to deprive the Union of leadership and membership. They claim that other officers were already dismissed. The foregoing, however, lacks substantiation. Unfair labor practice is a serious charge, and the respondents failed to show that the petitioners conclusively interfered with, restrained, or coerced employees in the exercise of their right to self-organization.

Transfer as Union Busting

Echo 2000 Commercial Corporation v. Obrero Filipino-Echo 2000 Chapter-CLO

Doctrine: In the case of Blue Dairy Corporation v. National

G. ULP BY LABOR ORGANIZATIONS

ULP can also be committed by the union. The union is trying to blackmail, threaten, or force employees to join. The employees are not able to freely exercise their right to self-organization.

1. Union-Induced Discrimination

Heirs of Cruz v. Court of Industrial Relations, G.R. No. L-23331-32, 27 December 1969

Doctrine: Respondent firm could not claim that it dealt in good faith with the union officials, for it hastily executed the settlement notwithstanding the serious charges of bad faith against the union leadership, and the non-holding of the scheduled conference where the union leaders, at their express request, could be duly assisted by union counsel.

Where collective bargaining process is not involved, and what is at stake are back wages already earned by the individual workers by way of overtime, premium and differential pay, and final judgment has been rendered in their favor, as in the present case, the real party in interest with direct material interest, as against the union which has only served as a vehicle for collective action to enforce their just claims, are the individual workers themselves. **Authority of the union to waive or quitclaim all or part of the judgment award in favor of the individual workers cannot be lightly presumed but must be expressly granted, and the employer, as judgment debtor, must deal in all good faith with the union as the agent of the individual workers.** The Court in turn should certainly verify and assure itself of the fact and extent of the authority of the union leadership to execute any compromise or settlement of the judgment on behalf of the individual workers who are the real judgment creditors.

Salunga v. Court of Industrial Relations, G.R. No. L-22456, 27 September 1967

Doctrine: Unions are not entitled to arbitrarily exclude qualified applicants for membership, and a closed-shop provision would not justify the employer in discharging, or a union in insisting upon the discharge of, an employee whom the union thus refuses to admit to membership, without any reasonable ground. If they may be compelled to admit new members, who have the requisite qualifications, with more reason may the law and the courts exercise the coercive power when the employee involved is a long standing union member, who, owing to provocations of union officers, was impelled to tender his resignation, which he forthwith withdrew or revoked.

In this case, the Union, by not presenting evidence to overcome the testimonies of Salunga on what caused him to submit his resignation have, in effect, confirmed the fact that its refusal to allow the withdrawal of his resignation had been due to his aforementioned criticisms which did not only

assail the Union, but the acts of its officers, and, indirectly, the officers themselves. Indeed, the officers tried to justify themselves by characterizing said criticisms as acts of disloyalty to the Union.

The court also held that the company is not guilty of unfair practice. The company was reluctant in discharging the petitioner. On the contrary, it did not merely show a commendable understanding and sympathy for his plight. It even tried to help him, although to such an extent only as was consistent with its obligation to refrain from interfering in purely internal affairs of the Union. At the same time, the Company could not safely inquire into the motives of the Union officers, in refusing to allow the petitioner to withdraw his resignation. Inasmuch as the true motives were not manifest, without such inquiry, and petitioner had concededly tendered his resignation of his own free will, the arbitrary nature of the decision of said officers was not such as to be apparent and to justify the company in regarding said decision as unreasonable.

2. FEATHERBEDDING

Employee practices which create or spread employment by unnecessarily maintaining or increasing the number of employees used, or the amount of time consumed, to work on a particular job.

Featherbedding occurs when the union gives the employer the false impression that the employer needs more workers.
For example, you have a group of employees in the company, the employees, as a union, tell the company that they need more workers. But, in reality, the union members are just slowing down their productivity. There is a false illusion of non-productivity to force employer to hire more employees.

Manila Mandarin Employees Union v. NLRC

Doctrine: A closed-shop agreement is a valid form of union security, and such a provision in a collective bargaining agreement is not a restriction of the right of freedom of association guaranteed by the Constitution. BUT, it should also be governed by law and the principles of justice, fair play, and legality and cannot be used by union officials against an employer much less their own members.

H. BURDEN OF PROOF AND QUANTUM OF EVIDENCE

In ULP, the burden of proof is on those who are alleging ULP. It should be supported with evidence

since good faith is presumed. If there is no proof, most likely, the ULP complaint can be dismissed.

The quantum of evidence is still substantial evidence. What a reasonable mind might accept to support a conclusion. It is not preponderance of evidence, not beyond reasonable doubt. The presumption is in favor of the employee.

When you have labor cases, you can even submit photocopies. When you are an employee, who is most likely to have documents and records between the employer and the employee? It is the employer.

In a lot of cases, employees are not given copies of their contract. This is true especially in rank-and-file employees or construction workers. They are most likely required to sign but are not given copies. They probably only have their pay slips. Employers can manipulate the employees by not giving them the records they need. This is the rationale why the quantum of evidence is not as high as other cases. To start with, the employees are at a disadvantage.

Philippine Metal Foundries v. Court of Industrial Relations

Doctrine: The question of whether an employee was discharged because of his union activities is essentially a question of fact as to which the findings of the Court of Industrial Relations are conclusive and binding if supported by substantial evidence considering the record as a whole. This is so because the Industrial Court is governed by the rule of substantial evidence, rather than by the rule of preponderance of evidence as in any ordinary civil cases.

Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred. Examining the evidence on hand on this matter, the Court found the same to be substantially supported.

Although a man's motive, like his intent, is, in the words of Lord Justice Bowen "as much a fact as the state of his digestion", evidence of such fact may consist both direct testimony by one whose motive is in question and of inferences of probability drawn from the totality of other facts.

Standard Chartered Bank Employees Union v. Hon. Confesor

Doctrine: In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined

as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the case at bar, the Union bases its claim of interference on the alleged suggestions of Diokno to exclude Umali from the Union's negotiating panel.

The circumstances that occurred during the negotiation do not show that the suggestion made by Diokno to Divinagracia is an anti-union conduct from which it can be inferred that the Bank consciously adopted such act to yield adverse effects on the free exercise of the right to self-organization and collective bargaining of the employees, especially considering that such was undertaken previous to the commencement of the negotiation and simultaneously with Divinagracia's suggestion that the bank lawyers be excluded from its negotiating panel.

The records show that after the initiation of the collective bargaining process, with the inclusion of Umali in the Union's negotiating panel, the negotiations pushed through. The complaint was made only on August 16, 1993 after a deadlock was declared by the Union on June 15, 1993. It is clear that such ULP charge was merely an afterthought.

Adamson University Faculty and Employees Union v. Adamson University

Doctrine: In UST Faculty Union v. University of Santo Tomas, this Court ruled that the person who alleges the unfair labor practice has the burden of proving it with substantial evidence: "The general principle is that one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in the case of ULP, the alleging party has the burden of proving such ULP."

Thus, a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process (De Paul v. NLRC). In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In other words, whether the employee or employer alleges that the other party committed ULP, it is the burden of the alleging party to prove such allegation with substantial evidence. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions (Standard Chartered Bank Employees Union v. Confesor).

In determining whether an act of unfair labor practice was committed, the totality of the circumstances must be considered. If the unfair treatment does not relate to or affect the workers' right to self-organize, it cannot be deemed unfair labor practice. A dismissal of a union officer is not necessarily discriminatory, especially when that officer committed an act of misconduct (Great Pacific Life Employees Union v. Great Pacific).

I. CAUSES OF ACTION CANNOT BE SPLIT

- Causes of action cannot be split. If you allege ULP, all existing ULP at that time has to be alleged. It is not allowed to file a ULP in one Labor Arbiter and file the other ULP to another Labor Arbiter. All ULP that has happened has to be grouped in one complaint.
- For example, the union filed two different ULPs to two different Labor Arbiters, the employer is not precluded from filing a manifestation stating that there is a split of causes of action. Employers can allege that the ULP should be grouped in one complaint.

Dionela v. Court of Industrial Relations

Short Facts: E. R. SQUIBB AND SONS (PHIL.) was charged with unfair labor practices allegedly committed against its employees and members of the Gas and Chemical Free Workers, assigned with Case No. 598-ULP. A supplemental complaint was filed for alleged additional acts of unfair labor practice. At this time, an amicable settlement (compromise agreement) was reached to settle their disputes and controversies. The petitioners filed a motion to withdraw the complaints under Case No. 598-ULP. Subsequently, the Court ordered the dismissal of the complaints under Case No. 597-ULP. They then instituted a new complaint for unfair labor practice.

Doctrine/Ruling: The Court held that when a labor union accuses an employer of acts of unfair labor practice allegedly committed during a given period of time, the charges should include all acts of unfair labor practice committed against any and all members of the Union during that period. The Union should not, upon the dismissal of the charges first preferred, be allowed to split its cause of action and harass the employer with subsequent charges, based upon acts committed during the same period of time.

In this case, the complaints filed by the petitioners involved additional acts allegedly constituting unfair labor practice against the defendants, which were not included in the charges preferred in Case No. 598-ULP, and should not be deemed covered by the order of dismissal therein issued. However, upon review of the record, petitioners have not introduced any evidence in support of their new allegations in the suppletory complaint. Said new allegations actually refer to events that are said to have taken place before the compromise agreement above mentioned and should be deemed included, therefore, in the settlement therein stipulated. Hence, the new complaint will not prosper.

VII. STRIKES AND LOCKOUTS

A. CHARACTERISTICS OF STRIKES OR LOCKOUTS

1. EER

One of the characteristics of a strike is the existence of an established relationship between the strikers and the person or persons against whom the strike is called and the Existence of an Er-Ee relationship.

2. LABOR DISPUTE

A valid strike therefore presupposes the existence of a labor dispute.

Article 219. Definition.

(o) "Strike" means any temporary stoppage of work by the concerted action of employees as a **result of an industrial or labor dispute**.

(l) "Labor dispute" includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

3. SUSPENSION OF EER

During a strike, the Er-Er relationship is not terminated but merely suspended as the work stoppage is not permanent but only temporary. Thus, a striking employee is still an employee. The employee's status during a strike remains, but the effects of employment are suspended, hence a striking employee, as a rule, is not entitled to his wage during the strike (2, Azucena, 2016, p. 590).

4. TEMPORARY WORK STOPPAGE

Strike means any *temporary stoppage of work* by the concerted action of Ees as a result of an industrial or labor dispute [IRR, Book V, Rule I, Sec. 1(uu)].

5. CONCERTED ACTION

An activity undertaken by two or more employees; by one on behalf of others. It is the policy of the State to encourage free trade unionism and free collective bargaining. Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. (Labor Code, Art. 278)

Forms of Concerted Activities (Labor Code, Art. 278)

1. Strike
2. Lock out

3. Picketing

6. STRIKING GROUP IS LLO AND IN THE CASE OF A BARGAINING DEADLOCK, IS THE SEBA

Strike - Any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labor dispute. (Labor code, Art. 219 (o))
Note: The term "strike" has been elucidated to encompass not only concerted work stoppage, but also slowdowns, mass leaves, sit downs, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities. (Toyota Motor Phils. Corp Workers Assoc. v. NLRC, G.R. Nos. 158798-99, October 19, 2007)

Labor Dispute includes any controversy or matters concerning terms and conditions of employment or the association or representation of persons in negotiations, fixing, maintaining, changing, or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees (Labor code, Art. 219(l); Gold City Integrated Port Services v. NLRC, G.R. No. 103560 & 103599, 1995)

Characteristics of a Strike

1. There must be an employer-employee relationship
2. Existence of a dispute
3. Employment relation is deemed to continue although in a state of belligerent suspension
4. There is temporary work stoppage
5. Work stoppage is done through concerted action
6. The striking group is a legitimate labor organization. In case of bargaining deadlock, it must be the employee's sole bargaining representative

B. PROCEDURAL REQUIREMENTS

- Must arise from a labor dispute

Article 278. [263] Strikes, Picketing, and Lockouts. 216

(a) It is the policy of the State to encourage free trade unionism and free collective bargaining.

(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected.

However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

(c) In cases of bargaining deadlocks, the duly certified

or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof.

In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Minister of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken.

The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

(i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties.

Striking union must be the majority union and certified bargaining agent

Philippine Diamond Hotel v. Manila Diamond Hotel Employees Union

Doctrine: Only the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit is the exclusive representative of

the employees in such unit for the purpose of collective bargaining.

The union (hereafter referred to as respondent) is admittedly not the exclusive representative of the majority of the employees of petitioner, hence, it could not demand from petitioner the right to bargain collectively in their behalf.

Respondent insists, however, that it could validly bargain in behalf of "its members," relying on Article 242 of the Labor Code. Respondent's reliance on said article, a general provision on the rights of legitimate labor organizations, is misplaced, for not every legitimate labor organization possesses the rights mentioned therein. Article 242 (a) must be read in relation to above-quoted Article 255.

On respondent's contention that it was bargaining in behalf only of its members, the appellate court, affirming the NLRC's observation that the same would only "fragment the employees" of petitioner, held that "what [respondent] will be achieving is to divide the employees, more particularly, the rank-and-file employees of [petitioner] . . . the other workers who are *not members* are at a serious disadvantage, because if the same shall be allowed, employees who are non-union members will be economically impaired and will not be able to negotiate their terms and conditions of work, thus defeating the very essence and reason of collective bargaining, which is an effective safeguard against the evil schemes of employers in terms and conditions of work." This Court finds the observation well-taken.

It bears noting that the goal of the DOLE is geared towards "a single employer wide unit which is more to the broader and greater benefit of the employees working force." The philosophy is to avoid fragmentation of the bargaining unit so as to strengthen the employees' bargaining power with the management. To veer away from such goal would be contrary, inimical and repugnant to the objectives of a strong and dynamic unionism.

United Restauror's Employees and Labor Union - PAFLU v. Torres

Doctrine: When the Union struck and picketed on January 16, 1965, it might have been true that the Union commanded a majority of Sulo's employees. Without need of certification, it could, under such circumstances, conclude a collective bargaining agreement with Sulo. But it is not disputed that shortly after this case was filed, a consent election was held. Not controverted, too, is the fact that, in that consent election, SELU defeated the Union, petitioner herein. Because of this, **SELU was certified to the Sulo management as the "collective bargaining representative of the employees ... for collective bargaining purposes** as regards wages, hours of work, rates of pay and/or such other terms and conditions of employment allowed them by law."

The consent election, it should be noted, was ordered by CIR pursuant to the Union's petition for direct certification and a similar petition for certification filed by SELU. Verily,

the Union can no longer demand collective bargaining. For, it became the minority union. As matters stand, said right properly belongs to SELU, which commands the majority. By law, the right to be the exclusive representative of all the employees in an appropriate collective bargaining unit is vested in the labor union "designated or selected" for such purpose "by the majority of the employees" in the unit concerned. SELU has the right as well as the obligation to hear, voice out and seek remedies for the grievances of all Sulo employees, including employees who are members of petitioner Union, regarding the "rates of pay, wages, hours of employment, or other conditions of employment."

Indeed, petitioner Union's concerted activities designed to be recognized as the exclusive bargaining agent of Sulo employees must come to a halt. Collective bargaining cannot be the appropriate objective of petitioning Union's continuation of their concerted activities. The record before us does not reveal any other legitimate purpose. To allow said Union to continue picketing for the purpose of drawing the employer to the collective bargaining table would obviously be to disregard the results of the consent election. To further permit the Union's picketing activities would be to flaunt at the will of the majority.

The outcome of a consent election cannot be rendered meaningless by a minority group of employees who had themselves invoked the procedure to settle the dispute. Those who voted in the consent election against the labor union that was eventually certified are hidebound to the results thereof. Logic is with this view. By their very act of participating in the election, they are deemed to have acquiesced to whatever is the consequence of the election. As to those who did not participate in the election, the accepted theory is that they "are presumed to assent to the expressed will of the majority of those voting."

Rationale For Procedural Requirements

Standard Chartered Bank Employees Union v Hon. Confessor

Doctrine: Interference as ULP, blue sky bargaining, surface bargaining

Article 248(a) of the Labor Code, considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form association. The right to self-organization necessarily includes the right to collective bargaining. If an employer interferes in the selection of its negotiators or coerces the Union to exclude from its panel of negotiators a representative of the Union, and if it can be inferred that the employer adopted the said act to yield adverse effects on the free exercise to right to self-organization or on the right to collective bargaining of the employees, ULP under Article

248(a) in connection with Article 243 of the Labor Code is committed.

In this case, the circumstances that occurred during the negotiation do not show that the suggestion made by Diokno to Divinagracia is an anti-union conduct from which it can be inferred that the Bank consciously adopted such act to yield adverse effects on the free exercise of the right to self-organization and collective bargaining of the employees, especially considering that such was undertaken previous to the commencement of the negotiation and simultaneously with Divinagracia's suggestion that the bank lawyers be excluded from its negotiating panel. It is clear that such ULP charge was merely an afterthought. The accusation occurred after the arguments and differences over the economic provisions became heated and the parties had become frustrated.

Blue-Sky Bargaining is defined as "unrealistic and unreasonable demands in negotiations by either or both labor and management, where neither concedes anything and demands the impossible." It actually is not collective bargaining at all.

In this case, we do not agree that the Union is guilty of ULP for engaging in blue-sky bargaining or making exaggerated or unreasonable proposals. 59 The Bank failed to show that the economic demands made by the Union were exaggerated or unreasonable

Surface bargaining is defined as "going through the motions of negotiating" without any legal intent to reach an agreement..

In this case, the records show that the Bank's counter proposals on the non-economic provisions or political provisions did not put "up for grabs" the entire work of the Union and its predecessors.

Pilipino Telephone Corporation v Pilipino Telephone Employees

Doctrine: Union-busting There is no union busting when the employees were mass promoted. Union busting only applies when the employees were illegally dismissed.

To constitute union busting under Article 263 of the Labor Code, there must be:

- 1) a dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws; and
- 2) the existence of the union must be threatened by such dismissal.

In the case at bar, the second notice of strike filed by the Union merely assailed the "mass promotion" of its officers and members during the CBA negotiations. Surely, promotion is different from dismissal. As observed by the Labor Arbiter:

Neither does that (sic) PILTEL's promotion of some members of respondent union constitutes (sic) union busting which could be a valid subject of strike because they were not being dismissed. In fact, these promoted employees did not personally come forward to protest their promotion vis - Á-vis their alleged option to remain in the union bargaining unit of the rank and filers.

Capitol Medical Center v. NLRC

Doctrine: The requirement of giving notice of the conduct of a strike vote to the NCMB at least 24 hours before the meeting for the said purpose is designed to:

- 1) inform the NCMB of the intent of the union to conduct a strike vote;
- 2) give the NCMB ample time to decide on whether or not there is a need to supervise the conduct of the strike vote to prevent any acts of violence and/or irregularities attendant thereto; and
- 3) should the NCMB decide on its own initiative or upon the request of an interested party including the employer, to supervise the strike vote, to give it ample time to prepare for the deployment of the requisite personnel, including peace officers if need be.

Unless and until the NCMB is notified at least 24 hours of the union's decision to conduct a strike vote, and the date, place, and time thereof, the NCMB cannot determine for itself whether to supervise a strike vote meeting or not and insure its peaceful and regular conduct. The failure of a union to comply with the requirement of the giving of notice to the NCMB at least 24 hours prior to the holding of a strike vote meeting will render the subsequent strike staged by the union illegal.

In this case, the respondent Union failed to comply with the 24-hour prior notice requirement to the NCMB before it conducted the alleged strike vote meeting on November 10, 1997. As a result, the petitioner complained that no strike vote meeting ever took place and averred that the strike staged by the respondent union was illegal.

Lapanday Workers Union v. National Labor Relations Commission,

Doctrine: The procedural requirements to be followed before staging such as the filing of notice of strike, taking of strike vote, and the reporting of the strike vote result to the Department of Labor and Employment are **mandatory**. **The seven (7)-day waiting period is intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.** The need for assurance that the majority of the union members support the strike cannot be gainsaid. Strike is usually the last weapon of labor to compel capital to concede to its bargaining demands or to defend itself against unfair labor practices of management. It is a weapon that can either breathe life to or destroy the union and its members in their struggle with management for a more equitable due of their

labor. The decision to wield the weapon of strike must, therefore, rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hotheads, and firmly focused on the legitimate interest of the union which should not, however, be antithetical to the public welfare. Thus, our laws require the decision to strike to be the consensus of the majority for while the majority is not infallible, still, it is the best hedge against haste and error. In addition, a majority vote assures the union it will go to war against management with the strength derived from unity and hence, with a better chance to succeed.

Applying the law to the case at bar, the strike conducted by the union is plainly illegal as it was held within the seven (7)-day waiting period provided for by paragraph (f), Article 263 of the Labor Code. The haste in holding the strike prevented the Department of Labor and Employment from verifying whether it carried the approval of the majority of the union members.

CCBPI Postmix Workers Union v. NLRC

Doctrine: Before a strike may be declared, the following requirements should be observed, to wit:

1. the thirty-day notice or the fifteen-day notice, in case of unfair labor practices;
2. the two-thirds (2/3) required vote to strike done by secret ballot; and
3. the submission of the strike vote to the DOLE at least seven days prior to the strike.

4. The language of the law leaves no room for doubt that the cooling-off period and the seven-day strike ban after the strike-vote report **were intended to be mandatory**.

Capitol Medical Center vs NLRC

Doctrine: Conformably to Article 264 of the Labor Code of the Philippines³⁰ and Section 7, Rule XXII of the Omnibus Rules Implementing the Labor Code, no labor organization shall declare a strike unless supported by a majority vote of the members of the union obtained by secret ballot in a meeting called for that purpose. The requirement is mandatory and the failure of a union to comply therewith renders the strike illegal. **The union is thus mandated to allege and prove compliance with the requirements of the law.**

Bigg's Inc. v. Boncacas

Doctrine: In a strike grounded on unfair labor practice, the following are the requirements:

1. The strike may be declared by the duly certified bargaining agent or legitimate labor organization;
2. The conduct of the strike vote in accordance with the notice and reportorial requirements to the NCMB and subject to the seven-day waiting period;

3. Notice of strike filed with the NCMB and copy furnished to the employer, subject to the 15-day cooling-off period.
4. In cases of union busting, the 15-day cooling-off period shall not apply.

The Court reinstates and affirms the ruling of the NLRC, which had, for its part, affirmed the findings of the LA that the union conducted an illegal sit-down strike on February 16, 1996, for failure of the union to comply with the pre-requisites for a valid strike.

The union did not file the requisite Notice of Strike and failed to observe the cooling-off period. In an effort to legitimize the strike on February 16, 1996, the union filed a Notice of Strike on the same day. This cannot be considered as compliance with the requirement, as the cooling-off period is mandatory. The cooling-off period is not merely a period during which the union and the employer must simply wait. The purpose of the cooling-off period is to allow the parties to negotiate and seek a peaceful settlement of their dispute to prevent the actual conduct of the strike. In other words, there must be genuine efforts to amicably resolve the dispute.

G & S Transport Corporation v. Infante

Doctrine: Article 212 of the Labor Code defines strike as any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A **valid strike therefore presupposes the existence of a labor dispute**. The strike undertaken by respondents took the form of a sit-down strike, or more aptly termed as a sympathetic strike, where the striking employees have no demands or grievances of their own, but they strike for the purpose of directly or indirectly aiding others, without direct relation to the advancement of the interest of the strikers. It is indubitable that an illegal strike in the form of a sit-down strike occurred in petitioner's premises, as a show of sympathy to the two employees who were dismissed by petitioner.

National Union of Workers in Hotels v. NLRC

Doctrine: Generally, a strike based on a "non-strikeable" ground is an illegal strike; corollarily, a strike grounded on ULP is illegal if no such acts actually exist. As an exception, even if no ULP acts are committed by the employer, if the employees believe in good faith that ULP acts exist so as to constitute a valid ground to strike, then the strike held pursuant to such belief may be legal. As a general rule, therefore, where the union believed that the employer committed ULP and the circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless.

Remedies Available to Striking employees: Appropriate remedies under the Labor Code were available to the striking employees and they had the option to either directly file a case for illegal dismissal in the office of the labor

arbiter or, by agreement of the parties, to submit the case to the grievance machinery of the CBA so that it may be subjected to voluntary arbitration proceedings.

Liwayway Publications, Inc. v. Permanent Concrete Workers Union

Doctrine: The first question that strikes the Supreme Court in this case, and is considered to be of determinative significance is **whether or not this case involves or has arisen out of a labor dispute**. If it does, then with certainty, Section 9 of Republic Act 875, the "Industrial Peace Act," would apply. If it does not, then the Rules of Court will govern the issuance of the writ of preliminary injunction because it will not partake in the nature of a labor injunction which the lower court has no jurisdiction to issue.

There is no connection between the appellee Liwayway Publications, Inc. and the striking union, nor with the company against whom the strikers staged the strike, and neither are the acts of the driver of the appellee, its general manager, personnel manager, the man in charge of the bodega and other employees of the appellee in reaching the bodega to obtain newsprint therefrom to feed and supply its publishing business interwoven with the labor dispute between the striking Union and the Permanent Concrete Products company. If there is a connection between appellee publishing company and the Permanent Concrete Products company, it is that both are situated in the same premises, which can hardly be considered as interwoven with the labor dispute pending in the Court of Industrial Relations between the strikers and their employer.

VII. STRIKES AND LOCKOUTS

A. CHARACTERISTICS OF STRIKES OR LOCKOUTS

1. EER

One of the characteristics of a strike is the existence of an established relationship between the strikers and the person or persons against whom the strike is called and the Existence of an Er-Ee relationship.

2. LABOR DISPUTE

A valid strike therefore presupposes the existence of a labor dispute.

Article 219. Definition.

(o) "Strike" means any temporary stoppage of work by the concerted action of employees as a **result of an industrial or labor dispute**.

(l) "Labor dispute" includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

3. SUSPENSION OF EER

During a strike, the Er-Er relationship is not terminated but merely suspended as the work stoppage is not permanent but only temporary. Thus, a striking employee is still an employee. The employee's status during a strike remains, but the effects of employment are suspended, hence a striking employee, as a rule, is not entitled to his wage during the strike (2, Azucena, 2016, p. 590).

4. TEMPORARY WORK STOPPAGE

Strike means any *temporary stoppage of work* by the concerted action of Ees as a result of an industrial or labor dispute [IRR, Book V, Rule I, Sec. 1(uu)].

5. CONCERTED ACTION

An activity undertaken by two or more employees; by one on behalf of others. It is the policy of the State to encourage free trade unionism and free collective bargaining. Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. (Labor Code, Art. 278)

Forms of Concerted Activities (Labor Code, Art. 278)

1. Strike
2. Lock out
3. Picketing

6. STRIKING GROUP IS LLO AND IN THE CASE OF A BARGAINING DEADLOCK, IS THE SEBA

Strike - Any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labor dispute. (Labor code, Art. 219 (o)) Note: The term "strike" has been elucidated to encompass not only concerted work stoppage, but also slowdowns, mass leaves, sit downs, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities. (Toyota Motor Phils. Corp Workers Assoc. v. NLRC, G.R. Nos. 158798-99, October 19, 2007)

Labor Dispute includes any controversy or matters concerning terms and conditions of employment or the association or representation of persons in negotiations, fixing, maintaining, changing, or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees (Labor code, Art. 219(l); Gold City Integrated Port Services v. NLRC, G.R. No. 103560 & 103599, 1995)

Characteristics of a Strike

1. There must be an employer-employee relationship
2. Existence of a dispute
3. Employment relation is deemed to continue although in a state of belligerent suspension
4. There is temporary work stoppage
5. Work stoppage is done through concerted action
6. The striking group is a legitimate labor organization. In case of bargaining deadlock, it must be the employee's sole bargaining representative

Strike has certain elements to consider an action by an employee or the employer as a strike or lockout.

The Key elements are:

1. There has to be an **employer-employee relationship** between the striking employees and the employer which they are striking against or the employees and the employer who is locking out the employees.
2. A general strike or sympathetic strike is when employees who are actually not employees of the employer joins the strike. If it is a sympathetic strike, it is invalid. There has to be an **existing labor dispute**.
3. Important element is **suspension of the employer-employee relationship**. The employer is permitted to **hire temporary employees to fill the positions of striking employees**. When the striking employees



return to work, those replacement employees are only temporary, once the striking ends, they are considered let go, it is not considered illegal dismissal.

There can be no strike if the employer-employed relationship has already been severed. For example, if the employee has already been terminated/retired/resigned, and he or she joins the strike, it is not a valid strike.

There is an understanding that when the strike ends, the striking employees should be allowed to go back to work if the strike is valid. In some cases, they can be ordered to go back to work.

4. There is a **temporary stoppage of work**, or the employees refuse to give the employees work if it is a lockout. The Keywords are "temporary" and "stoppage". Temporary because there is an understanding that the strike only lasts while the employees are unsatisfied with their grievance. If it is not temporary, it might be considered mass resignation.

Stoppage of work is important. **Slowdown strike** - the employee technically does not stop working but they slow down the work to hamper the productivity of the employer.

If the employees continue to work at the same pace, it cannot be considered a strike within the meaning of the Labor Code. There are other acts of rebellion such as when wearing armbands, and t-shirts. But if work is not affected, it cannot be considered a strike especially if they do it in their own time.

If employees campaign through social media during their free time , it cannot be considered a strike because there is no stoppage of work.

5. Another important element is **concerted action** meaning the employees are acting together. If they are doing things individually and not in the name of the group, it cannot be considered a strike. *For example, one employee decides to post placards, another employee decides to do a social media campaign and they do it individually, it is not a strike.*

6. Lastly, the **group of employees striking have to be part of the labor organization or the union**. If there is still no SEBA, they must at least be a member of the labor organization. But if there is already a union, the striking employees have to be a member of the union.

B. PROCEDURAL REQUIREMENTS

- Must arise from a labor dispute

Article 278. [263] Strikes, Picketing, and Lockouts. 216
(a) It is the policy of the State to encourage free trade

unionism and free collective bargaining.

(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected.

However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof.

In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Minister of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken.

The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall



have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

(i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties.

Procedural requirements: There is a very specific

procedure for strikes and lockouts.

1. Notice of strike/lockout

Notice of strike/lockout has to be filed within the cooling-off period. This period depends on the ground of the strike.

If the ground of strike is bargaining deadlock meaning there is an impasse, the cooling-off period is 30 days. If the ground is ULP, the cooling-off period is 15 days. If the ground is union busting, no cooling off period.

2. Strike vote

There has to be a strike vote requiring the majority vote of the total union membership or if it's a lockout - majority of the board of directors.

Strike vote must be conducted 7 days before the strike.

Q: Do we consider the 7 days as part of the cooling-off period?

A: No. The 7 days period for strike vote is separate from the cooling-off period.

If you file a notice of strike and the ground is bargaining deadlock, you have a 30 days cooling off period and 7 days for the strike vote. So, you have to wait 37 days before you can conduct a strike.

If the ground is ULP, you have to wait 22 days before you can conduct a strike.

If union busting, there is no cooling off period but you still have to respect the 7 days period, so, you have to wait 7 days before you can conduct a strike.

In one of the cases, it was clearly established that these requirements are mandatory. If the requirements are not met, the strike is considered illegal. **Non-compliance with any of the requirements can render the strike illegal.**

What if the employer was a sole proprietorship? Will the majority rule for the employer party be dispensed with?

Yes. It would just be the sole proprietor who will decide on the lockout but still report it to DOLE.

Generally, A lockout must be approved by a majority vote of the members of the Board of Directors of the Corporation or Association or of the partners in a partnership, obtained by a secret ballot in a meeting called for that purpose.

Striking union must be the majority union and certified

bargaining agent

Philippine Diamond Hotel v. Manila Diamond Hotel Employees Union

Doctrine: Only the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit is the exclusive representative of the employees in such unit for the purpose of collective bargaining.

The union (hereafter referred to as respondent) is admittedly not the exclusive representative of the majority of the employees of petitioner, hence, it could not demand from petitioner the right to bargain collectively in their behalf.

Respondent insists, however, that it could validly bargain in behalf of "its members," relying on Article 242 of the Labor Code. Respondent's reliance on said article, a general provision on the rights of legitimate labor organizations, is misplaced, for not every legitimate labor organization possesses the rights mentioned therein. Article 242 (a) must be read in relation to above-quoted Article 255.

On respondent's contention that it was bargaining in behalf only of its members, the appellate court, affirming the NLRC's observation that the same would only "fragment the employees" of petitioner, held that "what [respondent] will be achieving is to divide the employees, more particularly, the rank-and-file employees of [petitioner] . . . the other workers who are *not members* are at a serious disadvantage, because if the same shall be allowed, employees who are non-union members will be economically impaired and will not be able to negotiate their terms and conditions of work, thus defeating the very essence and reason of collective bargaining, which is an effective safeguard against the evil schemes of employers in terms and conditions of work." This Court finds the observation well-taken.

It bears noting that the goal of the DOLE is geared towards "a single employer wide unit which is more to the broader and greater benefit of the employees working force." The philosophy is to avoid fragmentation of the bargaining unit so as to strengthen the employees' bargaining power with the management. To veer away from such goal would be contrary, inimical and repugnant to the objectives of a strong and dynamic unionism.

United Restauror's Employees and Labor Union - PAFLU v. Torres

Doctrine: When the Union struck and picketed on January 16, 1965, it might have been true that the Union commanded a majority of Sulo's employees. Without need of certification, it could, under such circumstances, conclude a collective bargaining agreement with Sulo. But it is not disputed that shortly after this case was filed, a consent election was held. Not controverted, too, is the fact that, in that consent election, SELU defeated the Union, petitioner herein. Because of this, SELU was certified to the Sulo management as the "collective bargaining representative of the employees ... for collective bargaining purposes as regards wages, hours of work, rates of pay and/or such other terms and conditions of employment allowed them by law."

The consent election, it should be noted, was ordered by CIR

pursuant to the Union's petition for direct certification and a similar petition for certification filed by SELU. Verily, the Union can no longer demand collective bargaining. For, it became the minority union. As matters stand, said right properly belongs to SELU, which commands the majority. By law, the right to be the exclusive representative of all the employees in an appropriate collective bargaining unit is vested in the labor union "designated or selected" for such purpose "by the majority of the employees" in the unit concerned. SELU has the right as well as the obligation to hear, voice out and seek remedies for the grievances of all Sulo employees, including employees who are members of petitioner Union, regarding the "rates of pay, wages, hours of employment, or other conditions of employment."

Indeed, petitioner Union's concerted activities designed to be recognized as the exclusive bargaining agent of Sulo employees must come to a halt. Collective bargaining cannot be the appropriate objective of petitioning Union's continuation of their concerted activities. The record before us does not reveal any other legitimate purpose. To allow said Union to continue picketing for the purpose of drawing the employer to the collective bargaining table would obviously be to disregard the results of the consent election. To further permit the Union's picketing activities would be to flaunt at the will of the majority.

The outcome of a consent election cannot be rendered meaningless by a minority group of employees who had themselves invoked the procedure to settle the dispute. Those who voted in the consent election against the labor union that was eventually certified are hidebound to the results thereof. Logic is with this view. By their very act of participating in the election, they are deemed to have acquiesced to whatever is the consequence of the election. As to those who did not participate in the election, the accepted theory is that they "are presumed to assent to the expressed will of the majority of those voting."

Rationale For Procedural Requirements

Standard Chartered Bank Employees Union v Hon. Confessor

Doctrine: Interference as ULP, blue sky bargaining, surface bargaining

Article 248(a) of the Labor Code considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form association. The right to self-organization necessarily includes the right to collective bargaining. If an employer interferes in the selection of its negotiators or coerces the Union to exclude from its panel of negotiators a representative of the Union, and if it can be inferred that the employer adopted the said act to yield adverse effects on the free exercise to right to self-organization or on the right to collective bargaining of the employees, ULP under Article 248(a) in connection with Article 243 of the Labor Code is committed.



In this case, the circumstances that occurred during the negotiation do not show that the suggestion made by Diokno to Divinagracia is an anti-union conduct from which it can be inferred that the Bank consciously adopted such act to yield adverse effects on the free exercise of the right to self-organization and collective bargaining of the employees, especially considering that such was undertaken previous to the commencement of the negotiation and simultaneously with Divinagracia's suggestion that the bank lawyers be excluded from its negotiating panel. It is clear that such ULP charge was merely an afterthought. The accusation occurred after the arguments and differences over the economic provisions became heated and the parties had become frustrated.

Blue-Sky Bargaining is defined as "unrealistic and unreasonable demands in negotiations by either or both labor and management, where neither concedes anything and demands the impossible." It actually is not collective bargaining at all.

In this case, we do not agree that the Union is guilty of ULP for engaging in blue-sky bargaining or making exaggerated or unreasonable proposals. 59 The Bank failed to show that the economic demands made by the Union were exaggerated or unreasonable

Surface bargaining is defined as "going through the motions of negotiating" without any legal intent to reach an agreement..

In this case, the records show that the Bank's counter proposals on the non-economic provisions or political provisions did not put "up for grabs" the entire work of the Union and its predecessors.

Capitol Medical Center v. NLRC

Doctrine: The requirement of giving notice of the conduct of a strike vote to the NCMB at least 24 hours before the meeting for the said purpose is designed to:

- 1) inform the NCMB of the intent of the union to conduct a strike vote;
- 2) give the NCMB ample time to decide on whether or not there is a need to supervise the conduct of the strike vote to prevent any acts of violence and/or irregularities attendant thereto; and
- 3) should the NCMB decide on its own initiative or upon the request of an interested party including the employer, to supervise the strike vote, to give it ample time to prepare for the deployment of the requisite personnel, including peace officers if need be.

Unless and until the NCMB is notified at least 24 hours of the union's decision to conduct a strike vote, and the date, place, and time thereof, the NCMB cannot determine for itself whether to supervise a strike vote meeting or not and insure its peaceful and regular conduct. The failure of a union to comply with the requirement of the giving of notice to the NCMB at least 24 hours prior to the holding of a strike vote meeting will render the subsequent strike staged by the union illegal.

In this case, the respondent Union failed to comply with the 24-hour prior notice requirement to the NCMB before it conducted the alleged strike vote meeting on November 10, 1997. As a result, the petitioner complained that no strike vote meeting ever took place and averred that the strike staged by the respondent union was illegal.

Pilipino Telephone Corporation v Pilipino Telephone Employees

Doctrine: Union-bustingThere is no union busting when the employees were mass promoted. Union busting only applies when the employees were illegally dismissed.

To constitute union busting under Article 263 of the Labor Code, there must be:

- 1) a dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws; and
- 2) the existence of the union must be threatened by such dismissal.

In the case at bar, the second notice of strike filed by the Union merely assailed the "mass promotion" of its officers and members during the CBA negotiations. Surely, promotion is different from dismissal. As observed by the Labor Arbiter:

Neither does that (sic) PILTEL's promotion of some members of respondent union constitutes (sic) union busting which could be a valid subject of strike because they were not being dismissed. In fact, these promoted employees did not personally come forward to protest their promotion vis - Á-vis their alleged option to remain in the union bargaining unit of the rank and filers.

Lapanday Workers Union v. National Labor Relations Commission,

Doctrine: The procedural requirements to be followed before staging such as the filing of notice of strike, taking of strike vote, and the reporting of the strike vote result to the Department of Labor and Employment are mandatory. The seven (7)-day waiting period is intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members. The need for assurance that the majority of the union members support the strike cannot be gainsaid. Strike is usually the last weapon of labor to compel capital to concede to its bargaining demands or to defend itself against unfair labor practices of management. It is a weapon that can either breathe life to or destroy the union and its members in their struggle with management for a more equitable due of their labors. The decision to wield the weapon of strike must, therefore, rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hotheads, and firmly focused on the legitimate interest of the union which should not, however, be antithetical to the public welfare. Thus, our laws require the decision to strike to be the consensus of the majority for while the majority is not infallible, still, it is the best hedge against haste and error. In addition, a majority vote assures the union it will go to war against management with the strength derived from unity and hence, with a better chance to succeed.

Applying the law to the case at bar, the strike conducted by the union is plainly illegal as it was held within the seven (7)-



day waiting period provided for by paragraph (f), Article 263 of the Labor Code. The haste in holding the strike prevented the Department of Labor and Employment from verifying whether it carried the approval of the majority of the union members.

CCBPI Postmix Workers Union v. NLRC

Doctrine: Before a strike may be declared, the following requirements should be observed, to wit:

1. the thirty-day notice or the fifteen-day notice, in case of unfair labor practices;
2. the two-thirds (2/3) required vote to strike done by secret ballot; and
3. the submission of the strike vote to the DOLE at least seven days prior to the strike.
- 4.

The language of the law leaves no room for doubt that the cooling-off period and the seven-day strike ban after the strike-vote report **were intended to be mandatory**.

Capitol Medical Center vs NLRC

Doctrine: Conformably to Article 264 of the Labor Code of the Philippines³⁰ and Section 7, Rule XXII of the Omnibus Rules Implementing the Labor Code, no labor organization shall declare a strike unless supported by a majority vote of the members of the union obtained by secret ballot in a meeting called for that purpose. The requirement is mandatory and the failure of a union to comply therewith renders the strike illegal. **The union is thus mandated to allege and prove compliance with the requirements of the law.**

Bigg's Inc. v. Boncacas

Doctrine: In a strike grounded on unfair labor practice, the following are the requirements:

1. The strike may be declared by the duly certified bargaining agent or legitimate labor organization;
2. The conduct of the strike vote in accordance with the notice and reportorial requirements to the NCMB and subject to the seven-day waiting period;
3. Notice of strike filed with the NCMB and copy furnished to the employer, subject to the 15-day cooling-off period.
4. In cases of union busting, the 15-day cooling-off period shall not apply.

The Court reinstates and affirms the ruling of the NLRC, which had, for its part, affirmed the findings of the LA that the union conducted an illegal sit-down strike on February 16, 1996, for failure of the union to comply with the prerequisites for a valid strike.

The union did not file the requisite Notice of Strike and failed to observe the cooling-off period. In an effort to legitimize the strike on February 16, 1996, the union filed a Notice of Strike on the same day. This cannot be considered as compliance with the requirement, as the cooling-off period is mandatory. The cooling-off period is not merely a period during which the union and the employer must simply wait. The purpose of the cooling-off period is to allow the parties to negotiate and seek a peaceful settlement of their dispute

to prevent the actual conduct of the strike. In other words, there must be genuine efforts to amicably resolve the dispute.

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Doctrine: Article 212 of the Labor Code defines strike as any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A valid strike therefore presupposes the existence of a labor dispute. The strike undertaken by respondents took the form of a sit-down strike, or more aptly termed as a sympathetic strike, where the striking employees have no demands or grievances of their own, but they strike for the purpose of directly or indirectly aiding others, without direct relation to the advancement of the interest of the strikers. It is indubitable that an illegal strike in the form of a sit-down strike occurred in petitioner's premises, as a show of sympathy to the two employees who were dismissed by petitioner.

National Union of Workers in Hotels v. NLRC

Doctrine: Generally, a strike based on a "non-strikeable" ground is an illegal strike; corollarily, a strike grounded on ULP is illegal if no such acts actually exist. As an exception, even if no ULP acts are committed by the employer, if the employees believe in good faith that ULP acts exist so as to constitute a valid ground to strike, then the strike held pursuant to such belief may be legal. As a general rule, therefore, where the union believed that the employer committed ULP and the circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless.

Remedies Available to Striking employees: Appropriate remedies under the Labor Code were available to the striking employees and they had the option to either directly file a case for illegal dismissal in the office of the labor arbiter or, by agreement of the parties, to submit the case to the grievance machinery of the CBA so that it may be subjected to voluntary arbitration proceedings.

Liwayway Publications, Inc. v. Permanent Concrete Workers Union

Doctrine: The first question that strikes the Supreme Court in this case, and is considered to be of determinative significance is whether or not this case involves or has arisen out of a labor dispute. If it does, then with certainty, Section 9 of Republic Act 875, the "Industrial Peace Act," would apply. If it does not, then the Rules of Court will govern the issuance of the writ of preliminary injunction because it will not partake in the nature of a labor injunction which the lower court has no jurisdiction to issue.

There is no connection between the appellee Liwayway Publications, Inc. and the striking union, nor with the company against whom the strikers staged the strike, and neither are the acts of the driver of the appellee, its general manager, personnel manager, the man in charge of the bodega and other employees of the appellee in reaching the



bodega to obtain newsprint therefrom to feed and supply its publishing business interwoven with the labor dispute between the striking Union and the Permanent Concrete Products company. If there is a connection between appellee publishing company and the Permanent Concrete Products company, it is that both are situated in the same premises, which can hardly be considered as interwoven with the labor dispute pending in the Court of Industrial Relations between the strikers and their employer.

Assumption of Secretary of Labor, issuance of certification and return-to-work orders

St. Scholastica's College v. Torres

Doctrine: The issue on whether respondent SECRETARY has the power to assume jurisdiction over a labor dispute and its incidental controversies, causing or likely to cause a strike or lockout in an industry indispensable to the national interest, was already settled. The SC ruled that: ". . . [T]he Secretary was explicitly granted by Article 263 (g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbitrator has exclusive jurisdiction." And rightly so, for, as found in the aforesaid case, Article 217 of the Labor Code did contemplate of exceptions thereto where the SECRETARY is authorized to assume jurisdiction over a labor dispute otherwise belonging exclusively to the Labor Arbitrator. This is readily evident from its opening proviso reading " except as otherwise provided under this Code .

National Interest Cases

LMG Chemical Corporation v. Secretary of DOLE

Doctrine: Such authority of the Secretary to assume jurisdiction carries with it the power to determine the retroactivity of the parties' CBA. The authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute.

GTE Directories Corporation v. Sanchez

Doctrine: The production and publication of telephone directories, which is the principal activity of GTE, can scarcely be described as an industry affecting the national interest. GTE is a publishing firm chiefly dependent on the marketing and sale of advertising space for its not inconsiderable revenues. Its services, while of value, cannot be deemed to be in the same category of such essential activities as "the generation or distribution of energy" or those undertaken by "banks, hospitals, and export-oriented industries." It cannot be regarded as playing as vital a role in communication as other mass media. The small number of employees involved in the dispute, the employer's payment

of "P10 million in income tax alone to the Philippine government," and the fact that the "top officers of the union were dismissed during the conciliation process," obviously do not suffice to make the dispute in the case at bar one "adversely affecting the national interest."||| (GTE Directories Corp. v. Sanchez, G.R. No. 76219, [May 27, 1991], 274 PHIL 738-758)s.

Effect of noncompliance

St. Scholastica's College v. Torres

Doctrine: The respective liabilities of striking union officers and members who failed to immediately comply with the return-to-work order is outlined in Art. 264 of the Labor Code which provides that any declaration of a strike or lockout after the Secretary of Labor and Employment has assumed jurisdiction over the labor dispute is considered an illegal act. Any worker or union officer who knowingly participates in a strike defying a return-to-work order may, consequently, "be declared to have lost his employment status." Section 6, Rule IX, of the New Rules of Procedure of the NLRC, which provides the penalties for defying a certification order of the Secretary of Labor or a return-to-work order of the Commission, also reiterates the same penalty. It specifically states that non-compliance with the aforesaid orders, which is considered an illegal act, "shall authorize the Secretary of Labor and Employment or the Commission . . . to enforce the same under pain of loss of employment status." Under the Labor Code, assumption and/or certification orders are similarly treated. Thus, we held in Sarmiento v. Tuico, 162 SCRA 676, that by insisting on staging the restrained strike and defiantly picketing the company premises to prevent the resumption of operations, the strikers have forfeited their right to be readmitted, having abandoned their positions, and so could be validly replaced.||| (St. Scholastica's College v. Torres, G.R. No. 100158, [June 29, 1992], 285 PHIL 1103-1119)

It is clear from the provisions above quoted that from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. It is already in itself knowingly participating in an illegal act. Otherwise, the worker will just simply refuse to return to his work and cause a standstill in the company operations while retaining the positions they refuse to discharge or allow the management to fill (Sarmiento v. Tuico, supra). Suffice it to say, in Federation of Free Workers v. Inciong, supra, the workers were terminated from work after defying the return-to-work order for only nine (9) days. It is indeed inconceivable that an employee, despite a return-to-work order, will be allowed in the interim to stand akimbo and wait until five (5) orders shall have been issued for their return before they report back to work. This is absurd.||| (St. Scholastica's College v. Torres, G.R. No. 100158, [June 29, 1992], 285 PHIL 1103-1119)

C. PREREQUISITE

- Exhaustion of remedies
- Premature strikes

DO 40-03, s. 2003



RULE XXII

CONCILIATION, STRIKES AND LOCKOUTS

Section 5. Grounds for strike or lockout. – A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes or without first having filed a notice or lockout or without the necessary strike or lockout vote having been obtained and reported to the Board. Neither will a strike be declared after assumption of jurisdiction by the Secretary or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout. (as amended by D.O. 40-A)

Section 6. Who may declare a strike or lockout. – Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practices.

Section 7. Notice of strike or lockout. – In bargaining deadlocks, a notice of strike or lockout shall be filed with the regional branch of the Board at least thirty (30) days before the intended date thereof, a copy of said notice having been served on the other party concerned. In cases of unfair labor practice, the period of notice shall be fifteen (15) days. However, in case of unfair labor practice involving the dismissal from employment of any union officer duly elected in accordance with the union constitution and by-laws which may constitute union busting where the existence of the union is threatened, the fifteen (15) day cooling-off period shall not apply and the union may take action immediately after the strike vote is conducted and the results thereof submitted to the appropriate regional branch of the Board.

Section 8. Contents of notice. – The notice shall state, among others, the names and addresses of the employer and the union involved, the nature of the industry to which the employer belongs, the number of union members and of the workers in the bargaining unit, and such other relevant data as may facilitate the settlement of the dispute, such as a brief statement or enumeration of all pending labor disputes involving the same parties. In cases of bargaining deadlocks, the notice shall, as far as practicable, further state the unresolved issues in the bargaining negotiations and be accompanied by the written proposals of the union, the counter-proposals of the employer and the proof of a request for conference to settle the differences. In cases of unfair labor practices, the notice shall, as far as practicable, state the acts complained of and the efforts taken to resolve the dispute amicably. In case a notice does not conform with the requirements of this and the foregoing section/s, the regional branch of the Board shall inform the concerned party of such fact.

Section 9. Action on Notice. – Upon receipt of the notice, the regional branch of the Board shall exert all efforts at

mediation and conciliation to enable the parties to settle the dispute amicably. The regional branch of the Board may, upon agreement of the parties, treat a notice as a preventive mediation case. It shall also encourage the parties to submit the dispute to voluntary arbitration. During the proceedings, the parties shall not do any act which may disrupt or impede the early settlement of the dispute. They are obliged, as part of their duty to bargain collectively in good faith and to participate fully and promptly in the conciliation meetings called by the regional branch of the Board. A notice, upon agreement of the parties, may be referred to alternative modes of dispute resolution, including voluntary arbitration.

Section 10. Strike or lockout vote. – A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association, or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose. The regional branch of the Board may, at its own initiative or upon request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board and the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule.

Section 11. Declaration of strike or lockout. – Should the dispute remain unsettled after the lapse of the requisite number of days from the filing of the notice of strike or lockout and of the results of the election required in the preceding section, the labor union may strike or the employer may lock out its workers. The regional branch of the Board shall continue mediating and conciliating.

Prerequisite: exhaustion of remedies; premature

Before the employees can strike, if there are any available internal remedies such as the CBA within the company policy, the employees have to exhaust these remedies first before resorting to strike otherwise the employer can claim that the strike is premature because they did not go through the levels of possible settlement.

If the employee does not exhaust these remedies, the employer can ask that the strike be declared illegal. There are cases that the employer asks that the strike be declared premature because the employees failed to exhaust the possible degrees of settlement within the company.

What are the grounds for strikes and lockouts?

1. Collective Bargaining Deadlock
2. Unfair Labor Practice
 - a. Union Busting (form of ULP)

If two parties cannot negotiate because both of the parties are not giving in then the remedy of the employees is to file a strike or the employer can file a lockout. Remember,



refusal to give in to the demands of the employees is not ULP. The employer is also entitled to make a stand. If the employer refuses to give in, that would be a bargaining deadlock. If the employer is refusing outright to bargain that would be considered a ULP. I am highlighting the difference because the cooling off period would be different.

If the employer is attempting to negotiate in good faith but he will not just give in, that would be a bargaining deadlock and the cooling off period is 30 days.

If the employer refuses outright to bargain, that would be already ULP and the cooling off period is 15 days. The cooling off period would really depend on the circumstances.

Now, union busting is the dismissal of the officers of the union. The cooling of union busting is 0 days.

To constitute union busting, there must be:

- a. dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws
- b. the existence of the union must be threatened by such dismissal

Article 254 of the Labor Code that *no temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity.*

Telefunken Semiconductors Employees Union-FFW v. Court of Appeals

Doctrine: No strike or lockout shall be declared after the assumption of jurisdiction by the President or the Secretary or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

The moment the Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest, such assumption shall have the effect of automatically enjoining the intended or impending strike

Any union officer who knowingly participates in illegal strikes and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.

In this case, the illegal act is the holding of a strike despite the assumption of jurisdiction of the secretary of labor over a labor dispute in an industry indispensable to national interest.

Philcom Employees Union v. Phil. Global Communication

Doctrine: A strike declared on the basis of grievances which have not been submitted to the grievance committee as stipulated in the CBA of the parties is premature and illegal. The union should have immediately resorted to the grievance machinery provided for in the CBA.

Sec. 1 PD 823 - ...all forms of strikes, picketing and lockouts are hereby strictly prohibited in vital industries, such as in public utilities, including transportation and communications

The strike in this case was illegal because of the following reasons:

1. Philcom as a vital industry is prohibited from doing strikes
2. The strike was in violation of a return to work order by the Secretary of Labor
3. The blocking of entrances during the strike is illegal
4. The law forbids strikes while there is a preventive mediation proceeding pending with the NCMB
4. The strike was premature because the grievance was not submitted to the grievance committee as stipulated in the CBA

San Miguel Corp. v. NLRC

Doctrine: Article 264(a) of the Labor Code explicitly states that a declaration of strike without first having filed the required notice is a prohibited activity, which may be prevented through an injunction in accordance with Article 254. In this case, NLRC should have granted the injunctive relief to prevent the grave damage brought about by the unlawful strike.

Note: This is an exception to the general rule provided under

Insurefco Paper Pulp Project Workers Union v. Insular Sugar Refinery

Doctrine: A strike declared without giving to the general manager, or the board of directors of the company, reasonable time within which to consider and act on the demands submitted by the union is illegal. Likewise, a strike is illegal when it is declared in violation of a collective bargaining agreement especially when it provides for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved.

In this case, the walkout was premature as it was declared without giving to the General Manager, or the Board of Directors of the Company, reasonable time within which to consider and act on the demands submitted by the Union. The General Manager was then in Bacolod, and the latter could not be convened because the chairman and two of its members were also absent.

Almeda v. Court of Industrial Relations

Doctrine: Where no acts of violence were involved and where the strikes were declared merely unjustified, dismissal is valid.

In this case, the strike was clearly unjustified because the *petitioners-appellants went on strike knowing that their demands could not be acted upon* by the Treasurer of the company in the absence of its President who was then in the United States, and they did not wait until their demands could be transmitted to said President and acted upon by him.



Not only this, but the *strikers through their representatives had misled, not to say deceived the trial court*. Despite the assurances given by them that they would not go on strike and did not even have the intention of striking, they went on strike just the same.

Radio Operators Association of the Philippines v. Philippine Marine Radio Officers Association

Doctrine: While out on strike, it is not considered that the strikers have abandoned their employment, but rather have only ceased from their labor. The declaration of the strike is not a renunciation of the employment relation.

Union of Filipro Employees v. Nestle Philippines, Inc.

Doctrine: Assumption and certification orders are executory in character and are to be strictly complied with by the parties even during the pendency of any petition questioning their validity. This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests.

Regardless of their motives, or the validity of their claims, the striking workers must cease and/or desist from any and all acts that tend to, or undermine this authority of the Secretary of Labor, once an assumption and/or certification order is issued. They cannot, for instance, ignore return-to-work orders, citing unfair labor practices on the part of the company, to justify their actions.

D. GROUNDS FOR STRIKES/LOCKOUTS

1. COLLECTIVE BARGAINING DEADLOCK

Collective Bargaining Deadlock is defined as "the situation between the labor and the management of the company where there is failure in the collective bargaining negotiations resulting in a stalemate.

Legality of Strike Not Dependent Upon Ability of Management to Grant Demands

The demands that gave rise to the strike may not properly be granted under the circumstances of this case, but that fact should not make said demands and the consequent strike illegal. The ability of the Company to grant said demands is one thing, and the right of the laborers to make said demands is another thing. The latter should be kept inviolate. There are adequate instrumentalities which may be resorted to in case of excesses.

2. ULP

a. Good Faith Strike Doctrine

Sabotage

Rizal Cement Workers v. Madrigal Co.

Doctrine: Under Republic Act 875, for the discrimination by reason of union membership to be considered an unfair labor practice, the same must have been committed to courage or discourage such membership in the union.

In this case, requiring the striking employees to stay out of the company's premises in the meantime (perhaps while the strike was still going on at the factory) is not ULP because it was borne out of the Company's justified apprehension and fear that sabotage might be committed in the warehouse where the products machinery and spare parts were stored. It has never been shown that the act of the Company was intended to induce the employees to renounce their union-membership or as a deterrent for non-members to affiliate therewith, nor as a retaliatory measure for activities in the union or in furtherance of the cause of the union.

Union Busting as ground for strike

Pilipino Telephone Corporation v. Pilipino Telephone Employees Association

Doctrine: Filing of a notice of strike, strike vote, and notice given to the DOLE are mandatory in nature.

The procedural requirements for a valid strike may NOT be dispensed with even if the striking workers believed in good faith that the company was committing acts of unfair labor practice.

To constitute union busting under Article 263 of the Labor Code, there must be:

- dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws.
- the existence of the union must be threatened by such dismissal

In this case, the strike is illegal because of the following reasons:

1. The 2nd procedural requirement for a valid strike (the cooling off period) was not complied with.
2. There was no union busting which would warrant the non-observance of the cooling-off period. The exemption from requiring the 2nd requirement does not apply because there was no union busting to speak off because Union busting requires dismissal, HOWEVER THERE WAS NO DISMISSAL IN THIS CASE)
3. With the enactment of RA 6715, Good faith of the strikers in believing that there was ULP does not excuse non-compliance with the procedural requirements of a valid strike.

Union busting is a form of ULP. **It is not ULP if there are valid grounds for dismissal.**

For example, a union officer sexually harassed a fellow employee or a union officer is guilty for not coming in for three months and after due process, this union officer was



found guilty and was dismissed. This is a valid dismissal on the part of the employer so it cannot be considered as union busting.

When you are determining the ground for strike, you really have to look at the facts.

- Is there a valid ground for strike?
- What kind of ground is it?

You have to determine what kind of ground because that would determine your cooling off period.

Employees resigned as a supposed form of strike. If the employees resigned, can you consider that as a form of strike?

No, because one of the elements of strike is the existence of employer-employee relationship. Another element is the temporary stoppage of work. How can it be temporary if the employees have already resigned?

Essentially, resignation is permanent.

employer committed acts of unfair labor practice when the circumstances clearly negate even prima facie showing to warrant such a belief.

CAVEAT: There has to be a reasonable basis for the employees to believe that ULP exists. In labor cases, you have to prove everything by substantial evidence not necessarily beyond reasonable doubt or preponderance of evidence. Substantial evidence only. Whatever evidence is available to convince a reasonable person not necessarily a labor practitioner but just an ordinary reasonable person of average intelligence to convince them of the correct conclusion.

In order to invoke the good faith doctrine, the employees still have to meet the level of quantum of evidence to prove that their strike is valid.

You cannot just say that the employer is mean and that behaviour equates to unfair labor practice. Employees have to prove that there is a reasonable ground to believe that there was an unfair labor practice, hence, the strike was legal. The employees need to present evidence, i.e., letters, emails, documents, minutes of the meeting from the management.

What is the employees first step?

Get everything in writing. This could be your evidence if it amounts to a labor case. If everything is verbal or call, this could be difficult when presenting evidence in DOLE or NLRC.

Some employers prefer calls to avoid evidence in the future. If the employee secretly records a conversation, the employer can say that it is inadmissible for secretly tapping a conversation. If in writing, you can meet the quantum of evidence—the substantial evidence rule. Calls can be self-serving evidence.

Just an advice: don't call the employer, e-mail them or at least write them a letter. As much as possible, get everything in writing.

ULP- "Good Faith Strike Doctrine"

People's Industrial and Commercial Employees and Workers Org. (FFW) v. People's Industrial and Commercial Corp.

Doctrine: A strike may be considered legal when the union believed that the respondent company committed unfair labor acts and the circumstances warranted such belief in good faith although subsequently such allegations of unfair labor practices are found out as not true. In this case, the strike was proved and the same to be not illegal but was induced in the honest belief that management had committed unfair labor practices and, therefore, the cause of their dismissal from employment was non-existent.

What if the employees believed that ULP exists but in reality there is no ULP?

Even if no ULP acts are committed by the employer, if the employees believe in good faith that ULP acts exist so as to constitute a valid ground to strike, then the strike held pursuant to such belief may be legal.
(Good Faith Strike Doctrine)

"Good Faith Strike" - rational basis still required

Tiu v NLRC

Doctrine: It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even prima facie showing to warrant such a belief. Facts and evidence must establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices.

In the case at bar, the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the

Compel Employer to recognize already-proven majority status

Caltex Filipino Managers and Supervisors Association v. CIR

Doctrine: Striking for recognition is productive of good result in so far as a union is concerned.

The union conducted a strike because the company refused to recognize their majority status. The Company claimed that the strike was illegal because the ground was merely for recognition.

The strike was not illegal because the reasons in the



Association's notice to strike were valid grounds to strike. It is clear that the strike was declared not just for the purpose of gaining recognition but also for bargaining in bad faith on and by reason of unfair labor practices.

Further, the voluntary return-to-work agreement entered into between the Company and the Association ended the strike. This goes to show that Striking for recognition is productive of good result in so far as a union is concerned.

E. EMPLOYER'S INSTRUCTIONS TO RETURN TO WORK

Hongkong and Shanghai Banking Corp. Employees Union v. NLRC

Doctrine: Refusal to comply with the Return-to-Work Memorandum is not insubordination or abandonment.

The employees' right to exercise their right to concerted activities should not be defeated by the directive of HSBC for them to report back to work. Any worker who joined the strike did so precisely to assert or improve the terms and conditions of his work. Otherwise, the mere expediency of issuing the return to work memorandum could suffice to stifle the constitutional right of labor to concerted actions. Such practice would vest in the employer the functions of a strike breaker, which is prohibited under Article 264(c) of the Labor Code.

The petitioners' refusal to leave their cause against HSBC constituted neither insubordination nor abandonment.

F. EMPLOYER'S RIGHT TO HIRE TEMPORARY REPLACEMENT WORKERS DURING STRIKE

Where a strike is declared in protest of employer's conduct which the strikers could reasonably and in good faith believe to constitute unfair labor practice, such strike is deemed to have some legal basis, even if subsequent judicial investigation shows that no unfair labor practice on the part of the employer had been committed. Consequently, the strikers have a right to reinstatement, notwithstanding that the management may have hired other workers to replace them.

Norton Harrison Company & Jackbilt Concrete Blocks Co. Labor Union v. Norton & Harrison Co. & Jackbilt Concrete Blocks Co.

Doctrine: Anent the company's argument that reinstatement of said strikers would be unfair to those who had been taken in to replace them during the strike, when the company direly needed their services, suffice it to consider two other points. The first is that said other workers must be deemed to have accepted their employment as replacements with the knowledge that the same is subject to the consequences of the labor dispute between the strikers and the company on the resolution of which depended the effects of the strike as to the right to reinstatement of the strikers. The second point is that said workers had by now been engaged for almost nine years, so that it is not inequitable for them to be made

to yield their positions to those finally ruled to be with right to occupy the same.

Employers have the right to temporarily replace the workers.

Can the temporary workers file illegal dismissal case if the striking employees return to their respective jobs?

Generally, no. There is an understanding that their position is temporary. In effect, they are like contractual or project employees.

G. STATUS OF STRIKING EMPLOYEES

What is the status of the striking employee?

The striking employee is still an employee. The strike does not mean giving up the status. They are not giving up their seniority, security of tenure. It just means that the employer-employee relationship is temporarily suspended.

Should the employee receive salary when they strike?

No, doctrine of no work, no pay. Although we adhere to the principle of favoring the employees, it would also be unfair for the employers to pay the employees who are not working. In addition, the employer has to pay the temporary workers. Hence, the employees are not working, not receiving salaries but they are still employees. In computing separation pay and retirement benefits, it will be regarded as if there was no interruption in their employment.

Can the CBA provide a no strike clause?

Yes, they can agree. This is a valid clause in exchange for better benefits. Violation can result to suspension, penalties, or even dismissal.

San Carlos Milling Co. v. CIR,

Doctrine: Unfair labor practice acts may be committed by the employer against workers on strike. A strike was not abandonment of employment, and workers do not cease to be employed, in legal contemplation, simply because they struck against their employer.

Hence, when the strikers offered to return to work on April 2, 1956, the employer had no right to have the former's participation in the strike counted against them. When the Company refused to admit the strikers back for no valid reason shown, it was virtually applying a standard prohibited by law, i.e., the participation in due strike which, as shown, was legal.

H. KINDS OF STRIKES



1. Slowdown

Slowdown is a willful reduction in the rate of work by a group of employees for the purpose of restricting the output of the employer. The "slowdown" is a method by which one's employees, without seeking a complete stoppage of work, retard production and distribution in an effort to compel compliance by the employer with the labor demands made upon him

Slowdown

Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Secretary of the DOLE

Doctrine: The union officers were answerable not only for resisting the Labor Secretary's assumption of jurisdiction and return-to-work orders; they were also liable for leading and instigating and for participating in a work slowdown during CBA negotiations. That the work slowdown happened is confirmed by the affidavits and the documentary evidence submitted by the company

Security officer affidavit: The union members were engaging in a noise-barrage every day and when it was time to go back to work at noontime, they would mill around the production area or were at the toilet discussing the ongoing CBA negotiations (among others), and were slow in their movements, even those who were already working were deliberately slow in their movement

Sewer in production department affidavit: were told by the shop stewards to reduce their efficiency below 75%. They followed the order as it came from a decision of the union officers at a meeting.

Interphil Laboratories Employees Union-FFW v. Interphil Laboratories, Inc.

Doctrine: The Court is in substantial agreement with the petitioner's concept of a slowdown as a "strike on the installment plan," as a willful reduction in the rate of work by concerted action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute; as an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands.

The Court also agrees that such a slowdown is generally condemned as inherently illicit and unjustifiable, because while the employees "continue to work and remain at their positions and accept the wages paid to them," they at the same time "select what part of their allotted tasks they care to perform of their own volition or refuse openly or secretly, to the employer's damage, to do other work;" in other words, they "work on their own terms..".

2. Sit-down strike

Sit-down strike is one where the workers stop working but do not leave their place of work.

Sitdown strike

Bigg's Inc. v. Boncacas

Doctrine: The union conducted an illegal sit-down strike on February 16, 1996.

The consistent and corroborative sworn declarations of Bigg's witnesses constitute substantial evidence to prove that the union members committed a sit-down strike on February 16, 1996. The quantum of proof necessary in labor cases is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

On this score, the Court reinstates and affirms the ruling of the NLRC, which had, for its part, affirmed the findings of the LA that the union conducted an illegal sit-down strike on February 16, 1996, for failure of the union to comply with the prerequisites for a valid strike.

(not from the case)

Sit-down strike- Characterized by a temporary work stoppage of workers who seize or occupy property of the Er or refuse to vacate the premises of the Er. Amounts to a criminal act because of the Ees trespass on the premises of the Er.

3. General strike

General strike is one which covers and extends over a whole province or country. In this kind of strike, the employees of various companies and industries cease to work in sympathy with striking workers of another company. It is also resorted to for the purpose of putting pressure on die government to enact certain labor-related measures such as mandated wage increases or to cease from implementing a law which workers consider mimical to their interest. It is also mounted for purposes of paralyzing or crippling the entire economic dispensation.

Welga ng bayan - general strike, extended sympathy strike

Biflex Phil. Inc. Labor Union v. Fiflex Industrial Mfg. Corp

Doctrine: Stoppage of work due to **welga ng bayan** is in the nature of a general strike, an extended sympathy strike. It affects numerous employers including those who do not have a dispute with their employees regarding their terms and conditions of employment

Employees who have no labor dispute with their employer but who, on a day they are scheduled to work, refuse to work and instead join a welga ng bayan commit an illegal work stoppage.

(not from the case)

General strike (cause oriented strike) – A type of political sympathetic strike and therefore there is neither a bargaining deadlock nor any ULP. e.g. Welga ng bayan.

4. Local strike



5. Partial/ "Quickie"/ "Wildcat" strike

Partial strike, also known as "quickie" strike, takes the form of intermittent, unannounced work stoppage, including slowdowns, unauthorized extension of rest periods, and walkouts for portions of a shift or for entire shifts.

"Quickie strike" is sometimes used interchangeably with "wildcat strike" which is a work stoppage that violates the labor contract and is not authorized by the union

6. Primary strike

Primary strike is one declared by the employees who have a direct and immediate interest, whether economic or otherwise, in the subject of the dispute, which exists between them and their employer. Typical examples are employees who strike for a raise in their wages or in protest of employer's refusal to bargain with their duly certified representative. It also refers to an original or initial strike, that is, a strike which is waged by the union primarily aggrieved

7. Secondary strike

Secondary strike refers to a coercive measure adopted by workers against an employer connected by product or employment with alleged unfair labor conditions or practices. A secondary strike exists where employees in concert refuse to assist or cooperate with the allegedly unfair employers or their product. It is the absence of this connection between employment and product which characterizes the sympathetic as distinguished from the secondary strike. A secondary strike occurs when a group of employees refuse in concert to remain at work for an employer, not because of any complaint over their labor standards under him, but because he persists in dealing with a third person against whom they have a grievance. It is an attempt to secure the economic assistance of their employer to compel this third person to capitulate to the union over some issue between them, at the risk of losing the unionized employer's business if he does not capitulate

8. Economic strike

Economic strike is intended to force wage and other concessions from the employer, which he is not required by law to grant.³ It is declared for the purpose of securing higher wages and for other immediate conditions of labor as a shorter work day, higher rate of overtime compensation, and such other economic benefits as are usually included in a collective bargaining contract. Also known as bargaining strike, it is designed to enforce the union position on bargainable issues, i.e., the terms and conditions of employment being demanded of the employer at the bargaining table, when an impasse is reached or the negotiations fail to produce any agreement. The striking employees have no

intention of severing employment relations with their employer, except temporarily for the duration of the strike, although the employer is free to replace them, if he can.

Indeed, this recourse of the employer to the available pool of unorganized labor is theoretically one of the strongest economic assets he has in combatting a strike. And one of the strikers' chief concerns is to see that he does not gain free access to this supply of labor.⁴ Strikes are presumed to be "economic" rather than "unfair labor practice."

9. Unfair labor practice strike

Unfair labor practice strike is called against the unfair labor practices of the employer, usually for the purpose of making him desist from further committing such practices. This type of strike is perhaps the best known of strikes for mutual protection, which are declared in protest, and for the discontinuance, of employer abuses.

10. Sympathetic strike

Sympathy strike - refers to a strike where the strikers have no demands or grievances or Labor dispute of their own against their employer but nonetheless stage the strike for the purpose of aiding, direddy or indirccdy, other strikers in other establishments or companies, without necessarily having any direct relation to the advancement of the strikers' interest. This is patendy an illegal strike.⁴ An example of a sympathy strike is the "wetga ng beyan" where workers refuse to render work to join a general strike which does not involve a labor or industrial dispute between the strikers and the employer struck against but it is staged in pursuit of certain ends, such as reduction in the electric power rates, increase in the legislated wages, etc.

I. ASSUMPTION OF SECRETARY OF LABOR, ISSUANCE OF CERTIFICATION AND RETURN-TO-WORK ORDERS

Article 278. Strikes, Picketing, and Lockouts.

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions



prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

It is well settled in our jurisprudence that the authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute.¹

Art. 278(g), 1st par.

The LC provides the Secretary of Labor specific powers in the case of existing strikes and lockouts:

Two fold choices of the SOLE:

Secretary of Labor and Employment may 1) assume jurisdiction over the dispute and decide it or 2) certify the same to the Commission for compulsory arbitration.

The word **may** implies that this power is **discretionary** upon the SOLE. This means that they don't have to exercise it and they cannot be compelled thru *mandamus* to exercise it.

Hence, if the SOLE decides not to act on this power, there would be little that the employees could do to convince the SOLE otherwise, as it is a discretionary power. However, this is still subject to **judicial review**. The courts can still review the actions of officers to determine if there has been an abuse of discretion.

It has also been described as **plenary** (all encompassing). The SOLE actually has the power to resolve any disputes related to the existing or pending strike.

The SOLE has the power to resolve **incidental controversies**. If there is something that is even remotely related to the strike, the employees or employer can submit it to the SOLE when he assumes jurisdiction for resolution.

TN: Under the law, the assumption and certification power of the SOLE does not provide for **notice and hearing**. However, notice to everyone involved (employers and employees) is still necessary for the purpose of due process, but no hearing necessary. The SOLE can invoke his investigative power in resolving the case.

There exists a **labor dispute**.

This is already presumed because this is a requirement for strikes and lockouts.

Industry indispensable to the national interest

There has to be a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest

See examples of national interest in D.O. No. 40-H-13

Certification to the NLRC

If there is a **certification order**, the NLRC can assume jurisdiction and they are acting on behalf of the SOLE.

Example: if someone questions as to why it is NLRC who will handle the case, this provision will be your basis. If there is a certification order from the SOLE,

¹ University of the Immaculate Conception v. Office of the Secretary of Labor and Employment



there is a presumption that the powers of the NLRC is valid.

NLRC may only interfere if there is a certification order.

Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order.

If there is a strike - the strike has to cease; the employees have to stop striking, or if there is a lockout, the lockout shall immediately stop.

Keyword: automatic. The SOLE does not have to do anything, no injunction order needed. The very fact that there is a certification or assumption order is already has the automatic effect of enjoining the strike or the strike being processed.

There are cases where the parties "why did you allow the employees to go back to work even though there is no explicit order to enjoin the strike"

SC: that is not necessary because the assumption or certification order from the SOLE already has the effect of enjoining the strike. There is no need for the SOLE to act any further to enjoin the strike.

Assumption of Secretary of Labor, issuance of certification and return-to-work orders

Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Secretary of the DOLE

Doctrine: Under the law, the Labor Secretary's **assumption of jurisdiction** over the dispute or its **certification** to the National Labor Relations Commission for compulsory arbitration shall have the **effect of automatically enjoining the intended or impending strike or lockout and all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions before the strike or lockout.**

The union and its officers, as well as the workers, defied the Labor Secretary's assumption of jurisdiction, especially the accompanying return-to-work order within twenty-four (24) hours; their defiance made the strike illegal under the law and applicable jurisprudence.

1. NATURE OF POWER

Nature of power

University of the Immaculate Conception v. Office of the Secretary of Labor and Employment

Facts: UIC is a non-stock, non-profit educational institution while the Union is the certified SEBA of UIC's rank and file employees. The Union filed a notice of strike on the grounds

of bargaining deadlock on the issues of computing the increase of the wages. The Secretary held that the notice to strike was valid. From the order of the Secretary, the Union moved for the creation of a tripartite committee to compute the net proceeds of tuition fee increases. The Secretary approved. UIC then filed two separate petitions for certiorari questioning the Secretary's order creating the tripartite committee.

Issue: Whether or not the Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the contested order. NO

Ruling: The authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute.

The Secretary has a wide discretion to adopt means to resolve the labor dispute pursuant to the **DOCTRINE OF GREAT BREADTH OF DISCRETION**. This discretion dates back to the time when the CIR had jurisdiction over labor disputes. Thus, the SC will not interfere or substitute the Secretary's judgment with their own unless grave abuse of discretion is cogently shown. To determine whether there was grave abuse of discretion, the standard to be applied is **REASONABLENESS**.

The authority to create the tripartite committee flows from the jurisdiction conferred by Article 263(g) to the Secretary. A grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it— also referred to as "incidental jurisdiction." Incidental jurisdiction includes the power and authority of an office or tribunal to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgment and mandates.

In this regard, we find nothing in the Labor Code that prohibits the Secretary from creating ad hoc committees to aid in the resolution of labor disputes after he has assumed jurisdiction.

Jurisdiction over labor dispute and incidental controversies

International Pharmaceuticals, inc. v. Secretary of Labor

Doctrine: The Secretary was explicitly granted by Article 263(g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the labor arbiter has exclusive jurisdiction.

Jurisdiction

St. Scholastica's College v. Torres

Doctrine: The Secretary was explicitly granted by Article 263(g) of the Labor Code the authority to



assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction.

Previously, We held that Article 263 (g) of the Labor Code was broad enough to give the Secretary of Labor and Employment the power to take jurisdiction over an issue involving unfair labor practice. The submission of an incidental issue of a labor dispute, in assumption and/or certification cases, to the Secretary of Labor and Employment for his resolution is thus one of the instances referred to whereby the latter may exercise concurrent jurisdiction together with the Labor Arbiters.

Subject to judicial review

Manila Electric Co. v. Quisumbing

Doctrine: The Secretary's decision is subject to judicial review. The SC used the standard of reasonableness. Reasonableness implies the absence of arbitrariness, which means the exercise of proper discretion and the observance of due process.

The Secretary of Labor's statutory power under Art. 263 (g) of the Labor Code to assume jurisdiction over a labor dispute in an industry indispensable to the national interest, and, to render an award on compulsory arbitration, does not exempt the exercise of this power from the judicial review that Sec. 1, Art. 8 of the Constitution mandates, which provides that judicial power includes determining "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government".

The extent of judicial review over the Secretary of Labor's arbitral award is not limited to a determination of grave abuse in the manner of the secretary's exercise of his statutory powers. This Court is entitled to, and must – in the exercise of its judicial power – review the substance of the Secretary's award when grave abuse of discretion is alleged to exist in the award, i.e., in the appreciation of and the conclusions the Secretary drew from the evidence presented.

a. Prior notice and hearing not required; but notice to parties upon issuance is required

Magnolia Poultry Employees Union v. Sanchez

Doctrine: The discretion to assume jurisdiction may be exercised by the Secretary of Labor and Employment without the necessity of prior notice or hearing given to any of the parties. The rationale for his primary assumption of jurisdiction can justifiably rest on his own consideration of the exigency of the situation in relation to the national interests.

The following are the requisites for the Secretary of Labor and Employment to assume jurisdiction over a labor dispute and decide it or certify the same to the Commissioner for compulsory arbitration:

1. There exists a labor dispute;
2. Labor dispute is causing or likely to cause a strike or lockout; and
3. Labor dispute exists in an industry indispensable to the national interest

Saulog Transit, Inc. v. Lazaro

Doctrine: Labor Minister may immediately take action where a strike has effectively paralyzed a vital industry, e.g., a bus company drivers' strike, without awaiting filing of notice of strike.

Confronted with the strike which virtually paralyzed the transportation services of the petitioner and taking into account the inability of his Ministry's intervention to bring about an amicable settlement between the parties, the Minister rightly assumed jurisdiction. He did not have to wait for any notice of strike or formal complaint about a strike already in progress before he could exercise the powers given to him by law to avoid the strikes, picketing, or lockouts contemplated in the grant of power.

An actual strike effectively paralyzing an industry where strikes were not allowed and compulsory arbitration was mandated, called for his immediate action. The respondent Minister did not need the recommendation of his own under Secretary or Deputy Minister, under the facts of this case, to know what steps were necessary or that they were necessary to achieve compulsory arbitration of the main issues which led to the impasse and the strike.

PNOC Dockyard and Engineering Corp. v. NLRC

Doctrine: "Sec. 4. Contents of notice. - The notice shall state, among others, the names and addresses of the employer and the union involved, the nature of the industry to which the employer belongs, the number of union members and of the workers in the bargaining unit, and such other relevant data as may facilitate the settlement of the dispute, such as a brief statement or enumeration of all pending labor disputes involving the same parties.

In cases of bargaining deadlocks, the notice shall, as far as practicable, further state the unresolved issues in the bargaining negotiations and be accompanied by the written proposals of the union, the counter-proposals of the employer and the proof of a request for conference to settle the differences. In cases of unfair labor practices, the notice shall, as far as practicable, state the acts complained of and the efforts taken to resolve the dispute amicably.

Any notice which does not conform with the requirements of this and the foregoing sections shall be deemed as not having been filed and the party concerned shall be so informed by the regional branch of the Board."

Petitioner argues that the notice of strike was invalid, since (1) it erroneously named PNOC as the employer, which is actually a corporate entity separate and distinct from petitioner; (2) it did not indicate the specific acts which respondent union considered as unfair labor practices; and (3) there was no reasonable attempt or effort on the part of respondent union to amicably settle the alleged labor dispute.



The NLRC ruled, and we agree, that respondent union merely committed an honest mistake, because it appears on record that PNOC has the same set of corporate officers as petitioner; and matters as to wages and other official policies all emanated from PNOC, the mother company. The unrebutted testimony of Leo O. Orrica further attests to the fact that the employees concerned repeatedly brought to the attention of the management the discriminatory grant of salary increase, but the latter failed to address the grievance of the NMPTs or to satisfactorily explain such grant to MPTs only, except to say that it was management's prerogative.

Lastly, we agree with the solicitor general that, under the circumstances, there was sufficient indication of the nature and cause of the labor dispute subject of the notice of strike – unfair labor practice in the form of discrimination. The unions merely filled out the standard form furnished for the purpose by the Department of Labor and Employment, and they were indeed not expected to write in detail the history of their dispute. By supplying the information required in the DOLE form and submitting the other explicitly required documents, respondent unions have substantially complied with the law.

A well-recognized norm in labor law is that technical rules of procedure are not to be strictly interpreted and applied in a manner that would defeat substantial justice or be unduly detrimental to the work force. Rules may be relaxed in order to give full meaning to the constitutional mandate of affording full protection to labor. As provided in Article 4 of the Labor Code, "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor."

b. Bargaining deadlock not required

The SC is consistent in saying that that is not necessary because the very fact that there is an **assumption order or certification order from the Secretary of Labor**, this already has the effect of enjoining your strike.

2. NATIONAL INTEREST CASES

Section 16. Industries indispensable to the National Interest. – For the guidance of the workers and employers in the filing of Petition for Assumption of Jurisdiction, the following industries/services are hereby recognized as deemed indispensable to the national interest:

- (a) Hospital Sector;
- (b) Electric Power Industry;
- (c) Water Supply Services, to exclude small water supply services, such as bottling and refilling stations;
- (d) Air Traffic Control; and
- (e) such other industries as may be recommended by the National Tripartite Industrial Peace Council (NTIPC).

In jurisprudence we have:

- 1. large-scale food manufacturer
 - If employees stop working, the food supply

will be affected on the national scale.

- Not even across the whole country, even if its just across the province or a region, it is enough to consider a national interest industry

2. Teachers

- Education is of national interest

3. Chemical supplier

4. Publication of telephone directories

- not a national interest case
- It has no huge impact on society
- Telephone directories only publish 1x a year and the work for updating the directories is not so heavy or laborious
- Its not as necessary to have an 'updated' telephone directory

5. Farmers

6. News or Media Corporations

- GMA Corp. or Sunstar employees strike, it will be considered a national interest because it would deprive people of a reliable news source

7. Communication corporations (PLDT, Smart, Globe)

- People are dependent on their data plans, and communication in general

8. Big Banks (BPI, BDO, etc.)

- Except: small banks like rural banks

Other possible national interest

Electric cooperatives

Water purifiers

It is a case-to-case basis. Key question: How big of an impact would it be on society if the employees strike in that industry?

Example: If it is only a local restaurant that has 3 branches in the city, it would not be considered a national interest case because the effect is only in the local level.

If the industry or the product produced is not indispensable to the day-to-day living, it will not qualify as a national interest case, such as:

Toy manufacturer

Books

Entertainment industry

Models

Another industry are the hospitals or health care workers: It is something that deserves the assumption

of the Secretary of Labor because of the impact



caused by a strike undertaken by the health care workers.

Q: Should the ER or EE notify the DOLE, or can the Secretary immediately act so long as he hears a rumor that a strike will happen?

A: Yes, if the Secretary of Labor has reasonable grounds to believe that a strike is about to happen, it can already assume jurisdiction. But usually, the Secretary of Labor will intervene if there was a notice of strike. Also, there have been cases where the Secretary of Labor has intervened even during the negotiations. But this is a case-to-case basis. You can argue that the Secretary of Labor could intervene even without a notice of strike if the industry affected is so big and important that a strike could be very detrimental to the country.

Q: What about the BPO industry? Can we consider this as an industry indispensable to the national interest?

A: From an economic standpoint, yes because the BPOs are an income-generating industry. But it will depend on the size of the BPO.

Q: What about sastre ? Are they indispensable to the national interest?

A: No, because people can get by without a lot of new clothes.

3. ASSUMPTION OR CERTIFICATION ORDER; RTW

The Secretary does not have to act any further to enjoin the strike. The provision goes on further to say that "if a strike has already taken place at the time of the assumption or certification order, all the striking or lockout employees shall immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike or lockout. It is clear that once there is an order, the employees shall return to their work and the employer must take them back. If the employer does not accept the employee back, the employee can file for illegal dismissal because the return-to-work order was ordered by the Secretary of Labor.

If the employees return to work, the employer must accept them back.

Example: If for example the employees were receiving a salary of P15,000 a month before the strike happened, after the assumption of the Secretary of Labor, the Employer cannot say that he/she can only give a salary of P10,000 because the employer has to accept the employees under the same terms and conditions prevailing before the strike or lockout.

Q: As regards impending strike, does that mean that

the Secretary of Labor may intervene as early as the conduct of a strike-vote?

A: Yes, because the provisions provide that "when there exists a labor dispute causing or likely to cause a strike or like-out, the Secretary may assume jurisdiction over the dispute" thus the Labor Arbiter can intervene as early as then. The Secretary of Labor can assume jurisdiction even as early as the procedure for the build-up towards a strike.

4. EFFECT OF NON-COMPLIANCE

Defiance equivalent to abandonment

St. Scholastica's College vs Torres

Facts: Petitioner sent individual letters to the respondents who were striking employees, enjoining them to return to work. Respondent then presented a list of (6) demands to the petitioner. The most important of these demands was the unconditional acceptance back to work of the striking employees. But these were flatly rejected.

Petitioner mailed individual notices of termination to the striking employees. The union officers and members then tried to return to work but were no longer accepted by the petitioner. The union moved for the enforcement of the return-to-work order before respondent secretary, citing "selective acceptance of returning strikers" by the petitioner. The petitioner argues that the dismissal of the employees who defied his return-to-work order should be upheld..

Issue: Whether or not the employees were validly terminated

Ruling: YES. Any worker or union officer who knowingly participates in a strike defying a return-to-work order may, consequently, "be declared to have lost his employment status." Section 6, Rule IX, of the New Rules of Procedure of the NLRC, which provides the penalties for defying a certification order of the Secretary of Labor or a return-to-work order of the Commission, also reiterates the same penalty.

It is clear from the provisions above quoted that from the moment a worker defies a return-to-work order, he is deemed to have abandoned his job. It is already in itself knowingly participating in an illegal act. Otherwise, the worker will just simply refuse to return to his work and cause a standstill in the company operations while retaining the positions they refuse to discharge or allow the management to fill

The employee who refuses to come back to work, is deemed to have abandoned their work. But due process should still be followed. The employer should ensure that the employee is properly terminated.



Q: What happens if there is non-compliance? The employee does not want to come back, or the employer does not want to accept the employee back?

A: Non-compliance of the employee amounts to abandonment of work. This is discussed in the case of St. Scholastica vs Torres.

The employer, however, can choose to be more lax. If the employer chooses to suspend the employees for 30 days rather than terminating them for abandonment of office, it is also acceptable. Because there is nothing to stop the employer from exercising their benevolence. However, for this rule to apply, it has to be deliberate. Meaning, the employee must have done it intentionally. For example, the employee did not come back because he was ill, or because the employer secretly refused to let them in, it is not considered abandonment. For the refusal to be considered as abandonment, abandonment must be intentional and voluntary on the part of the employee, not because of extraneous circumstances prohibiting them from coming back. The employer is also required to accept the employee with the same working terms and conditions as before.

Q: What happens if the employer brings them back, but the conditions are not the same as before? They have lesser benefits, lesser salary, and bad working conditions?

A: The employee can file for constructive dismissal. Constructive dismissal means that the environment is so difficult, toxic, or offensive to the employee that the employee is left with no other choice but to resign. For example, an employee whose office was transferred near the CR. As a result, the employee suffers from the bad odor from the CR and he cannot work well.

Q: What is the effect if the employee does not want to go back to work?

A: The Employee can be considered as dismissed.

deduction of an "agency fee" from non-members was made in 1961, over two years before our decision in *National Brewery & Allied Industries Labor Union vs. San Miguel Brewery, Inc.*, L-18170 (August 31, 1963) declared, for the first time, that such agency fee was not lawfully demandable; that the strikers offered to return to work, and, in fact, did return to work when so ordered by the Labor Court; and there is no proof that all of them had resorted to, and were convicted of, unlawful acts committed in the prosecution of the strike, we find no abuse of discretion in the denial by the court below of the company's plea for the dismissal of the said strikers. Of course, following the jurisprudence on the matter, the separation from the service of those who may be found guilty of unlawful acts committed in carrying out the strike may properly be decreed.

Actual Reinstatement vs Payroll Reinstatement

University of Sto. Tomas v. NLRC,

Doctrine: Within the context of Article 263(g), the phrase "under the same terms and conditions" contemplates actual reinstatement or the return of actual teaching loads to the dismissed faculty members.

Article 263(g) was devised to maintain the status quo between the workers and management in a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, pending adjudication of the controversy.

Actual Reinstatement	Payroll Reinstatement
The employer has to actually return to work, and actually receiving benefits, etc.	Employee can still receive benefits despite not actually returning to work
This is what is implied in a return to work order	
General Rule	Exception

Trans-Asia Shipping Lines, Inc. - Unlicensed Crew Employees Union v. Court of Appeals

Doctrine: The powers granted to the DOLE Sec. under Article 263 (g) have been characterized as an exercise of the police power of the State, with the aim of promoting public good. When the Secretary exercises these powers, he is granted "great breadth of discretion" in order to find a solution to a labor dispute.

When payroll reinstatement allowed

University of the Immaculate Conception v. Office of the Secretary of Labor and Employment

Facts: Petitioner university and respondent union had a collective bargaining negotiation. However, one item was left unresolved and this was the inclusion or

Refusal must be deliberate

Bantangas Laguna Tayabas Bus Company v. NLRC

Doctrine: For abandonment to constitute a valid cause for termination of employment, there must be a deliberate, unjustified refusal of the employee to resume his employment. This refusal must be clearly established. As we stressed in a recent case, mere absence is not sufficient; it must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.

Suspension instead of dismissal

Cebu Portland Cement Co. v. Cement Workers' Union

Doctrine: Considering that the strikers' demand for



exclusion of the following positions in the scope of the bargaining unit:

- Secretaries
- Registrars
- Accounting Personnel
- Guidance Counselors

During the thirty (30) day cooling-off period, two union members were dismissed by the petitioner. The UNION went on strike. Afterwards, the petitioner terminated some employees, especially the striking ones. The Secretary of Labor issued an order directing the petitioner to give payroll reinstatement on the dismissed employees.

Issue: W/N payroll reinstatement is allowed

Ruling: Article 263(g) of the Labor Code aforementioned states that all workers must immediately return to work and all employers must readmit all of them under the same terms and conditions prevailing before the strike or lockout. The phrase "under the same terms and conditions" makes it clear that the norm is actual reinstatement. This is consistent with the idea that any work stoppage or slowdown in that particular industry can be detrimental to the national interest.

However, payroll reinstatement is allowed due to special circumstances that render actual reinstatement impracticable or otherwise not conducive to attaining the purposes of the law, such as in this case.

The "superseding circumstances" mentioned by the Acting Secretary of Labor no doubt refer to the final decision of the panel of arbitrators as to the confidential nature of the positions of the twelve private respondents, thereby rendering their actual and physical reinstatement impracticable and more likely to exacerbate the situation. The payroll reinstatement in lieu of actual reinstatement ordered in these cases, therefore, appears justified as an exception to the rule until the validity of their termination is finally resolved.

Payroll reinstatement is allowed if the employees are confidential employees. In this case, the employees are secretaries, handling confidential information. Not necessarily confidential in the aspect of labor relations. The confidential employees here are those confidential employees in the literal sense. The rationale behind this is that the employee might disclose sensitive information about the employer's business just to get an upper hand in the negotiation.

5. BACKWAGES

- Salary you would have received if you have been forced to stop working
- **Example:** If you were forced to stop working in

May, and you got back to work in December, your backwages consist of your salary from May to December

Legal/Economic strike	No backwages
Legal/ULP strike	Entitled to backwages
Illegal strike	No backwages

General Rule: Rule on backwages will depend on the grounds of your strike. If your strike is economic strike or maybe a bargaining deadlock strike, you would not be entitled to backwages for the time that you were striking. Why? We go back to the no work, no pay principle. You were not working, you shouldn't get a salary. But if the ground for your strike is ULP, you are entitled to backwages. Why? Because it's the fault of the employer why the employees went on strike. Because of the employer's ULP, the employees went on strike. They wanted to address the ULP of the employer. **They are entitled to backwages because it is a penalty to punish the erring employer. That is why in a ULP strike, the employees may be entitled to backwages.** However, this is premised on the condition that they returned to work without any difficulty or any conditions. These kinds of backwages is dependent on the condition that the strike was legal. If the strike is not legal, they should not be entitled to backwages because you would essentially be rewarding illegal behavior.

What happens in an illegal strike, how will the employees recover?

A: The remedy of employees in an illegal strike is to go after the union. It is the fault of the union why they conducted an illegal strike.

For employee-participants in the strike, may the minority union members join the strike or only the majority union members?

A: As a general rule, only the majority union members can strike. Let's qualify the answer. If there's still no exclusive bargaining agent, the labor organization can strike. Usually because of ULP. But for example there's an exclusive bargaining agent, then only the exclusive bargaining agent can strike because of the fact that it supposedly represents the majority of the bargaining unit. Plus one of the grounds is actually bargaining deadlock. And remember, a minority union cannot bargain with the employer. So as a general rule, it would be the majority union that is allowed the power to strike. Probably if they still have not had a certification election or anything, the minority union can still probably join because there's still no majority union at that time. I don't think there's anything to stop them from grouping together. But definitely it has to be spearheaded by the majority union. Plus you'll notice



that one of the requirements is that legal strike is a majority vote of the organization.

No backwages

Ma ngagawa ng Komunikason sa Pilipinas v. PLDT

Doctrine: The award of reinstatement, including backwages, is awarded by a Labor Arbiter to an illegally dismissed employee pursuant to Article 294 of the Labor Code:

Article 294. Security of Tenure. — *In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.*

If actual reinstatement is no longer possible, the employee becomes entitled to separation pay in lieu of reinstatement.

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, that mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

(b) No person shall obstruct, impede, or interfere with by force, violence, coercion, threats or intimidation, any peaceful picketing by employees during any labor controversy or in the exercise of the right to self-organization or collective bargaining, or shall aid or abet such obstruction or interference.

(c) No employer shall use or employ any strike-breaker, nor shall any person be employed as a strike-breaker.

(d) No public official or employee, including officers and personnel of the New Armed Forces of the Philippines or the Integrated National Police, or armed person, shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: Provided, That nothing herein shall be interpreted to prevent any public officer from taking any measure necessary to maintain peace and order, protect life and property, and/or enforce the law and legal orders.

(e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares

What about illegal activities or prohibited activities?

So under the Labor Code, we actually have a list of prohibited activities during the strike. This is in Art. 279 of the Labor Code. One of the prohibited activities are impeding the area of entrance and exit of the workplace; or using violence, force, coercion, threats, intimidation; or using a strike-breaker (the employer would hire people to disrupt the strike by physical means).

Is blocking the entrance (ingress) or exit (egress) reasonable? Yes.

The one on blockading the entrance and exit, this is reasonable because a strike is not permitted to stop the employer from conducting their business. So there are striking employees who are hot-headed who decide to block the driveways to prevent ingress and egress. That is actually a prohibited activity. Another common example is striking employees will sometimes harass non-striking employees. That is another prohibited activity as it is a form of coercion, threat, or intimidation.

6. REFERRAL TO VOLUNTARY ARBITRATOR

J. PROHIBITED ACTIVITIES

Article 279. [264] Prohibited Activities

(a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the 217As amended by B.P. Blg. 227 (1982). Par. (d), as amended by E.O. No. 111 (1986), pendency of cases involving the same grounds for the strike or lockout.



As to the crimes committed during the strike, does it make the strike illegal? Yes.

Any act under these prohibited activities would make the strike illegal. If crimes are committed during the strike, that would also make the strike illegal. We also have threats, violence, vandalism, libel. So if they would have placards insulting the wife of the owner of the business, that is not allowed. If their placards would contain lies about the employer, that is another illegal activity.

If the act of violence was first inflicted by the employer would this constitute a valid reason for the employees to retaliate and thus, would not make the strike illegal? Yes.

One exception to the rule against violence is when the employer inflicted the violence first and the employee reacted with violence also, this cannot be considered as against the employee because you can claim it as self-defense. In order for it to be an illegal strike, it has to have been at the initiative of the employees.

Would minor disorders make the strike illegal?

Minor disorders like littering, these cannot be considered as illegal strikes. These minor disorders are necessary consequences of a strike. These things can't be helped but so long as the employees stay in line, you cannot consider those as prohibited activities. These prohibited activities must be proven, as with all things in labor law, even in any field of law. If, for example, the employer claims an illegal strike but has no basis, and has no evidence to show that the strike is illegal, the presumption is that the strike is legal. The one who claims that a strike is illegal is the one who carries the burden of proof to show that the strike is illegal, and also to show the consequences of illegal strike.

K. NON-STRIKE COMMITMENTS IN CBA

Interphil Laboratories Employees Union-FFW v. Interphil Laboratories, Inc.

Doctrine: The Supreme Court held that the Labor Arbiter is not precluded from accepting and evaluating evidence other than, and even contrary to, what is stated in the CBA. The two-shift schedule effectively changed the working hours stipulated in the CBA. As the employees assented by practice to this arrangement, they cannot now be heard to claim that the overtime boycott is justified because they were not obliged to work beyond eight hours. More importantly, the "overtime boycott" or "work slowdown" by the employees constituted a violation of their CBA, which prohibits the union or employee, during the existence of the CBA, to stage a strike or engage in slowdown or interruption of work.

Ilaw at Buklod ng Manggagawa (IBM) v. NLRC

Doctrine: The legislative intent that solution of the problem of wage distortions shall be sought by voluntary negotiation or arbitration, and not by strikes, lockouts, or other

concerted activities of the employees or management, is made clear in the rules implementing RA 6727 issued by the Secretary of Labor and Employment pursuant to the authority granted by Section 13 of the Act. Section 16, Chapter I of these implementing rules, after reiterating the policy that wage distortions be first settled voluntarily by the parties and eventually by compulsory arbitration, declares that, *Any issue involving wage distortion shall not be a ground for a strike/lockout.*

Moreover, the collective bargaining agreement between the SMC and the Union, relevant provisions of which are quoted by the former without the latter's demurring to the accuracy of the quotation, also prescribes a similar eschewal of strikes or other similar or related concerted activities as a mode of resolving disputes or controversies, generally, said agreement clearly stating that settlement of «all disputes, disagreements or controversies of any kind» should be achieved by the stipulated grievance procedure and ultimately by arbitration.

When no-strike clause may not be invoked

Master Iron Labor Union v. NLRC

Doctrine: A no-strike clause in a CBA is applicable only to economic strikes. Corollarily, if the strike is founded on an unfair labor practice of the employer, a strike declared by the union cannot be considered a violation of the no-strike clause.

An economic strike is defined as one which is *to force wage or other concessions from the employer which he is not required by law to grant.*

Exception to no-strike clause and to 'Substitutionary Doctrine'

- newly certified bargaining agent

Benguet Consolidated, Inc. v. BCI Employees and Workers Union-PAFLU

Doctrine: In formulating the "substitutionary" doctrine, the only consideration involved was the employees' interest in the existing bargaining agreement. The agent's interest never entered the picture. In fact, the justification for said doctrine was:

... that the majority of the employees, as an entity under the statute, is the true party in interest to the contract, holding rights through the agency of the union representative. Thus, any exclusive interest claimed by the agent is defeasible at the will of the principal....

Stated otherwise, the "**substitutionary**" **doctrine** only provides that the employees cannot revoke the validly executed collective bargaining contract with their employer by the simple expedient of changing their bargaining agent. And it is in the light of this that the phrase "said new agent would have to respect said contract" must be understood. It only means that the employees, thru their new bargaining agent, cannot renege on their collective bargaining contract, except of course to negotiate with management for the shortening thereof.

The "substitutionary" doctrine, therefore, cannot be invoked to support the contention that a newly certified collective



bargaining agent automatically assumes all the personal undertakings — like the no-strike stipulation here — in the collective bargaining agreement made by the deposed union. When BBWU bound itself and its officers not to strike, it could not have validly bound also all the other rival unions existing in the bargaining units in question. BBWU was the agent of the employees, not of the other unions which possess distinct personalities. To consider UNION contractually bound to the no-strike stipulation would therefore violate the legal maxim that *res inter alios nec prodest nec nocet*.

Of course, UNION, as the newly certified bargaining agent, could always voluntarily assume all the personal undertakings made by the displaced agent. But as the lower court found, there was no showing at all that, prior to the strike, UNION formally adopted the existing CONTRACT as its own and assumed all the liability ties imposed by the same upon BBWU. BENGUET contends, citing Clause II in connection with Clause XVIII of the CONTRACT, that since all the employees, as principals, continue being bound by the no-strike stipulation until the CONTRACT's expiration, UNION, as their agent, must necessarily be bound also pursuant to the Law on Agency. This is untenable. The way We understand it, everything binding on a duly authorized agent, *acting as such*, is binding on the principal; not *vice-versa*, unless there is a mutual agency, or unless the agent expressly binds himself to the party with whom he contracts. As the Civil Code decrees it:

The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

Here, it was the previous agent (BBWU) who expressly bound itself to the other party, BENGUET. UNION, the new agent, did not assume this undertaking of BBWU.

L. IMPROVED OFFER BALLOTTING

Sec. 12, Rule XXII, DO 40-03, s. 2003

Section 12. Improved offer balloting. – In case of a strike, the regional branch of the Board shall, at its own initiative or upon the request of any affected party, conduct a referendum by secret balloting on the improved offer of the employer on or before the 30th day of strike. When at least a majority of the union members vote to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon re-admit them upon the signing of the agreement.

In case of a lockout, the regional branch of the Board shall also conduct a referendum by secret balloting on the reduced offer of the union on or before the 30th day of the lockout. When at least a majority of the board of directors or trustees or the partners holding the controlling interest in the case of partnership vote to accept the reduced offer, the workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

M. ILLEGAL STRIKES

1. GROUNDS FOR DECLARING A STRIKE ILLEGAL

Enumeration of causes affecting legality of strike

Toyota Motor Phil. Workers Association v. NLRC

Doctrine: *When is a strike illegal?*

Noted authority on labor law, Ludwig Teller, lists six (6) categories of an illegal strike, viz:

1. When it is *contrary to a specific prohibition of law*, such as strike by employees performing governmental functions; or
2. When it *violates a specific requirement of law* [such as Article 263 of the Labor Code on the requisites of a valid strike]; or
3. When it is *declared for an unlawful purpose*, such as inducing the employer to commit an unfair labor practice against non-union employees; or
4. When it employs *unlawful means* in the pursuit of its objective, such as a widespread terrorism of non-strikers [for example, prohibited acts under Art. 264(e) of the Labor Code]; or
5. When it is *declared in violation of an existing injunction* [such as injunction, prohibition, or order issued by the DOLE Secretary and the NLRC under Art. 263 of the Labor Code]; or
6. When it is *contrary to an existing agreement*, such as a no-strike clause or conclusive arbitration clause.

ICAB, the court upheld the dismissal of the union officers and 227 union members whose 'mass action' and 'walkouts' were in fact illegal work stoppages

Capitol Medical Center v. NLRC

Doctrine: The failure of a union to comply with the requirement of the giving of notice to the NCMB at least 24 hours prior to the holding of a strike vote meeting will render the subsequent strike staged by the union illegal.

a. Statutory prohibition

Another kind of illegal strike is when you are not allowed to strike in the first place, like government employees, managerial employees and those not allowed to exercise the right to self-organization.

Social Security System Employees Association v. Court of Appeals, G.R. No. 85279, 28 July 1989

Doctrine: Section 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, which took effect after the instant dispute arose, "[t]he terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and GOCCs with original charters are governed by law and employees therein shall not strike for the purpose of securing changes thereof.

Bangalisan v. Court of Appeals, G.R. No. 124678, 31 July 1997



Doctrine: It is the settled rule in this jurisdiction that employees in the public service may not engage in strikes. While the Constitution recognizes the right of government employees to organize, they are prohibited from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass action which will result in temporary stoppage or disruption of public services. The right of government employees to organize is limited only to the formation of unions or associations, without including the right to strike. The ability to strike is not essential to the right of association. In the absence of statute, public employees do not have the right to engage in concerted work stoppages for any purpose.

The fact that the conventional term 'strike' was not used by the striking employees to describe their common course of action is inconsequential, since *the substance of the situation and not its appearance, will be deemed controlling.*" The term "strike" has been elucidated to encompass not only concerted work stoppages, but also slowdowns, mass leaves, sit-downs, attempts to damage, destroy, or sabotage plant equipment and facilities, and similar activities.

b. Non-compliance with procedural requirements

What makes a strike illegal?

First is the most obvious answer, **non-compliance with the procedural and reportorial requirements.** You didn't go through the strike vote, you didn't serve a notice of strike, you didn't respect the cooling off period, you didn't respect the seven-day period, etc. So that would turn your strike into an illegal strike.

Good faith strike: Remember the good faith strike in ULP. In a ULP strike, the employees honestly and sincerely believe in good faith that on reasonable and rational grounds that a ULP occurred. Good faith strike is a recognized principle under our labor law. However, **good faith strikes are still subject to the procedural requirements of strikes.** They must still file a notice of strike, conduct a strike vote, respect the cooling off period, etc. So the employees cannot claim that "we conducted our strike in good faith." They cannot claim that with respect to the procedural requirements.

Why? Because the procedural requirements are explicitly provided in the Labor Code. So they cannot claim ignorance of the law because they are presumed to know the law and therefore they cannot exempt themselves from these requirements. If anyone can invoke good faith as an excuse, the procedural requirements would become useless because anyone could just invoke good faith.

striking union.

Article 264 of the Labor Code, in providing for the consequences of an illegal strike, makes a distinction between union officers and members who participated thereon. Knowingly participating in an illegal strike is a valid ground for termination from employment of a union officer. The law, however, treats mere union members differently. Mere participation in an illegal strike is not a sufficient ground for termination of the services of the union members. The Labor Code protects an ordinary, rank-and-file union member who participated in such a strike from losing his job, provided that he did not commit an illegal act during the strike. Thus, absent any clear, substantial and convincing proof of illegal acts committed during an illegal strike, an ordinary striking worker or employee may not be terminated from work.

Mandatory Nature of Requirements

National Federation of Sugar Workers v. Ovejera

Doctrine: The cooling-off period in Article 264(c) is mandatory. When the law says "the labor union may strike" should the dispute "remain unsettled until the lapse of the requisite number of days (cooling-off) period from the mandatory filing of the notice," the unmistakable implication is that the union may not strike before the lapse of the cooling-off period. Similarly, the mandatory character of the 7 day strike ban after the report on the strike vote is manifest in the provisions that "in every case," the union shall furnish the MOLE with the results of the voting at least seven (7) days before the intended strike, subject to the (prescribed) cooling-off period and the 7 day strike ban must both be complied with, although a labor union may take a strike vote and report within the statutory cooling-off period.

Here, the strike conducted by NFSW is illegal because it declared the strike six (6) days after filing a strike notice, i.e., before the lapse of the mandatory cooling-off period. It also failed to file with the MOLE *before* launching the strike a report on the strike-vote, when it should have filed such a report "at least seven (7) days before the intended strike."

Lapanday Workers Union v. NLRC, G.R. Nos. 95494-97, 07 September 1995

Doctrine: The strike conducted by the union is plainly illegal as it was held within the seven (7)-day waiting period. The haste in holding the strike prevented the Department of Labor and Employment from verifying whether it carried the approval of the majority of the union members. It set to naught an important policy consideration of our law on strike. The seven (7)-day waiting period is intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.

Samahan ng Manggagawa in Moldex Products v. NLRC, G.R. Nos. 119467, 01 February 2000

Doctrine: The results of the strike-vote were never forwarded to the NCMB. Without the submission of the results of the strike-vote, the strike was illegal, pursuant to Article 264 of the Labor Code. In addition to the failure to submit the strike vote to the NCMB, the Union also committed acts of

Legitimate Labor Organization

Stanford Marketing Corp. v. Julian

Doctrine: The strike conducted by the respondent union is illegal. First, it has not been shown that said union is a legitimate labor organization, entitled to file a notice of strike on behalf of its members. Second, the other requirements under Article 263 (c) and (f) were not complied with by the



violence, threats, coercion, and intimidation during the strike because the Union totally blocked free ingress to and egress from Moldex's premises and committed illegal acts of violence, threats, coercion and intimidation in the course of their strike. illegal acts of violence, threats, coercion and intimidation in the course of their strike.

Union of Filipro Employees v. Nestle Philippines, Inc., G.R. No. 88710, 19 December 1990

Doctrine: Assumption and certification orders are *executory in character* and are to be *strictly complied* with by the parties even during the pendency of any petition questioning their validity. This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests. Regardless of their motives, or the validity of their claims, the striking workers must cease and/or desist from any and all acts that tend to, or undermine this authority of the Secretary of Labor, once an assumption and/or certification order is issued. They cannot, for instance, ignore return-to-work orders, citing unfair labor practices on the part of the company, to justify their actions.

An assumption and/or certification order of the Secretary of Labor automatically results in a return-to-work of all striking workers, whether or not a corresponding order has been issued by the Secretary of Labor. Thus, the striking workers erred when they continued with their strike alleging absence of a return-to-work order. Article 264(g) is clear. Once an assumption/certification order is issued, strikes are enjoined, or if one has already taken place, all strikers *shall immediately return to work*. A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a *prohibited activity* and thus illegal.

Procedural Requirements Still Apply Even in "Good Faith" Strikes

National Federation of Labor v. NLRC

Doctrine: Under the New Labor Relations Law, the rule is that the requirements as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature. Thus, even if the union acted in **good faith** in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal.

United Restauror's Employees and Labor Union - PAFLU v. Torres

Doctrine: Before an election is held by the Board to determine which of two rival unions represents a majority of the employees, one of the unions may call a strike and demand that the employer bargain with it. A labor dispute will then exist. Nothing in the statute makes it illegal for a minority to strike and thereby seek to obtain sufficient strength so as to become the sole bargaining agent. But after the Board certifies the bargaining representative, a strike by a minority union to compel an employer to bargain with it is unlawful. No labor dispute can exist between a minority union and an employer in such a case. The Union's right to strike and consequently to picket ceased by its defeat in the consent election.

c. No valid ground for strike/unlawful purpose

What about the non-procedural aspect?

Another ground would be that the **strike has no legal basis**.

Example: if they would be striking not because there is a bargaining deadlock or a ULP but because of political differences. Let's say the employer supports BBM and placed Uniteam tarpaulins outside the workplace.

The employees are a mix of Kakampinks, Isko, and Pacquiao and because they are firm with their political beliefs, they decided to conduct a strike to rebel against the political stand of their employer. **Do you think the strike would be lawful?**

So we have this misconception that every time there's a disagreement with the employer, the employees can conduct a strike. But in reality, **a strike has a very narrow and limited application**. So remember that. Not every instance that employees have a cause of action against the employer that they can conduct a strike.

Conversion Doctrine

Consolidated Labor Association of the Philippines v. Marsman Co.

Doctrine: Initially the strike staged by the Union was meant to compel the Company to grant it certain economic benefits set forth in its proposal for collective bargaining. The strike was an economic one and the striking employees would have to be reinstated if, in the interim, the employer had not hired other permanent workers to replace them. For it is recognized that during the pendency of an economic strike an employer may take steps to continue and protect his business by supplying places left vacant by the strikers and is not bound to discharge those hired for that purpose upon election of the strikers to resume their employment. But the strike changed its character from the time the Company refused to reinstate complainants because of their union activities after it had offered to admit all the strikers and in fact did readmit the others. It was then converted into an unfair labor practice strike. The Company alleges that it was economic reasons, not labor discrimination, which prevented it from rehiring complainants. This is disproved by the fact that it not only readmitted the other strikers, but also hired new employees and even increased the salaries of its personnel by almost 50%. This is an indubitable case of unfair labor practice.

The Union began the strike because it believed in good faith that settlement of their demands was at an impasse and that further negotiations would only come to naught. It stopped the strike upon the belief they could go back to work. Then it renewed the strike (or it started a new strike) as a protest against the discrimination practiced by the Company. Both are valid grounds for going on a strike.



Employer's Refusal or Inability to Meet Workers' Demands

Central Vegetable Oil Manufacturing v. Philippine Oil Industry Workers Union, G.R. No. L-4061, 28 May 1952

Doctrine:

The strike, prompted by the refusal of the company to discuss the 14-point petition of the union and to concede at least two working days a week, was legitimate. The plea of the laborers for better conditions and for more working days cannot be said to be trivial, unreasonable or unjust, much less illegal, because it is not only the inherent right but the duty of all free men to improve their living standard through honest work that pays a decent wage. The demands that gave rise to the strike may not properly be granted but that fact should not make the demands and the consequent strike illegal. The ability of the company to grant the demands is one thing, and the right of the laborers to make said demands is another thing. The latter should be kept inviolate.

Interwood Employees Association v. International Hardwood and Veneer Company of the Philippines

Doctrine: Marcelo was not dismissed for union activities. If he was separated from the service of the company, it was because of his voluntary resignation which was duly accepted by the management. If the management refuses to re-employ him, it is merely acting in the exercise of its prerogative. What would have been the proper step for Mr. Marcelo before declaring the strike was to bring the matter to this Court and ask for his reinstatement, as the exercise by the management of its prerogatives is basically subject to the regulation of the State. Marcelo, without resorting to some pacific means and processes, prevailed upon the members of the Association to declare a strike simply because he was harboring the belief that he was illegally dismissed.

Shaved Heads, Violation of Grooming Standards

National Union of Workers in the Hotel and Restaurant and Allied Industries (NUWHRAIN-APL-IUF) Dusit Hotel Nikko Chapter v. Court of Appeals

The Union is liable for conducting an illegal strike for the following reasons:

1. The appearances of the Hotel employees directly reflect the character and well-being of the Hotel, being a five-star hotel that provides service to top-notch clients. Being bald or having cropped hair per se does not evoke negative or unpleasant feelings. The reality that a substantial number of employees assigned to the food and beverage outlets of the Hotel with full heads of hair suddenly decided to come to work bald-headed or with cropped hair, however, suggests that something is amiss and insinuates a sense that something out of the ordinary is afoot.

The act of the Union was not merely an expression of their grievance or displeasure but, indeed, a calibrated

and calculated act designed to inflict serious damage to the Hotel's finances or its reputation. Union's concerted violation of the Hotel's Grooming Standards which resulted in the temporary cessation and disruption of the Hotel's operations is an unprotected act and should be considered as an illegal strike.

2. The Union's concerted action which disrupted the Hotel's operations clearly violated the CBA's "No Strike, No Lockout" provision.
3. Since the bargaining deadlock is being conciliated by the NCMB, the Union's action to have their officers and members' heads shaved was manifestly calculated to antagonize and embarrass the Hotel management and in doing so effectively disrupted the operations of the Hotel and violated their duty to bargain collectively in good faith.
4. The Union failed to observe the mandatory 30-day cooling-off period and the seven-day strike ban.
5. The strike was illegal since the Union officers and members formed human barricades and obstructed the driveway of the Hotel.

Strike to Dismiss Employee

Luzon Marine Department Union v. Roldan

Doctrine: The law does not expressly ban strikes except when enjoined against by the court; but if a strike is declared for a trivial, unjust or unreasonable purpose, or if it is carried out through unlawful means, the law will not sanction it and the court will declare it illegal, with the adverse consequences to the strikers.

If the laborers resort to a strike to enforce their demands, instead of resorting first to the legal processes provided by the law, they do so at their own risk, because the dispute will necessarily reach the court and, if the latter should find that the strike was unjustified, the strikers would suffer the adverse consequences.

Strike Against Rearrangement of Office

Reliance Surety and Insurance Co., Inc. v. NLRC

Doctrine: The strike itself was prompted by no actual, existing unfair labor practice committed by the petitioner. In effecting a change in the seating arrangement in the office of the underwriting department, the petitioner merely exercised a reasonable prerogative employees could not validly question, much less assail as an act of unfair labor practice. The Court is indeed at a loss how rearranging furniture, as it were, can justify a four-month-long strike. As to the private respondent's charges of harassment, the Commission found none, and as a general rule, we are bound by its findings of fact.

Strike Against Company Policy



GTE Directories Corporation vs Sanchez

Doctrine: When the strike notice was filed by the union, the chain of events which culminated in the termination of the 14 salespersons' employment was already taking place, the series of defiant refusals by said sales representatives to comply with GTE's requirement to submit individual reports was already in progress. At the time, no less three (3) of the ultimate six (6) direct orders of the employer for the submission of the reports had already been disobeyed. The filing of the strike notice, and the commencement of conciliation activities by the Bureau of Labor Relations did not operate to make GTE's orders illegal or unenforceable so as to excuse continued non-compliance therewith. It does not follow that just because the employees or their union are unable to realize or appreciate the desirability of their employer's policies or rules, the latter were laid down to oppress the former and subvert legitimate union activities.

Indeed, the overt, direct, deliberate and continued defiance and disregard by the employees of the authority of their employer left the latter with no alternative except to impose sanctions. The sanction of suspension having proved futile in this case, termination of employment was the only option left to the employer.

d. Illegal means and methods

Ilaw at Buklod ng Manggagawa vs NLRC

Doctrine: Strikes or lockouts are not one of the ways of correcting wage distortions. The proper procedure as provided by law must be followed.

The right to strike, lockout, or otherwise engage in concerted activities may be restricted by law and/or contract.

Threats, Violence

United Seamen's Union of the Philippines vs Davao Shipowners Associations

Doctrine: The strikers not only shouted slanderous and scurrilous words against the owner of the vessels but also hurled threatening remarks at the non-strikers. Fear was instilled in the minds of non-strikers and owners of the vessels.

A labor organization is wholesome if it serves its legitimate purpose of promoting the interests of labor without unnecessary labor disputes. That is why it is given personality and recognition in concluding collective bargaining agreements. But if it is made use of as a subterfuge, or as a means to subvert valid commitments, it defeats its own purpose, for it tends to undermine the harmonious relations between management and labor. The situation does not deserve any approving sanction from the Court. In view of our conclusion that the strike staged by petitioner USUP was illegal and unjustified and that the permanent injunction issued by the lower court was proper, we deem it unnecessary to consider the other incidental issues presented by petitioner.

List of Examples of Prohibited Acts, Threats Against Non-Strikers

Sukhothai Cuisine vs CA

Doctrine: Well-settled is the rule that even if the strike were to be declared valid because its objective or purpose is lawful, the strike may still be declared invalid where the means employed are illegal.

Among such limits are the prohibited activities under Article 264 of the Labor Code, particularly paragraph (e), which states that no person engaged in picketing shall:

- a) commit any act of violence, coercion, or intimidation or
- b) obstruct the free ingress to or egress from the employer's premises for lawful purposes, or
- c) obstruct public thoroughfares.

Coercion of Non-Striking Employees

Liberal Labor Union v Phil. Can. Co

Doctrine: In the present case there is more than a mere violation of a collective bargaining agreement. Here we find that the majority opinion predicated the illegality of the strike not merely on the infringement of said agreement by the union but on the proven fact that, in carrying out the strike, coercion, force, intimidation, violation with physical injuries, sabotage and the use of unnecessary and obscene language or epithets were committed by the top officials and members of the union in an attempt to prevent the other willing laborers to go to work. We hold that a strike held under these circumstances cannot be justified in a regime of law for that would encourage abuses and terrorism and would subvert the very purpose of the law which provides for arbitration and peaceful settlement of labor disputes. As aptly said in one case: "A labor philosophy based upon the theory that might is right, in disregard of law and order, is an unfortunate philosophy of regression whose sole consequences can be disorder, class hatred and intolerance"

Exception: Violence on Both Sides

Malayang Samahan ng mga Manggagawa sa M. Greenfield vs Ramos

Doctrine: Violence on the part of the strikers cannot be a ground to make the strike illegal if the employer was also violent.

Illegal Acts Must Be Proven During an Investigation

Batangas Laguna Tayabas Bus Company vs NLRC

Doctrine: Fraud or wilfull breach of trust reposed upon an employee by his employer is a recognized cause for termination of employment and it is not necessary that the employer should await the employee's final conviction in the criminal case involving such fraud or breach of trust before it can terminate the employee's services. In fact, even the dropping of the charges or acquittal of the employee therefrom does not preclude the dismissal of an employee for acts inimical to the interests of the employer.



To our mind, the criminal charges initiated by the company against private respondents and the finding after preliminary investigation of their *prima facie* guilt of the offense charged constitute substantial evidence sufficient to warrant a finding by the Labor Tribunal of the existence of a just cause for their termination based on loss of trust and confidence. The Labor Tribunal need not have gone further as to require private respondents' conviction of the crime charged, or inferred innocence on their part from their release from detention, which was mainly due to their posting of bail.

Minor Disorders Not Illegal

Insular Life Assurance Co Employees Association-NATU vs The Insular Life Assurance

Doctrine: The heated altercations and occasional blows exchanged on the picket line do not affect or diminish the right to strike. Persuasive on this point is the following commentary:

We think it must be conceded that some disorder is unfortunately quite usual in any extensive or long drawn out strike. A strike is essentially a battle waged with economic weapons. Engaged in it are human beings whose feelings are stirred to the depths. Rising passions call forth hot words. Hot words lead to blows on the picket line. The transformation from economic to physical combat by those engaged in the contest is difficult to prevent even when cool heads direct the fight. Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Sec. 13 of Act 29 USCA Sec. 163, that nothing therein should be construed so as to interfere with or impede or diminish in any way the right to strike. If this were not so, the rights afforded to employees by the Act would indeed be illusory. We accordingly recently held that it was not intended by the Act that minor disorders of this nature would deprive a striker of the possibility of reinstatement. (Republic Steel Corp. v. N. L. R. B., 107 F2d 472, cited in Mathews, Labor Relations and the Law, p. 378)

Hence the incident that occurred between Ner, et al. and Ramon Garcia was but a necessary incident of the strike and should not be considered as a bar to reinstatement.

Bascon vs CA

Doctrine: While a union officer can be terminated for mere participation in an illegal strike, an ordinary striking employee, like petitioners herein, must have participated in the commission of illegal acts during the strike. There must be proof that they committed illegal acts during the strike. But proof beyond reasonable doubt is not required. Substantial evidence, which may justify the imposition of the penalty of dismissal, may suffice. In the case at bar, the Court of Appeals found that petitioners' actual participation in the illegal strike was limited to wearing armbands and putting up placards. There was no finding that the armbands or the placards contained offensive words or symbols. Thus, neither such wearing of armbands nor said putting up of placards can be construed as an illegal act. In fact, *per se*, they are within the mantle of constitutional protection under freedom of speech. Evidence on record shows that various illegal acts were committed by unidentified union members in the course of the protracted mass action. But it cannot hold petitioners responsible for acts they did not commit. The law, obviously solicitous of the welfare of the common

worker, requires, before termination may be considered, that an ordinary union member must have knowingly participated in the commission of illegal acts during a strike.

e. Violation of injunction

Will a violation of injunction make a strike illegal? Yes.

Another illegal strike is when there is already an injunction, but the employees still strike anyway. For example, the assumption of jurisdiction by the Secretary of Labor necessarily carries with it the injunction of the pending strike. Once the employees receive the notice of the assumption order but they do not listen to it, the strike has to be considered illegal.

2. EFFECTS ON PARTICIPATING EMPLOYEES

A union officer of an illegal strike	Maybe terminated from service at the option of the employer subject to due process
Employee, member of the union, who participates in the illegal acts during the strike	Maybe terminated at the discretion of the employer subject to due process, provided that it has to be shown that the employee participated in the illegal acts
Employee, member of the union, who did not participate	None; they just continue with their work

Notice the difference: the mere fact that you are a union officer, the employer has the discretion to dismiss you. The mere fact that you are a union member in an illegal strike is not enough ground to dismiss you. For a union member to be dismissed, it has to be shown that they actually participated in the illegal acts or prohibited activities or illegal strike. Union officers are the leaders. As such, we have to hold them in a higher degree of accountability because of the fact that they are the ones who organize such strikes, they also have to control how the flow of the strike is going or how the strike is being processed in the case of the procedural requirements. All of these are subject to due process: there has to be proper evidence, substantial evidence, etc. Just because someone participated in a strike that later on turned out to be illegal doesn't mean that they can be dismissed. It has to be shown with substantial evidence that they, at the very least, participated in the illegal activities.

What happens to union members who did not



participate? They just carry on with their work.

As a strike started out legal, can it become illegal later on? Yes.

Let's say you process everything: strike vote, you respect notice of strike, you respect the cooling off period and the 7-day period. Everything started out peacefully but then suddenly, people will get into a fight, and even vandalize the properties, etc. Even if the strike starts out legal, it can become illegal later on, that is why we have the list of prohibited activities. Just because it started out legal, it doesn't mean that it can't evolve into an illegal strike later on. But if it starts out as an illegal strike, it can't change into a legal strike. Legal can become illegal, but illegal stays illegal.

a. Liability of union and members in general

Mere Membership or Affirmative Vote for an Initially Legal Strike, Discarded the Principle of Vicarious Liability

Esso Philippines vs Malayang Manggagawa sa Esso

Facts: Respondent Union (MME) was originally composed of members from Citizen Labor's Union. A decision was passed terminating members of the CLU for staging an illegal strike.

Issue: Whether or not members of the MME should also be terminated, even though they did not participate in the illegal strike

Ruling: No. In the instant case, neither the complaint of Esso nor the judgment of the CIR, just quoted, can be read as making members of the CLU responsible for the illegal strike aforementioned on the sole basis of such membership or even on account of their affirmative vote authorizing the same. Liability is pinned on them explicitly only if they had actually "participated" therein. Regardless of the evidence relied upon by petitioner, consisting of the testimonies of the president of the union, Sareno Saren, as to the absence of any dissent to the strike vote during the general meeting called for the purpose, and the vice-president, Amado Fuentes, to the effect that "we went on strike", which, to be sure, are anyway inconclusive, since it has not been shown that all and everyone of the members were present at the general meeting referred to by Sareno and that the "we" of Fuentes referred to all and everyone of the members, We deem it inconsistent with the liberal spirit of our labor laws to go beyond the more definite and precise tenors of the complaint of Esso and judgment of the CIR above referred to, which, as We have explained, limit the liability and responsibility for the strike in dispute only to those who actually participated therein. And since there is absolutely no showing or at least "clear proof

of actual participation in or authorization or ratification" of the illegal strike in dispute (Benguet, supra) on the part of the members of MME herein concerned, the impugned order of execution is in order. Under the circumstances extant in the record, We hold there is no adequate basis for Us to hold that these MME members should be deemed to be among those who have lost employee status in consequence of the judicial declaration of illegality of the strike invoked by petitioner.

Liability for Illegal Acts During Strike - Individual and Not Collective

First City Interlink Transportation Co. vs Confesor

Facts: Petitioner First City Interlink Transportation Co., Inc., is a public utility corporation doing business under the name and style Fil Transit. Respondent Nagkakaisang Manggagawa ng Fil Transit-National Federation of Labor (NMF-NFL) is a labor union composed of employees of Fil Transit.

The Union filed a notice of strike with the (BLR) because of alleged unfair labor practice of petitioner. Despite several conciliation conferences, the parties failed to reach an agreement, so that, the Union went on strike. As a result several workers were dismissed. The Union filed another notice of strike alleging unfair labor practice, massive dismissal of union officers and members, coercion of employees and violation of workers rights to self-organization. Conciliation conferences were again held but the Union again went on strike. The strike declared by the Union was attended by pervasive and widespread violence. The acts of violence committed were not mere isolated incidents which could normally occur during any strike. Then, the MOLE assumed jurisdiction and a return to worker order was issued.

Petitioner contends that the strike staged by the Union was illegal because no strike vote had been taken before the strike was called.

Issue: Whether the commission of prohibited activity and any worker or union officer, who knowingly participates in their commission during a strike, may be declared to have lost his employment status

Ruling: YES. Although the strike was illegal because of the commission of illegal acts, only the union officers and strikers who engaged in violent, illegal and criminal acts against the employer are deemed to have lost their employment status. Union members who were merely instigated to participate in the illegal strike should be treated differently.

Respondent Secretary held that responsibility for such acts should be individual and not collective.



Collective Liability - Illegal Acts Authorized or Ratified

Phil. Marine Officer's Guild vs Cia Maritima

Doctrine: Under the circumstances, the CIR correctly held that the PMOG strike against MARITIMA was illegal.

The last proposition raised by the petitioner is that the illegality of a strike does not ipso facto deprive a striker of the right to reinstatement if he is not personally guilty of any illegal act.

It bears repeating here that according to the CIR the strike against MARITIMA was "for no cause or purpose" and hence was unjustified, and unlawful means was resorted to by some strikers and picketers in the prosecution of the strike. On the first point the court categorically found that MARITIMA "had not refused to bargain collectively with PMOG" and "had not engaged in any kind of unfair labor practice." On the second point the specific acts of illegality have been mentioned in the earlier part of this decision. In view of such findings three Judges of the CIR (Villanueva, Tabigne and Bugayong), as hereinbefore stated, upon motion for reconsideration voted for the reversal of the decision penned by Judge Martinez insofar as it ordered MARITIMA to reinstate the strikers.

Judge Martinez himself in the decision found that PMOG, through its leaders, not only had knowledge of the acts of violence committed by some of the strikers but either participated in such commission or ratified the same.

b. Mere participation of union officers/leaders

Officers in Illegal Strike

Bukluran ng Manggagawa sa Clothman Knitting vs Court of Appeals

Doctrine: Mere participation of union officers in an illegal strike warrants their termination as provided under Article 264(a) of the Labor Code.

"Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike."

Samahang Manggagawa sa Sulpicio Lines vs Sulpicio Line

Facts: The Petitioner Union filed a notice of strike due to deadlock with the NCMB-NCR after the renegotiation for a CBA with Sulpicio Lines remained a stalemate. Sulpicio in response filed with the Secretary of Labor a petition praying that the Secretary assume jurisdiction over the controversy. Secretary of Labor issued an Order assuming jurisdiction over the labor dispute and enjoined any strike or lockout by the parties. The Union filed a second notice of strike alleging that Sulpicio Lines committed acts constituting ULP amounting to union busting. The Union immediately conducted a strike vote on the same day. As a result, 167 rank-and-file employees, officers and members did not report for work and instead gathered in front of Pier 12, North Harbor. Secretary of Labor issued another order directing the employees to return to work and certifying the labor dispute to the NLRC for compulsory arbitration. Sulpicio Lines filed a complaint for illegal strike/clearance for termination with the NLRC. Some union officers, thereafter, were terminated.

Issue: Whether or not the dismissal of the union officers is valid

Ruling: YES. ART. 264. PROHIBITED ACTIVITIES.

Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

In this case, it is worth reiterating that the strike is illegal for failure of petitioner to submit the strike vote to the Department of Labor and Employment at least seven (7) days prior thereto. Also, petitioner failed to prove that respondent company committed any unfair labor practice. Amid this background, the participation of the union officers in an illegal strike forfeits their employment status.

In Telefunken Semiconductors Employees Union-FFW v. Secretary of Labor and Employment, it was explained that:

"The effects of such illegal strikes, outlined in Article 265 (now Article 264) of the Labor Code, make a distinction between workers and union officers who participate therein.

"A union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost their

employment status. An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike."

Hence, since the strike was declared illegal, the dismissal of the union officers was valid because their mere participation in an illegal strike is a ground for dismissal.

A Soriano Aviation v. Employees Association of A. Soriano Aviation

Doctrine: In *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*, this Court explained that the effects of such illegal strikes, outlined in Article 264, make a distinction between workers and union officers who participate therein: an ordinary striking worker cannot be terminated for mere participation in an illegal. There must be proof that he or she committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during an illegal strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice. (Emphasis supplied)

The liability for prohibited acts has thus to be determined on an individual basis. A perusal of the Labor Arbitrator's Decision, which was affirmed in toto by the NLRC, shows that on account of the staging of the illegal strike, individual respondents were all deemed to have lost their employment, without distinction as to their respective participation.

Of the participants in the illegal strike, whether they knowingly participated in the illegal strike in the case of union officers or knowingly participated in the commission of violent acts during the illegal strike in the case of union members, the records do not indicate. While respondent Julius Vargas was identified to be a union officer, there is no indication if he knowingly participated in the illegal strike. The Court not being a trier of facts, the remand of the case to the NLRC is in order only for the purpose of determining the status in the Union of individual respondents and their respective liability, if any.

Ergonomic Systems Philippines, Inc. v. Enaje

Doctrine: In the determination of the consequences of illegal strikes, the law makes a distinction between union members and union officers. The services of an ordinary union member cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. A union officer, on the other hand, may be dismissed, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike.

Phimco Industries, Inc. v. Phimco Industries Labor Association

Doctrine: We explained in *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*, 426 SCRA 319 (2004), that the effects of illegal strikes, outlined in Article 264 of the Labor Code, make a distinction between participating workers and union officers. The services of an ordinary striking worker cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. The services of a participating union officer, on the other hand, may be terminated, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required; substantial evidence, available under the attendant circumstances, suffices to justify the imposition of the penalty of dismissal on participating workers and union officers as above described.

Toyota Motor Phil. Corp. Workers Association v. NLRC

Doctrine: Art. 264(a) sanctions the dismissal of a union officer who knowingly participates in an illegal strike or who knowingly participates in the commission of illegal acts during a lawful strike. It is clear that the responsibility of union officials is greater than that of the members. They are tasked with the duty to lead and guide the membership in decision making on union activities in accordance with the law, government rules and regulations, and established labor practices. The leaders are expected to recommend actions that are arrived at with circumspection and contemplation, and always keep paramount the best interests of the members and union within the bounds of law. If the implementation of an illegal strike is recommended, then they would mislead and deceive the membership and the supreme penalty of dismissal is appropriate. On the other hand, if the strike is legal at the beginning and the officials commit illegal acts during the duration of the strike, then they cannot evade personal and individual liability for said acts.

c. Illegal acts of union members

Striking Worker

CCBPI Postmix Workers Union v. NLRC

Doctrine: It is a well-settled rule that a union officer who knowingly participates in an illegal strike, or in the commission of illegal acts during a strike, may be terminated from his employment. An ordinary striking worker, however, may not be dismissed from his job for mere participation in an illegal strike. There must be proof that he committed illegal acts during an illegal strike. Thus, absent any clear, substantial and convincing proof of illegal acts committed during an illegal strike, an ordinary striking worker or employee may not be terminated from work.

Toyota Motor Phil. Corp. Workers Association v. NLRC



Doctrine: Art. 264(a) of the Labor Code provides that a member is liable when he knowingly participates in an illegal act "during a strike." While the provision is silent on whether the strike is legal or illegal, we find that the same is irrelevant. As long as the members commit illegal acts, in a legal or illegal strike, then they can be terminated. However, when union members merely participate in an illegal strike without committing any illegal act, are they liable? This was squarely answered in Gold City Integrated Port Service, Inc. v. NLRC, 245 SCRA 627 (1995), where it was held that an ordinary striking worker cannot be terminated for mere participation in an illegal strike. This was an affirmation of the rulings in Bacus v. Ople, 132 SCRA 690 (1984), and Progressive Workers Union v. Aguas, 150 SCRA 429 (1987), where it was held that though the strike is illegal, the ordinary member who merely participates in the strike should not be meted loss of employment on the considerations of compassion and good faith and in view of the security of tenure provisions under the Constitution. In Esso Philippines, Inc. v. Malayang Manggagawa sa Esso (MME), 75 SCRA 73 (1977), it was explained that a member is not responsible for the union's illegal strike even if he voted for the holding of a strike which became illegal.

Gold City Integrated Port Service, Inc. v. NLRC

Doctrine: A union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost their employment status. An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike.

3. DISMISSAL BY EMPLOYER

"May"

| *What does the word "may" mean in the phrase "It is a well-settled rule that a union officer who knowingly participates in an illegal strike, or in the commission of illegal acts during a strike, may be terminated from his employment"?*

| Keep in mind that a union leader of an illegal strike and a labor union member who participated in the prohibited or illegal activities during the illegal strike, may be dismissed. That's important because they used "may". It means that the employers can choose to exercise altruism or mercy, so they are not required to dismiss the employees. They may suspend, give a warning, depending on the employer. However, it is not necessary that there has to be a declaration coming from the DOLE that there is an illegal strike or the strike is illegal. As long as the employer has evidence that the strike is illegal, that is sufficient grounds for them to launch an investigation and dismiss the employees.

Bagong Pagkakaisa ng Manggagawa ng Triumph International v. SOLE

Doctrine: In a different vein, the union faulted the company for having dismissed the officers, there being no case filed on the legality or illegality of the strike. We see no merit in this argument. In Gold City Integrated Port Service, Inc. v. NLRC, 245 SCRA 627 (1995), we held that "[t]he law, in using the word 'may,' grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment." We reiterated this principle in San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc., 430 SCRA 193 (2004), where we stated that "Despite the receipt of an order from the SOLE to return to their respective jobs, the Union officers and members refused to do so and defied the same. Consequently, then, the strike staged by the Union is a prohibited activity under Article 264 of the Labor Code. Hence, the dismissal of its officers is in order. The respondent Foundation was, thus, justified in terminating the employment of the petitioner Union's officers."

Gold City Integrated Port Service, Inc. v. NLRC

Doctrine: Under Article 264 of the Labor Code, a worker merely participating in an illegal strike may not be terminated from his employment. It is only when he commits illegal acts during a strike that he may be declared to have lost his employment status. Since there appears no proof that these union members committed illegal acts during the strike, they cannot be dismissed. The striking union members among private respondents are thus entitled to reinstatement, there being no just cause for their dismissal.

The fate of private respondent-union officers is different. Their insistence on unconditional reinstatement or separation pay and backwages is unwarranted and unjustified. For knowingly participating in an illegal strike, the law mandates that a union officer may be terminated from employment.

Notwithstanding the fact that IMPORT previously accepted other union officers and that the screening required by it was uncalled for, still it cannot be gainsaid that it possessed the right and prerogative to terminate the union officers from service. The law, in using the word may, grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment.

Prior declaration of illegality of strike not necessary

| *Is prior declaration by DOLE of illegality of the strike not necessary? Any exceptions?*

| Yes, prior declaration by DOLE of illegality of the strike is not necessary, but there is an exception under PNOC Dockyard and Engineering Corp. v. NLRC because in this case, the case was already filed with the NLRC.

Jackbilt Industries, Inc. v. Jackbilt Employees' Workers



Union-NAFLU-KMU

Doctrine: The use of unlawful means in the course of a strike renders such strike illegal. Therefore, pursuant to the principle of conclusiveness of judgment, the March 9, 1998 strike was ipso facto illegal. The filing of a petition to declare the strike illegal was thus unnecessary.

Exception - case already filed before NLRC

PNOC Dockyard and Engineering Corp. v. NLRC

Facts: KMM-PDEC, among other unions, filed with the DOLE a notice of strike against Phil. National Oil Company (PNOC) on the ground of discrimination constituting unfair labor practice. The dispute arose from the grant by petitioner of P2,500.00 increase in monthly salaries to Managerial, Professionals and Technical Employees (MPT) but not to Non-Managerial, Professional and Technical Employees (NMPT).

On the day the union was poised to strike, its officers and members decided to report for work but petitioner padlocked the gate and refused entry to the employees. Acting Labor Secretary Confesor issued a return to work order.

The union filed before the NLRC a complaint against petitioner for Illegal Lock-out. All members of the union reported and were accepted back to work.

Subsequently, petitioner filed before the DOLE a petition to declare the strike illegal with a motion to cite the striking workers in contempt for defying the DOLE Orders. Respondent union on the other hand filed a Motion to Dismiss the petition.

The President, Secretary, Auditor and Treasurer of the union, after due notice and investigation, were dismissed by petitioner from their employment on the ground, among others of their participation in the work stoppage.

The dismissed union officers filed before the NLRC a complaint for illegal dismissal. The NLRC ordered the reinstatement of the dismissed officers of the union.

Issue: Whether or not the dismissals were illegal?

Ruling: YES. The NLRC correctly observed that, although petitioner averred that the dismissals of individual respondent were due to infractions of company rules and regulations, the alleged infractions actually arose from their participation in the strike. This is crystal clear from the charges leveled against the union officers, such as "active participation in the illegal work stoppage," "disruption of company operations resulting [in] losses," "violation of the 'NO STRIKE' clause of the existing CBA," among others, cited in their similarly worded notices of investigation that eventually led to their dismissals.

Furthermore, such investigations conducted by petitioner were in flagrant disregard of the authority and jurisdiction of Respondent Commission and in defiance of the Memorandum of Agreement with the striking unions, executed upon the order of then acting Labor Secretary Nieves Confesor. The issues relating to the strike and lockout were already submitted before the NLRC through

the corresponding complaints filed by petitioner itself and private respondents. By filing a formal complaint for illegal strike, it behooved petitioner to desist from undertaking its own investigation on the same matter, concluding upon the illegality of the union activity and dismissing outright the union officers involved. The latter objected, in fact, to the conduct of such investigations precisely due to the pendency before the NLRC of an action based on the same grounds. Instead, petitioner preempted the NLRC from ascertaining the merits of the complaints.

Due process for termination must still be observed

Due process is always indispensable. Even if there is an illegal strike, the employees are still subject to due process. They can't just be dismissed by the mere fact that there is an illegal strike. There has to be notice of hearing, etc.

Phimco Industries, Inc. v. Phimco Industries Labor Association

Doctrine: Under Article 277(b) of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself. We explained in Suico v. National Labor Relations Commission that Article 277(b), in relation to Article 264(a) and (e) of the Labor Code recognizes the right to due process of all workers, without distinction as to the cause of their termination, even if the cause was their supposed involvement in strike-related violence prohibited under Article 264(a) and (e) of the Labor Code. To meet the requirements of due process in the dismissal of an employee, an employer must furnish him or her with two (2) written notices: (1) a written notice specifying the grounds for termination and giving the employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.

N. POST-STRIKE

1. REINSTATEMENT, BACKWAGES

Legal Strike	Bargaining deadlock or economic strike	No backwages
	ULP Strike	May be awarded with backwages
Illegal Strike	No backwages	



Legal strike, it would depend: if it is a bargaining deadlock or economic strike, no backwages. We observe the no work no pay rule.

If it is a **ULP strike**, there may be backwages because presumably, it is the fault of the employer. In a way, it will push the employer.

If it is an **illegal strike**, erring employees cannot be awarded with backwages. You cannot reward an employee who committed a mistake. It would essentially mean that you are reinforcing in their mindset that what they did was right. You are not trying to positively reinforce this illegal strike. The employees would have to suffer the consequences of their actions by not receiving backwages, regardless if the ground is initially ULP by the employer.

Is the non-compliance from the "return to work" order from the employer constitute a valid ground for dismissing the services of the employees? No.

Employers can ask their employees to return to work. This is a given action but you cannot compel employees to stop striking unless they committed illegal activities. If the strike is legal and the employers told their employees to return to work, this cannot be a ground for dismissal of the latter's services because the employees were merely exercising their right to strike. The mere fact that the employees did not comply with that particular order, to return to work, does not itself constitute a dismissible ground on their part.

What happens to temporary workers?

To reiterate, when employees return to work, regardless if it is through settlement of the strike by negotiations or by order of the Secretary of Labor after assumption or certification, these temporary workers have to be discharged. There is no illegal dismissal on that aspect because when they are hired, there is an understanding that they are merely there temporarily to fill in the shoes of those who are out there striking. Temporary employees are usually being harassed by the striking employees because the latter erroneously believe that they are being replaced, that the former are their enemies in a way. But in reality, the temporary workers are just there to do the work and then leave when the striking employees return to work.

Is vicarious liability principle on illegal strikes still applicable? No.

There used to be this principle of vicarious liability on illegal strikes (old principle, not applicable). It says that all the striking employees have to bear the consequences of an illegal strike. This is not anymore applicable. We are currently following the current rules about the union officers of an illegal strike versus union members in an illegal. Do not invoke this principle.

No strike agreements in the CBAs, are these valid?

Yes. This is a valid stipulation since the employees can validly waive their right to strike in exchange for better working conditions. However, there was a case, Benguet Consolidated case, where the Supreme Court said that an exception to a no strike clause is actually in a case of a newly certified bargaining agent. If the bargaining agent was just certified for the first time, they cannot be subject to no strike clause.

a. Good faith strikes vs. bad faith strikes

"Good Faith" strike - reinstatement but without backwages

Ferrer v. Court of Industrial Relations

Doctrine: Although the Management may have had the strict legal right to take disciplinary and other administrative measures against the union members, however, the time chosen by the Management therefor justified the belief of the Union that the real or main purpose of the Management was to discourage membership in the Union and to discredit the officers thereof. The strike having been called to offset what petitioners were warranted in believing in good faith to be unfair labor practices on the part of the management, the petitioners were not bound to wait for the expiration of thirty (30) days from notice of strike before stating the same. The strike was not, accordingly, illegal and the strikers had not thereby lost their status as employees of respondents. Considering, however, that the latter have been absolved from the charge of unfair labor practice, the reinstatement of the strikers must be without backpay.

Bad faith strike

Reliance Surety and Insurance Co., Inc. v. NLRC

Doctrine: There is no dispute that the strike in question was illegal, for failure of the striking personnel to observe legal strike requirements, to wit: (1) as to the fifteen-day notice; (2) as to the two-thirds required vote to strike done by secret ballot; (3) as to submission of the strike vote to the Department of Labor at least seven days prior to the strike.

In staging the strike in question, a strike that was illegal in more ways than one, the reinstated union officers were clearly in bad faith, and to reinstate them without, indeed, loss of seniority rights, is to reward them for an act public policy does not sanction.

The private respondents cannot find sanctuary in the cases of *Ferrer v. Court of Industrial Relations* and *Almira v. BF Goodrich Philippines, Inc.*, in which we affirmed reinstatement in spite of an "illegal" strike. In the first place, neither *Ferrer* nor *Almira* involved an illegal strike. What was involved in *Ferrer* was a defective strike, that is, one conducted in violation of the thirty-day "cooling-off" period, but one carried out in good faith "to offset what petitioners were warranted in believing in good faith to be unfair labor practices [committed by] Management." What *Almira* on the other hand declared was that a violent strike alone does not



make the action illegal, which would justify the dismissal of strikers. It is therefore clear that we ordered reinstatement in both cases not in spite of the illegality of the strike but on the contrary, because the same was "legal", that is to say, carried out in good faith.

b. Voluntary reinstatement

Voluntary reinstatement - waiver of defense of illegality of strike

Bisaya Land Trans. Co. v. Court of Industrial Relations

Doctrine: The strike in this case was adopted by the union to compel the respondent shipping company to accede to its demands. The strike was but one of the means employed to achieve its ends. When the radio officers returned back to work after the strike, such return did not imply the waiver of the original demands. The fact that the radio operators returned back to work and ended their strike only meant that they desisted from the strike; such desistance is a personal act of the strikers, and cannot be used against the union and interpreted as a waiver by it of its original demands for which the strike was adopted as weapon.

c. Backwages in LEGAL economic strikes

No backwages in economic strike

The Philippine Marine Radio Officers Association v. Court of Industrial Relations

Doctrine: No commission of any unfair labor practice is involved in the case. The grant of backpay is, therefore, to be governed by the general principle of "fair day's wage for a fair day's labor." If even in cases of unfair labor practices the court may be justified in denying backpay (See section 5 (c) of Industrial Peace Act), there is absolutely no reason for granting backpay if there has not been any unfair labor practice on the part of the respondent companies at all.

Backwages

Olisa v. Escario

Doctrine: As a general rule, backwages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left his employment, he is entitled to all the rights and privileges that accrue to him from the employment. The grant of backwages to him is in furtherance and effectuation of the public objectives of the Labor Code, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the Labor Code. ***That backwages are not granted to employees participating in an illegal strike simply accords with the reality that they do not render work for the employer during the period of the illegal strike.*** Based on jurisprudence cited by the Court, with respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee, there

can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. ***It is required that the strike be legal.***

Remedy of employee - Proceed against the union

J.P. Heilbronn Co. v. National Labor Union

Doctrine: In a case where a laborer absents himself from work because of a strike or to attend a conference or hearing in a case or incident between him and his employer, he might seek reimbursement of his wages from his union which had declared the strike or filed the case in the industrial court. Or he might have his absence from his work charged against his vacation leave.

d. Backwages in LEGAL ULP strikes

Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations

Doctrine:

What is the distinction between the two types of employees involved in a ULP?

There are two types of employees in a ULP: those who are discriminatorily dismissed for union activities, and those who voluntarily go on strike even if it is in protest of an ULP. ***Discriminatorily dismissed employees were ordered entitled to backpay from the date of the act of discrimination, that is, from the day of their discharge, whereas employees who struck as a voluntary act of protest against what they considered a ULP of their employer were held generally not entitled to backpay.***

If the strike was made in protest against ULP, would the strikers be entitled to backwages? Generally, no.

Those who strike voluntarily, even if in protest of unfair labor practice, are not entitled to backpay. But when the strikers abandon the strike and apply for reinstatement despite the ULP and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitutes unfair labor practice, then these voluntary strikers are entitled to backwages.

Must the RTW offer be unconditional in order for the strikers to be entitled to backwages? Yes.

To be effective so as to entitle the strikers to backpay, the offer must have been unconditional. The strikers must have offered to return to work under the same conditions under which they worked just before their strike so that the company's refusal would have placed on the latter the blame for their economic loss.

Strikers' offer to RTW must be unconditional to entitle them to backwages

Dinglasan v. National Labor Union

Doctrine: Petitioner could not be held guilty of unfair labor practice under the Industrial Peace Act. The cessation of the



operation of the jeepney was not due to any willful, unfair and discriminatory act of petitioner but was the result of the drivers' voluntary and deliberate refusal to return to work. While the said drivers may be entitled to reinstatement, there is no justification for their receiving back wages for the period that they themselves refused to return to work.

Elements to entitle strikers to backwages n a ULP

Philippine Marine Officers' Guild v. Compania Maritima

Doctrine: Requisites to entitle strikers to back pay: 1) that the strike was legal; 2) that there was an unconditional offer to return to work; and 3) that the strikers were refused reinstatement.

Philippine Diamond Hotel v. Manila Diamond Hotel Employees Union

Doctrine: "When employees voluntarily go on strike, even if in protest against unfair labor practices," no backwages during the strike is awarded. Jurisprudential law, however, recognizes several exceptions to the "no backwages rule," to wit: when the employees were illegally locked to thus compel them to stage a strike; when the employer is guilty of the grossest form of ULP; when the employer committed discrimination in the rehiring of strikers refusing to readmit those against whom there were pending criminal cases while admitting nonstrikers who were also criminally charged in court; or when the workers who staged a voluntary ULP strike offered to return to work unconditionally but the employer refused to reinstate them. Not any of these or analogous instances is, however, present in the instant case.

Award of backwages in a legal ULP strike is still discretionary upon the court

Consolidated Labor Association of the Philippines v. Marsman and Company, Inc.

Doctrine: In an economic strike, the strikers are not entitled to backpay, since the employer should get the equivalent day's work for what he pays his employees. During the time that the strike was an economic one, complainants had no right to back pay. The Industrial Court could not have made a finding of unfair labor practice with respect to such time, as none had so far been committed. This being an unfair labor practice case, it cannot, therefore, order reinstatement much less back pay for that period.

Even after the court has made a finding of unfair labor practice, it still has the discretion to determine whether or not to grant back pay. Such discretion was not abused when it denied back wages to complainants, considering the climate of violence which attended the strike and picket that the complainants conducted.

e. Backwages for illegally dismissed employees in an illegal strike

No backwages for period of illegal strike

G & S Transport Corporation v. Infante

Doctrine: With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working.

Hongkong and Shanghai Banking Corp. Employees Union v. NLRC

Doctrine: The award of backwages is subject to the settled policy that when employees voluntarily go on strike, no backwages during the strike shall be awarded. In this case, the striking employees were entitled to backwages except during the period of the strike.

f. Waiver of reinstatement

East Asiatic Co., Ltd. v. CIR

Doctrine: Surely, his departure from the Philippines for such purpose should not constitute a waiver of his right to reinstatement; it is only if he unjustifiedly or unreasonably refuses to report for work with his former employer after his reinstatement has been ordered or after his employer has offered to reinstate him pursuant to the judgment of the court that he could be considered as having renounced such right. The bare fact of his being actually employed elsewhere in any capacity cannot affect his right to reinstatement, for the option is his to return or not to return to his former work upon knowing of the order or offer of reinstatement; if he opts to return, he has to be reinstated, subject to the conditions as to his backwages already elucidated above; if he refuses to return or imposes uncalled for conditions therefor, then and only then would his right to reinstatement cease, although he would nonetheless be entitled to the same backwages already discussed up to the time of such refusal.

However, by failing to report for work with petitioners when she had an opportunity to do so and leaving instead for the United States with intent to resume her teaching job, she must be deemed to have effectively waived reinstatement by petitioners from said date.

f. Legal strike: Refusal to comply with the employer's order to return to work is not a ground for dismissal

Hongkong and Shanghai Banking Corp. Employees Union v. NLRC

Doctrine: Employees' right to exercise their right to concerted activities should not be defeated by the directive of HSBC for them to report back to work. Any worker who joined the strike did so precisely to assert or improve the terms and conditions of his work. 75 Otherwise, the mere expediency of issuing the return to work memorandum

could suffice to stifle the constitutional right of labor to concerted actions. Such practice would vest in the employer the functions of a strike breaker, 76 which is prohibited under Article 264 (c) of the Labor Code.

f. Discharge of replacement workers

Norton Harrison Company & Jackbilt Concrete Blocks Co. Labor Union v. Norton & Harrison Co. & Jackbilt Concrete Blocks Co.

Doctrine: Since the strike of the union was in response to what it was warranted in believing in good faith to be unfair labor practice on the part of the management, said strike, following the Ferrer ruling, did not result in the termination of the striking members' status as employees, and, therefore, they are still entitled to reinstatement but without back wages.

As regards replacement workers

Anent the company's argument that reinstatement of said strikers would be unfair to those who had been taken in to replace them, during the strike, when the company direly needed their services, suffice it to consider two other points. The first is that said other workers must be deemed to have accepted their employment as replacements with the knowledge that the same is subject to the consequences of the labor dispute between the strikers and the company on the resolution of which depended the effects of the strike as to right to reinstatement of the strikers. The second point is that said workers had by now been engaged for almost nine years, so that it is not inequitable for them to be made to yield their positions to those finally ruled to be with right to occupy the same.

Feati University v. Bautista

Doctrine: Striking employees maintained their status as employees of the employer; that employees who took the place of strikers do not displace them as 'employees.' The return-to-work order cannot be considered as an impairment of the contract entered into by petitioner with the replacements.

O. ALTERNATIVE: ADR

Preventive mediation by NCMB

Insular Hotel Employees Union-NFL v. Waterfront Insular Hotel Davao

Doctrine: Section 3, Rule IV of the NCMB Manual of Procedure provides who may file a notice of preventive mediation, to wit: TDcAIH

Who may file a notice or declare a strike or lockout or request preventive mediation. —

Any certified or duly recognized bargaining representative may file a notice or declare a strike or request for preventive mediation in cases of bargaining deadlocks and unfair labor

practices. The employer may file a notice or declare a lockout or request for preventive mediation in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may file a notice, request preventive mediation or declare a strike, but only on grounds of unfair labor practice.

From the foregoing, it is clear that only a certified or duly recognized bargaining agent may file a notice or request for preventive mediation. In this case, the one who filed a notice or request for preventive mediation is their counsel. Therefore, the NCMB had no jurisdiction to entertain the notice filed before it.

VIII. DISCIPLINE, PREVENTIVE SUSPENSION, & TERMINATION OF SERVICE

A.REVIEW: TYPES OF EMPLOYEES

REGULAR EMPLOYEES

those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.

PROJECT EMPLOYEES

those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement.

SEASONAL EMPLOYEES

those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season. Employment of seasonal employees ends when the work is no longer available.

CASUAL EMPLOYEES

those who are not regular, project, or seasonal employees.

FIXED-TERM EMPLOYEES

those hired only for a definite period of time.

PROBATIONARY EMPLOYEES

those who are on trial by an employer during which the employer determines whether or not he is qualified for permanent employment

B. REVIEW: SECURITY OF TENURE

Article 279. Security of Tenure.

In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority



rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

You cannot be terminated from your job unless it is for just and authorized cause. **Security of tenure applies to all types of employees.**

- If you are a project employee, you can only be terminated once the project ends.
- If you are a contractual employee, you can only be terminated once the contract ends,
- If you are a seasonal employee, you can only be terminated once the season ends.
- If you are a probationary employee, you can only be terminated if you fail to meet the standards of regularization.

However, the employee can be terminated even before the end of the project, contract, season, probationary period, if there is just or authorized cause to terminate the employee subject to procedural requirements.

C. MANAGEMENT PREROGATIVE TO DISCIPLINE, TRANSFER EMPLOYEES

1. Power to discipline in general

Right Of Employer To Regulate And Discipline

St. Luke's Medical Center, Inc. v. Sanchez

Facts: Sanchez worked as a Staff Nurse at the hospital. She was terminated for violating the hospital's Code of Discipline for theft and pilferage.

Issue: Whether or not Sanchez was illegally dismissed (NO)

Ruling: The right of an employer to regulate all aspects of employment, aptly called "management prerogative," gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.⁵⁵ In this light, courts often decline to interfere in legitimate business decisions of employers. In fact, labor laws discourage interference in employers' judgment concerning the conduct of their business.

In this case, Sanchez was validly dismissed by SLMC for her willful disregard and disobedience of Section 1, Rule 1 of the SLMC Code of Discipline, which reasonably punishes acts of

dishonesty, i.e., "theft, pilferage of hospital or co-employee property, x x or its attempt in any form or manner from the hospital, co-employees, doctors, visitors, [and] customers (external and internal)" with termination from employment. Such act is obviously connected with Sanchez's work, who, as a staff nurse, is tasked with the proper stewardship of medical supplies. Significantly, records show that Sanchez made a categorical admission⁶¹ in her handwritten letter – i.e., "[k]ahit alam kong bawal ay nagawa kong [makapag-uwil] ng gamit" – that despite her knowledge of its express prohibition under the SLMC Code of Discipline, she still knowingly brought out the subject medical items with her.

As it is clear that the company policies subject of this case are reasonable and lawful, sufficiently known to the employee, and evidently connected with the latter's work, the Court concludes that SLMC dismissed Sanchez for a just cause.

Philippine Span Asia Carriers Corporation v. Pelayo

Doctrine: An employer who conducts investigations following the discovery of misdeeds by its employees is not being abusive when it seeks information from an employee involved in the workflow which occasioned the misdeed.

Basic diligence impels an employer to cover all bases and inquire from employees who, by their inclusion in that workflow, may have participated in the misdeed or may have information that can lead to the perpetrator's identification and the employer's adoption of appropriate responsive measures. An employee's involvement in such an investigation will naturally entail difficulty. This difficulty does not mean that the employer is creating an inhospitable employment atmosphere so as to ease out the employee involved in the investigation.

Management Prerogative Is Not Absolute

Isabela-I Electric Coop, Inc. v. Rosario

Doctrine: While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and other privileges, as to constitute constructive dismissal.

Demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.

Discipline And Termination As Self-Protection

Reyes-Rayel v. Philippine Luen Thai Holdings

Facts: Reyes worked as HR Director for Manufacturing for Ph Luen Thai (PLT)'s subsidiary company L&T with administrative and recruitment functions. She was sent a letter by the Legal Counsel stating that the company has lost confidence in her for failure to perform her functions:



She send a reply stating that her alleged failure to perform management directives could be attributed to the lack of effective communication with her superiors due to a malfunctioning email system. This caused her to miss certain directives. However, PLT dismissed Reyes for loss of confidence in her ability to promote the company's interests. She then filed a complaint for illegal dismissal.

Issue: Whether or not Reyes was illegally dismissed (NO)

Ruling: An employer "has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers." "[S]o long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements," the exercise of this management prerogative must be upheld.

IN THIS CASE

1. Reyes failed to effectively communicate with her immediate superior;
2. Her co-workers testified that she had a negative attitude and unprofessional behavior towards them and the company; and
3. She was inefficient. On two occasions, she gave wrong information regarding leaves and holiday pay

Taking all these circumstances collectively, the Court is convinced that employers have sufficient and valid reasons in terminating the services of Reyes as her continued employment would be patently inimical to employer's interest.

the respondent's products to one or few customers only, but making it appear that they were sold to many customers. This was contrary to the FILIPRO'S policy of distributing its goods to as many customers as possible. The supervisor issued a confidential memorandum demanding explanation from Parino. Parino admitted such and was suspended for two weeks.

Issue: Whether Panilo should be dismissed . Yes

Ruling: **Malpractices should not be allowed to continue but should be rebuked.** It is not proper to suggest that an employee may extend special treatment to a few customers on the specious reasoning that there is nothing wrong with a salesman making a little extra-money on the side during these hard times and that, after all, no economic loss was suffered by the company. **The continuation or tolerance of such practice could produce erosion of discipline among company personnel and an unstable marketing policy for the petitioner company and its customers.** All these infractions would lead to an obviously undesirable situation.

The right of the employer to freely select or discharge his employees is subject to regulation by the State basically in the exercise of its paramount police power. An employer cannot be legally compelled to continue with the employment of a person who admittedly was guilty of misfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest.

In this case, although there was no economic loss that accrued to the company, the SC ordered to allow Parino to claim his separation pay but his dismissal must imperatively be decreed.

Right To Dismiss

Mercury Drug Corporation v. NLRC

Facts: Ladisla was employed by MDC as a stock analyst. He was apprehended by MDC while in the act of pilfering medicines. He admitted his guilt during the investigation through a handwritten admission. While placing Ladisla under preventive suspension, MDC filed an application before DOLE for his termination on grounds of breach of trust and dishonesty.

Ladisla opposed arguing that the application was unfounded as the alleged pilfering was an incriminatory act of Suarez and Imperial, the Manager and Supervisor respectively.

Issue: Whether or not Ladisla was validly dismissed (YES)

Ruling: Dismissal of a dishonest employee is to the best interest not only of management but also of labor. As a measure of self-protection against acts inimical to its interest, a company has the right to dismiss its erring employees. An employer cannot be compelled to continue in employment an employee guilty of acts inimical to its interest, justifying loss of confidence in him. The law does not impose unjust situations on either labor or management.

Self-Protection, But Subject To Regulation By The State

Filipro, Inc. v. NLRC

Facts: Danilo Parino was alleged to have engaged in "table distribution" or what is known to be the practice of selling

SM Development Corporation v. Ang, citing Punongbayan Araulli v. Lepon

Doctrine: "The right of an employer to freely select or discharge his employees is subject to the regulation by the State in the exercise of its paramount police power. However, there is also an equally established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him."

IN THIS CASE

Respondent's **lack of previous record of inefficiency**, infractions or violations of company rules for almost six years of service **cannot serve as justification to reduce the severity of the penalty.** There is really no premium for a clean record of almost six years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.

Respondent's failure to properly manage the projects clearly is an act inimical to the company's interests sufficient to erode petitioners' trust and confidence in him. He ought to know that his job requires that he keep the trust and confidence bestowed on him by his employer untarnished. He failed to perform what he had represented or what was expected of him, thus, petitioners had a valid reason in losing confidence in him which justified his termination.



2. Transfer

Management Prerogative

Visayan Electric Company Employees Union-ALU-TUCP v. VECO

Doctrine: An employer's free reign and wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The only criterion to guide the exercise of its management prerogative is that the policies, rules, and regulations on work-related activities of the employees must always be fair and reasonable, and the corresponding penalties, when prescribed, are commensurate to the offense involved and to the degree of the infraction.

cannot be the basis of an employee's dismissal from service.

IN THIS CASE

A Warehouse Checker and a Forklift Operator are rank-and-file employees. On the other hand, the job of a Delivery Supervisor/Coordinator requires the exercise of discretion and judgment from time to time. Specifically, a Delivery Supervisor/Coordinator assigns teams to man the trucks, oversees the loading of goods, checks the conditions of the trucks, coordinates with account specialists in the outlets regarding their delivery concerns, and supervises other personnel about their performance in the warehouse. A Delivery Supervisor/Coordinator's duties and responsibilities are apparently not of the same weight as those of a Warehouse Checker or Forklift Operator.

Hence, despite the fact that no salary increases were effected, the assumption of the post of a Delivery Supervisor/Coordinator should be considered a promotion. The respondents' refusal to accept the same was therefore valid.

Transfer Of Employee As Management Prerogative

Echo 2000 Commercial Corporation v. Obrero Filipino-Echo 2000 Chapter-CLO

Facts: Echo, in the exercise of its management prerogative, decided to re-assign the staff. A memorandum was issued informing the respondents (Warehouse Checker and a Forklift Operator) of their transfer to the Delivery Section, which was within the premises of Echo's warehouse. The transfer would entail no change in ranks, status and salaries. Somido does not want to be promoted as a "Delivery Supervisor".

Issue: Whether or not the respondents' refusal to be promoted is a valid ground for suspension and termination.

Ruling: No. The Court held that the offer of transfer is, in legal contemplation, a promotion, which the respondents validly refused. Such refusal cannot be the basis for the respondents' dismissal from service.

Transfer v. Promotion v. Demotion

A transfer is a movement from one position to another which is of equivalent rank, level or salary, without break in service.

Promotion, on the other hand, is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.

Conversely, demotion involves a situation where an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.

An employee is not bound to accept a promotion, which is in the nature of a gift or reward. Refusal to be promoted is a valid exercise of a right. Such exercise cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer, hence, it

Peckson v. Robinsons Supermarket Corporation

Doctrine: If the transfer of an employee is not unreasonable, or inconvenient, or prejudicial to him, and it does not involve a demotion in rank or diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to a constructive dismissal.

Philippine Japan Active Carbon Corporation v. NLRC

Doctrine: TRANSFER OF EMPLOYEES TO VARIOUS AREAS OF BUSINESS, AN EMPLOYER'S PREROGATIVE. — It is the employer's prerogative, based on its assessment and perception of its employees' qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee's right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful.

When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits, and other privileges, the employee may not complain that it amounts to a constructive dismissal.

IN THIS CASE

The private respondent's assignment as Production Secretary of the Production Department was reasonable as it did not involve a demotion in rank (her rank was still that of a department secretary) nor a change in her place of work (the office is in the same building), nor a diminution in pay, benefits, and privileges. It did not constitute a constructive dismissal.

Blue Dairy Corporation v. NLRC

Facts: Blue Dairy Corporation, hired private respondent Elvira R. Recalde as a food technologist in its laboratory. Recalde was transferred from the laboratory to the vegetable



processing section where she cored lettuce, minced and repacked garlic and performed similar work, and was restricted from entering the laboratory.

Issue: Whether the transfer was valid. NO

Ruling: The employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits.

Transfer Of Employee With Demotion In Rank Constitutes Constructive Dismissal.

IN THIS CASE

Employer failed to justify Recalde's transfer from the position of food technologist in the laboratory to a worker in the vegetable processing section. As food technologist in the laboratory, she occupied a *highly technical position* requiring use of her mental faculty. As a worker in the vegetable processing section, she performed *mere mechanical work*. It was virtually a transfer from a position of dignity to a servile or menial job. The radical change in Recalde's nature of work unquestionably resulted in, as rightly perceived by her, a demeaning and humiliating work condition. The transfer was a demotion in rank, beyond doubt.

3. Demotion

Petrophil Corporation v. NLRC

Doctrine: It is management prerogative to transfer, demote, discipline and even to dismiss an employee to protect its business, provided it is not tainted with unfair labor practice.

IN THIS CASE

The record is bereft of any evidence to show that the demotion and transfer of Encarnacion was due to unfair labor practice acts defined under Article 249, , hence the act of Gersher Engineering Works in transferring and demoting complainant Encarnacion is anchored on just and valid grounds.

Blue Dairy Corp. v. NLRC

Doctrine: Demotion is, like dismissal, also a punitive action; the employee being demoted should, as in cases of dismissals, be given a chance to contest the same.

IN THIS CASE

What triggered Recalde's transfer was the incident where she was found to have allegedly utilized a company vehicle in looking for a new residence during office hours without permission from management. In petitioners' view, she was dishonest such that they lost their trust and confidence in her. Yet, it does not appear that Recalde was provided an opportunity to refute the reason for the transfer. Petitioners merely relied on the narrations of the company driver. Nor was Recalde notified in advance of her impending transfer which was, as we shall elucidate later, a demotion in rank. Moreover, the act of dishonesty imputed to Recalde has no bearing at all to her work in the laboratory.

MANAGEMENT PREROGATIVE

The discretion of the employer to do certain things, or the prerogative of the employer to dismiss an employee

DIFFERENCE BETWEEN DISCIPLINE AND DISMISSAL

Dismissal or Termination is like a penalty of last resort. There are other forms of penalty, i.e. written reprimand; warning, suspension.

The power to discipline in general is a discretion left to the employer. It is the recognized right of the employer to regulate and discipline its employees because the employer is controlling the business and you cannot compel an employer to retain an employee detrimental to the business however, this is subject to regulation by the state. Discipline must be reasonable, fair, and there must be due process.

Discipline is a mode of self-protection. It is to enforce certain standards of conduct, to protect the interest of the employer. Some employees might not want to follow the reasonable standards set by the employer, so therefore, the employer's right to discipline comes in.

Does the right to discipline means you also have the right to terminate?

Right to discipline stems from the elements of the employer-employee relationship. The elements of employer-employee relationship are as follows:

1. Selection of employees
2. Payment of wages
3. Control over the means and methods employed in the performance of their work
4. Dismissal/Discipline of employees

Another management prerogative is the right to transfer and demote an employee.

What does transfer/demotion have to do with our topic termination? Sometimes, transfer/demotion can be construed as dismissal. For example, you are a manager of a plant in Cebu, and your employer decided to transfer you to Tawi-tawi. This can probably be construed as constructive dismissal. This is why we also have to talk about transfer in relation to dismissal. What is a valid transfer? When can a transfer be construed as a form of constructive dismissal?



Demotion is the opposite of promotion. Instead of going up, or getting a better salary, you were demoted and your salary and benefits were lessened. For example, if a manager becomes a rank-and-file employee , salary will decrease.

What is the difference between transfer and demotion?

TRANSFER V. DEMOTION

Transfer is usually lateral, i.e. you maintain your rank in the company

Demotion and promotion vertical. Promotion, you go up the hierarchy. Demotion, you go down the hierarchy. All of this is subject to the prerogative of the employer. You cannot force an employer to choose you because it is the prerogative of the management.

D. Factors and principles to consider in determining appropriate penalty

1. Totality rule

Totality rule

Alvarez v. Golden Tri Bloc, Inc.

Facts: Sometime in November 1996, respondent GTBI hired the petitioner as a Service Crew in one of its Dunkin Donuts franchise store in Antipolo City, Rizal. Six (6) months later, he attained the status of a regular employee. He was thereafter promoted as Shift Leader and served as such for four (4) years. Sometime in 2001, he was again promoted as Outlet Supervisor and was assigned to three (3) Dunkin Donuts outlets located at San Roque, Cogeo and Super 8, Masinag, all in Antipolo City.

On May 27, 2009, the petitioner reported for duty at around 12:30 in the afternoon at Dunkin Donuts, Super 8, Masinag branch. Since his timecard was at the San Roque branch, he telephoned Chastine Kaye Sambo (Sambo), shift leader, and requested her to "punch-in" his time card to reflect that he is already on duty. She obliged. Roland Salindog (Salindog), the petitioner's senior officer called the Super 8, Masinag branch and verified that he has indeed reported for work.

The following day, however, the petitioner was informed by Sambo that both of them are suspended and that he had to prepare an incident report regarding his time card.

The petitioner was placed on preventive suspension for 30 days without pay. GTBI notified the petitioner of its decision to terminate his employment effective that day on the ground of loss of trust. The petitioner filed, before the Labor Arbitrator (LA), a complaint for illegal dismissal.

The NLRC gave credence to records of the petitioner's previous infractions and based thereon, found his dismissal valid. The NLRC applied the "totality rule" which states that: "the totality of infractions or number of violations

committed during the period of employment shall be considered in determining the penalty to be imposed on the erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other."

Issue: Whether or not applying the totality infraction rule was correct. Yes

Ruling: Yes, applying the totality of infractions rule was correct.

The NLRC and the CA were thus correct in applying the totality of infractions rule and in adjudging that the petitioner's dismissal was grounded on a just and valid cause. The standards of procedural due process were likewise observed in effecting the petitioner's dismissal.

Evidence shows at least three (3) different offenses – ranging from tardiness, negligence in preparing inventory to dishonesty relating to his timecard – repeatedly committed by the petitioner over the years and for which he has been constantly disciplined. On July 4, 2003, the petitioner was found guilty of asking an employee to punch-in his time card for him. He was suspended for 45 days with a warning that a recurrence of the same act will merit dismissal from service. He, however, disregarded this incident and the corrective intention of disciplinary action taken on him when he repeated the same act on May 27, 2009.

A repetition of the same offense for which one has been previously disciplined and cautioned evinces deliberateness and willful intent; it negates mere lapse or error in judgment. While it may be assumed that the petitioner has become stubborn or has forgotten the 2003 episode, it should not work to his advantage, because either cause demonstrates his indifference to GTBI's policies on employees' conduct and discipline. Based on this consideration, taken together with his numerous other offenses, GTBI had compelling reasons to conclude that the petitioner has become unfit to remain in its employ.

Villanueva v. Ganco Resort and Recreation, Inc.

Doctrine: The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. The record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty.

This is a very important principle.

Totality rule provides that in determining the penalty to be meted out against an employee, the employer can take into account the previous infractions of the employee or the history of the employment record of



the employee. Basically, if an employee committed multiple misconduct/ offenses. Before, the employer can take that into account such offenses when giving the penalty for the current offense.

Is it unfair on the part of the employee that you take into account his/her previous faults?

You may think that the totality rule is unfair because the employee has already been punished for his previous offenses. But the rationale behind the totality rule is that the employee should have reform after the previous punishment.

The logic is that if an employee committed an infraction before, you are expecting that an employee has in a way reform or improved their performance, i.e. they have learned from their past mistakes. It is more disappointing on the part of the employer when the employee keeps repeating his/her mistakes. To remedy this, the employer has to give gradually higher penalties, otherwise, the employee will never learn if the penalty will still be the same. The employer has to be more strict with later infractions, otherwise, the employer will never reform or seek to improve. You are trying to build it up towards termination, as said before, there are other forms of penalties, it would be weird if you will immediately be terminated after 2 warnings. That's another rationale, you are trying to build it up towards suspension or termination.

It would be unfair if an employee will be immediately terminated after his/her first infraction. Ultimately, you cannot compel an employer to give a higher penalty.

An employer is given the leeway to take into account the previous faults of the employee even if the employee has already been punished previously for those but you are not allowed to punish an employee for offenses that you have already punished him, this is violative of due process because the employee has already dealt with the penalty of that previous infraction. You are allowed to take into account previous faults but you are not allowed to punish those previous faults that have already been punished. What you are punishing is the current misconduct, you are just taking into account previous misconduct.

2. Dismissal too harsh a penalty, penalty should be commensurate with offense; progressive penalties

trip to Batangas.

Alpuerto was dismissed by the company for theft of company products, serious misconduct and loss of trust and confidence.

Issue: Whether or not the dismissal was valid.

Ruling: No. Respondent's dismissal was too harsh a penalty for the infraction he committed, thus, such dismissal is invalid.

While petitioner's company rules provide for the penalty of dismissal in case of theft or unauthorized taking of company property, "such cannot preclude the State from inquiring whether the strict and rigid application or interpretation thereof would be harsh to the employee." While respondent committed an act which should not go unpunished, the penalty of dismissal was too harsh and disproportionate. **Infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance, and the penalty must be commensurate with the act, conduct or omission imputed to the employee.**

Surely, if respondent's taking was driven by a wrongful intent, he would not have taken the Coke Zeros in this case knowing very well that other people would have easily noticed what he was doing. Hence, rather than being impelled by wrongful intent, the Court finds that respondent's act was a mere exercise of bad judgment, considering that he believed that the verbal permission given by Padua and Guamos to drink the Coke Zero products were sufficient for him to be able to take them out for the family trip.

Alvarez v. Golden Tri Bloc, Inc.

Doctrine: Under Article 293 (formerly Article 279) of the Labor Code, an employer shall not terminate the services of an employee except only for a just or authorized cause. A dismissal not anchored on a just or authorized cause is considered illegal and it entitles the employee to reinstatement or in certain instances, separation pay in lieu thereof, as well as the payment of backwages.

Gelmart Industries Phils., Inc. v. NLRC

Doctrine: Considering that private respondent herein has no previous derogatory record in his fifteen (15) years of service with petitioner GELMART, the value of the property pilfered (16 ounces of used motor oil) is very minimal, plus the fact that petitioner failed to reasonably establish that non dismissal of private respondent would work undue prejudice to the viability of their operation or is patently inimical to the company's interest, it is more in consonance with the policy of the State, as embodied in the Constitution, to resolve all doubts in favor of labor.

The suspension imposed upon private respondent is a sufficient penalty for the misdemeanor committed. The complainant's dismissal was therefore unwarranted.

Dismissal is too harsh a penalty rule:



Provides that if a lower penalty would suffice then the lower penalty should be meted out. If the offense is not too grave, do not dismiss the employee. For example, an employee was dismissed because he/she broke 10 plates and it is the employee's first offense, this is unfair because you could always replace the plate, suspend the employee or deduct the value of the plates from his salary plus it was unintentional, so it would be unfair to dismiss the employee.

How does the dismissal is too harsh a penalty rule work? There is no hard and fast rule. You take into account a lot of factors.

1st factor - whether it is the employee's first offense, if yes, then dismissal would be too harsh a penalty.

2nd factor - whether the penalty is reasonable. By itself, breaking plates is not really deserving of termination.

What about sexually harrassing a co-employee or a student? that would deserve a harsher penalty, maybe dismissal depending on what the person did.

3rd factor - history of the employee. Whether the employee has a good record, if yes, then dismissal may be too harsh a penalty.

4th factor - whether the offense is intentional or unintentional. If intentional, the penalty may be harsher because you are trying to punish the malicious behavior of the employee.

But again, there is no hard and fast rule on what the penalty should be. You have to objective as much as possible when looking at the situation. Should the employee be terminated or will a smaller penalty suffice. For most problems, you can always justify it either way unless it is very clear that the employee was at fault. For example, if the employee stole 500k from the bank, it is very severe, so that would merit termination from service even if it is a first time offense.

What if the employee introduces a virus in the workplace computer unintentionally? Dismissal as a penalty would not be appropriate. You would have to defend whether dismissal is appropriate or not.

Dismissal is too harsh a penalty rule also ties in with the concept of progressive penalties. As much as possible, you don't do dismissal outright. Warnings or reprimands, suspension of multiple lengths gradually getting longer and longer, and lastly dismissal.

If the action is very grave and severe then dismissal would be appropriate even if it is a first time offense. It is a case-to-case basis.

3. Length of service taken into consideration

Moya v. First Solid Rubber

Facts: Reynaldo Moya was hired by respondent First Solid, a business engaged in manufacturing of tires and rubbers, as a machine operator. He was promoted as head of the Tire Curing Department of the company. He reported an incident about under curing of tires within his department which led to the damage of five tires. The incident was investigated by the company which he was later required to explain.

In his Reply, he also added that his termination fell short of any of the just causes of serious misconduct, gross and habitual neglect of duties and willful breach of trust. He pointed out that the company failed to prove that his act fell within the purview of improper or wrong misconduct, and that a single act of negligence as compared to eleven (11) years of service of good record with the company will not justify his dismissal.

Issue: Whether or not Moya's length of service should be taken against him. YES

Ruling: Moya's length of service should be taken against him. The pronouncement in Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan is instructive on the matter:

... Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect a longtime employee to return such fairness with at least some respect and honesty. Thus, it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer.

It must be stressed that Moya was not an ordinary rank-and-file employee. He was holding a supervisory rank being an Officer-in-Charge of the Tire Curing Department. The position, naturally one of trust, required of him abiding honesty as compared to ordinary rank-and-file employees. When he made a false report attributing the damage of five tires to machine failure, he breached the trust and confidence reposed upon him by the company.

Manila Water v. Del Rosario

Doctrine: To this case, *Central Pangasinan Electric Cooperative, Inc. v. NLRC*. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.

Del Rosario is not only responsible for the loss of the water meters in flagrant violation of the company's policy but his act is in utter disregard of his partnership with his employer in the pursuit of mutual benefits. That Del Rosario rendered



21 years of service to the company will not save the day for him.

Length of service taken into consideration

What about the length of service of the employee? Can we take into account the employee's length of service in the company? It would depend on the context, whether the offense is unintentional or intentional.

If it is an unintentional offense, you would take into account the length of service and give a lighter penalty. For example, the accountant employee miscalculates the tax due.

If it is an intentional offense, the length of service must be taken against the employee. For example, if the employee is with the bank for 30 years and then he stole P500,000. In order to have a lighter penalty and not dismissal, the employee cannot invoke his 30 years of service with the bank. In case of intentional offenses, it has to be taken against the employee meaning length of service is actually an aggravating circumstance insofar as the penalty is concerned.

Ratio: A higher degree of loyalty is expected from an employee who has been around longer.

4. Internal policies

Pacific Products v. Pacific Products, Inc.

Facts: Edipolo Torrelino was an employee of Pacific Products, Inc. (PPI) for a period of more than 10 years. He was a stock clerk at the time PPI applied for clearance to terminate his employment effective February 23, 1977 allegedly on grounds of: vending cigarettes in the premises of the company; tampering of the company's payroll; and collusion in illegal acts. All of which were in violation of company rules and regulations.

Torrelino opposed the application alleging that he had not committed the acts attributed to him and that his projected dismissal was a scheme of the company to scuttle the union of the employees of which he was the president.

The Labor Arbiter gave due course to the application and ordered the dismissal of Torrelino and the payment of respondent company of separation pay to Torrelino. The NLRC upheld the same with modification.

Issue: Whether or not the Labor Arbiter and the NLRC committed a grave abuse of discretion in granting the clearance application and ordering the dismissal of the petitioner. YES

Ruling: Acts committed by an employee who is a first offender, do not warrant the drastic remedy of dismissal.

As can be gathered from the evidence, petitioner Edipolo Torrelino's Employment Service Record for more than 10 years was clean without any indication that he had committed violations or abuses against the company, his superiors, or his co-employees until his attention was called to the questioned violation.

In resume, We believe that the acts committed by petitioner (being a first offender) do not warrant the drastic remedy of dismissal. As provided for in the company rules and regulations, presented by petitioner in his memorandum, the penalty for vending, soliciting, engaging in usurious activities is a written reprimand for the first offense, six (6) days suspension for the second offense, and discharge for the third offense. Nothing specific however is provided with respect to deductions from salaries with the express consent of the employees.

Internal Policies of the Employer

Employment contracts are the law between the employer and the employee but so are the policies of the employer that have been made known to the employee.

For example, if the company says that a first time offense has to be a warning, the company cannot back out on that. The employee can always invoke the policy of the company if he was suspended even though it was a first time offense. The Labor Arbiter would most likely side with the employee because the internal policies of the employer are binding.

However, sometimes, if the policy is too harsh, it will be struck out by the Labor Arbiter or the NLRC.

REMEMBER: The general rule is that the employer must always follow their policy. The policy is binding between the employer and the employee.

5. Special laws or regulations

E. Preventive suspension

Omnibus Rules, Book Five RULE XIV Termination of Employment

SECTION 1. Security of tenure and due process.

No workers shall be dismissed except for a just or authorized cause provided by law and after due process.

SECTION 2. Notice of dismissal.

Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts



or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

SECTION 3. Preventive suspension.

The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his coworkers.

SECTION 4. Period of suspension.

No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

SECTION 5. Answer and hearing.

The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

SECTION 6. Decision to dismiss.

The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

SECTION 7. Right to contest dismissal.

Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

SECTION 8. Period to decide.

Cases involving the dismissal of a worker shall be decided by the Labor Arbiter within 20 working days from the date of submission of such cases for decision.

SECTION 9. Reinstatement pending hearing.

The Secretary may suspend the effects of the termination pending resolution of the case in the event of a *prima facie* finding that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

SECTION 10. Certification of employment.

A dismissed worker shall be entitled to receive, on request, a certificate from the employer specifying the dates of his engagement and termination of his employment and the type or types of work on which he is employed.

SECTION 11. Report of dismissal.

The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the date of commencement and termination of employment, the positions last held by them and such other information as may be required by the Department for policy guidance and statistical purposes.

Nature of preventive suspension, not a penalty, no salary

Every Nation Language Institute v. Dela Cruz

Facts: ENLI undertook preliminary investigation on the alleged infractions committed by Dela Cruz while the latter initiated a complaint for underpayment of salaries with the Labor Arbiter. Dela Cruz was later on placed under preventive suspension.

ENLI learned of Dela Cruz's complaint before the Labor Arbiter and while the complaint was pending, the 30-day suspension period lapsed but Dela Cruz did not report back for work.

Issue: Whether or not the preventive suspension had ripened into constructive dismissal. YES

Ruling: Upon expiration of the 30-day suspension period without Dela Cruz having been reinstated, the SC found that the preventive suspension had ripened into constructive dismissal.

Placing an employee under preventive suspension is allowed under Section 8, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended. This section provides: The employer may place the worker concerned under preventive suspension only if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.\

Preventive suspension is not a penalty but a disciplinary measure to protect life or property of the employer or the co-workers pending investigation of any alleged infraction committed by the employee. Thus, it is justified only when the employee's continued employment poses a serious and imminent threat to the employer's or co-workers' life or property. When justified, the preventively suspended employee is not entitled to the payment of his salaries and benefits for the period of suspension.

In this case, Dela Cruz's preventive suspension was justified considering that, as branch manager, she had unlimited access to the Calamba branch's finances, property, and records. As Dela Cruz herself admitted, she managed the Calamba branch as if she were the owner thereof.

Nevertheless, the management's prerogative of placing an employee under preventive suspension is further temporally limited. Section 9 of the Omnibus Rules Implementing the Labor Code limits the duration of the preventive suspension



to a maximum of 30 days.

Globe-Mackay Cable and Radio Corporation v. NLRC

Doctrine: By itself, preventive suspension does not signify that the company has adjudged the employee guilty of the charges she was asked to answer and explain. Such disciplinary measure is resorted to for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.

Global Incorporated v. Atienza

Doctrine: The employer may place the employee concerned under preventive suspension only if the continued employment of the employee poses a serious and imminent threat to the life or property of the employer or of the co-employees. Any preventive suspension before the filing of the application shall be considered worked days, and shall be duly paid as such if the continued presence of the employee concerned does not pose a serious threat to the life and property of the employer or of the co-employees.

Preventive Suspension

SECTION 3. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his coworkers. (RULE XIV, BOOK V, OMNIBUS RULES)

Preventive suspension only applies pending administrative investigation.

If there is a suspicion against an employee for stealing office supplies and the employer does not want the employee to stick around, the employer, while pending investigation, can place the employee under preventive suspension.

There is no serious and imminent threat to the life or property of the employer or of his coworkers in the following instances:

- employee stole a stapler
- employee mishandled P200 pesos worth of funds

In the above examples, the employer cannot preventively suspend the employee.

There is serious and imminent threat to the life or property of the employer or of his coworkers in the following instances

- Employee stole coworkers' things
- Employee tried to strangle one of his co-workers.

In the above examples, the employer can preventively suspend the employee.

Why is preventive suspension important?

if the employer preventively suspends the employee in an arbitrary manner, it can be construed as constructive dismissal. If the employer does it wrong, the employee can claim that he/she was illegally dismissed.

Duration of preventive suspension

It should not last for more than 30 days. The maximum is 30 days. It can be for a shorter period especially if the disciplinary proceedings wrap up in less than 30 days.

Preventive suspension is without pay.(Preventive suspension can also be with pay if the employer is generous). The employer does not have to pay the wage of the employee during the preventive suspension even if it was later found out that the employee was innocent as long as the employer acted in good faith or that there were reasonable grounds to believe that the employee is guilty.

Exception to the duration of preventive suspension

The employer may extend the 30-day period provided the Ee's wages are paid after the 30-day period.

If the employee was found guilty, the employee will not have to reimburse the employer for the salary they receive during the extension of the preventive suspension.

SECTION 4. Period of suspension. — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker. (RULE XIV, BOOK V, OMNIBUS RULES)

What happens at the end of the preventive suspension and there is no notice to extend?

The Ee should be made to resume his work after 30 days. The extension cannot be presumed. The employer has to give notice to the employee if it decides to extend. If there is no notice of extension, employees automatically go back to work.

What happens if there is an extension and the employee was not given its salary during extension of the preventive suspension?

The employee can claim that he/she was illegally dismissed/constructive dismissal.



SITUATION: The period of prevention suspension ended and the employee was found guilty. The employer gave the penalty of 15-days suspension. Can the employee claim that he cannot no longer be penalized because he was already preventively suspended?

No. Preventive suspension is not punitive. It is not a penalty. It was merely a safeguard for the employer to protect its own interest and the interest of the other employees as well.

Note: The employer must be very clear that the notice was for "preventive suspension" and not for "suspension" or not a penalty. The employee has to be made aware that it was not a penalty otherwise the employee can misconstrue that he/she was already suspended without due process.

Remember:

- NO SALARY: First 30 days of the preventive suspension
- WITH SALARY: preventive suspension was extended

F. GROUNDS FOR DISMISSAL (SUBSTANTIVE DUE PROCESS)

Omnibus Rules, Book Six

Rule I

Section 7. Termination of employment by employer.

The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.cralaw

Grounds for dismissal

JUST CAUSE	AUTHORIZED CAUSE
Causes for dismissal that are the fault of the employee	Causes for dismissal because of something that happened with the employer.
These are within the control of the employee.	Example: the business will be closing; retrenchment because of financial losses, etc.

	circumstances beyond the control of the employee
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Why is this difference important?

Just causes refers to dismissal only while authorized causes are entitled to separation pay. Authorized causes were beyond the control of the employees.

1. JUST CAUSES

Article 293. Termination by employer

An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e. Other causes analogous to the foregoing.

a. Serious misconduct

Improper or wrong conduct, it is a transgression of some established or definite rule of action, a forbidden act, a dereliction of duty, **willful in character** and implies wrongful intent and not mere error in judgment.

If its not willful and mere error in judgment, it is probably negligence and not serious misconduct. Serious misconduct implies intent.

To constitute a valid cause for dismissal, the employee's misconduct has to be serious, grave and aggravated in character not merely trivial or unimportant.

For example, an employee was running in the corridor during her break, if no client or customer complaint. Then, not serious.

Flirting with co-worker, not serious. No one was affected.

Sexually harass a co-worker. Probably, serious. In practice, it would depend on the degree of



harassment.

Fondling of the genitals or breasts. Serious. You have to contextualize.

Is the behaviour trivial or serious?

Elements of serious misconduct

1. It must be serious
2. It must relate to the performance of the employee's duties and it must show that the employee is unfit to continue working for the employer.
3. It must be performed with wrongful intent.

For example, the employee joined a basketball tournament and engaged in a fight with other players and the referee. Not a serious misconduct, not related to the performance of the duty.

If the brawl is in the premises of the building and with the employee. It is serious.

Brawl happened because the person is defending her women friends because they were being harassed. One can argue that it is not serious misconduct. There was no wrongful intention.

Workplace brawl, an employee beat up another co-worker. Employee was trying to stop the co-worker from molesting one of their staff. Probably, not serious misconduct.

Employee hacked to the computer of another employee to look into the discrepancies made by the latter in their money records. There was indeed discrepancies. It may be serious but it was done to protect the interest of the employer. It can be considered not a serious misconduct.

The Supreme Court held that even the minor misconduct and take it all into account, it can be considered serious. If there are many and the employee did not change a bit, it can be considered serious misconduct.

Loud and foul language can be considered serious misconduct.

Physical violence, serious misconduct.

"Cute nimu uy" then nangusi, trivial.

Accepting bribes from clients regardless of the amount, serious misconduct.

Reckless driving, serious misconduct.

Insulting a supervisor, has been held to be a serious misconduct. There was one case, he said "Putangina"

to his supervisor.

Hot headed employee and causing a toxic workplace, serious misconduct.

Pre-marital sex, not a serious misconduct.

Sterling Paper Products Enterprises, inc. v. KMM-Katipunan

Facts: Petitioner Sterling Paper Products (Sterling) hired private respondent Raymond Esponga (Esponga) as a machine operator. After sometime in June 2006, workers, including Esponga, was given a 20-day suspension for allegedly staging a "wildcat strike." A notice was then sent to those involved stating that a repetition of the same may result to a penalty of termination from employment. Another incident involved Esponga and his supervisor Vinoya. Upon seeing Esponga taking a nap on the sheeter machine, Vinoya called his attention and prohibited him from doing the same. After transferring to a nearby mango tree, Vinoya heard Esponga utter words against the former. She then confronted Esponga, to which the latter replied in a loud and disrespectful manner. Incidents following the confrontation, e.g. giving Vinoya the "dirty finger" and uttering disrespectful statements against Vinoya, were imputed to Esponga.

It was then found that Esponga was guilty of gross and serious misconduct, gross disrespect to superior and habitual negligence. Esponga was subsequently terminated from employment. Esponga, with KMM-Katipunan then filed a complaint for illegal dismissal and unfair labor practices with the Labor Arbiter (LA) against Sterling.

Issue: Whether or not the cause of Esponga's dismissal amounts to serious misconduct. NO

Ruling:

Yes. Under Article 282 (a) of the Labor Code, serious misconduct by the employee justifies the employer in



terminating his or her employment. In this case, the Court defined misconduct as "an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."

The Court stated that, to fall under such category as to amount to a valid cause for dismissal from employment, the employee's misconduct must be serious. It is must be of such grave and aggravated character and not merely trivial or unimportant. Further, such misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. The act or conduct must have been performed with wrongful intent.

The Court summarized the requisites for serious misconduct as a valid cause for dismissal as follows: "(a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent."

First, in the case at bar, it was duly established that Esponga was guilty of such serious misconduct. The Court, in a number of case, has consistently held that "the utterance of obscene, insulting or offensive words against a superior is not only destructive of the morale of his co-employees and a violation of the company rules and regulations, but also constitutes gross misconduct." It is also settled that accusatory and inflammatory language used by an employee towards his employer or superior can be a ground for dismissal or termination.

Second, Esponga's conduct was related to his work as a machine operator. His conduct towards Vinoya reflected his defiance of reasonable management directives.

Finally, Esponga defied his supervisor, and uttered disrespectful words to her, in front of his co-employees, which is manifest of Esponga's wrongful intent of committing a serious misconduct against his supervisor Vinoya.

Therefore, from the foregoing, the dismissal of Esponga was based on a valid cause, and as such, his termination from employment is valid.

Coffee Bean and Tea Leaf v. Arenas

Doctrine:

For willful disobedience to be a valid cause for dismissal, these two elements must concur:

1. the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and
2. the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

For misconduct or improper behavior to be a just cause for dismissal,

1. it must be serious;
2. it must relate to the performance of the employee's duties; and
3. it must show that the employee has become unfit to continue working for the employer

Panaligan v. Phyvita Enterprises (serious)

Facts: Petitioner Phyvita Enterprises Corporation, a domestic corporation engaged in the business of health club massage parlor, spa and other related services under the name and style of Starfleet Reflex Zone.

Panaligan, Villajin, and Penilla were employees of Phyvita assigned as Roomboys at Starfleet.

The Finance Assistant of Phyvita for Starfleet, Enriquez discovered that the amount of Php180,000.00 representing their sales was missing including receipts, payrolls, credit card receipts and sales invoices.

She immediately reported the same to her immediate superior Jorge Rafols. As such, they searched for the missing documents and cash. However, their search remained futile.

Jorge Rafols and Enriquez reported the incident to their Vice President for Operations Henry Ting. A police blotter was filed and while the police investigation was pending, employees filed a complaint before DOLE NCR for underpayment of wages, nonpayment of holiday, SIL, night diff, no payslip, signing of blank payroll, withheld salary.

The manager directed them to explain about the alleged involvement in a theft—act of dishonesty. Petitioners were placed on preventive suspension pending the investigation of the said alleged theft they committed. They were even asked to report at Phyvita on the 3rd, 9th and 10th of May 2005, respectively. Upon personal service of the said Office Memoranda, the said employees refused to receive the same.

Issue:

Whether there exists just and valid cause for the termination of PANALIGAN, et al.'s, employment by PHYVITA. (NO)

Ruling:

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause. In the case at bar, PHYVITA failed to adduce substantial evidence that would clearly demonstrate that PANALIGAN, et al., have committed serious misconduct or have performed actions that would warrant the loss of trust and confidence reposed upon them by their employer.

Therefore, we uphold the NLRC in finding that PANALIGAN, et al., were illegally dismissed from employment by PHYVITA and, thus, are entitled to separation pay, in lieu of reinstatement, and full backwages. Given the obviously strained relations between the parties and the length of time that PANALIGAN, et al., have been separated from their employment in PHYVITA, we agree with the NLRC that the doctrine of strained relations must apply wherein the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.

Piedad v. Lanao del Norte Electric (cumulative misconduct)

Facts:

Warlito Piedad was employed with Lanao Del Norte Electric Cooperative (LANECO) as a bill collector.

On December 20, 1983, Piedad was found short of P300.00 in his collections in an audit conducted by SGV. On January



4, 1984, he was suspended from his work on account of such shortage. On February 1, 1984 his services were finally terminated by LANECO.

Piedad filed a complaint with the Ministry of Labor and Employment in Iligan City for "Illegal Suspension and Dismissal with Prayers for Reinstatement, Payment of Backwages, Allowances, Benefits, and Damages."

Issues:

Whether or not Piedad's shortage of his electric bill collections was sufficient to warrant his dismissal

Ruling: Yes. It is clear that a shortage was indeed incurred by the petitioner. The total cash remitted by petitioner Piedad was less than the paid electric bill receipts evidencing the collector's total liability. The auditor's report "certified to" and signed by the petitioner, states: "The above shortage was explained by the Collector as *used* by him." The petitioner neither refutes nor contests this fact. The failure to deny the same becomes an admission. *Qui non negat fatetur.* Subsequent remittance by the petitioner of the sum in question can no longer erase as fact the shortage already incurred.

Indeed, an employer may dismiss an employee for breach of trust in the handling of funds inspite of his having been acquitted in the course of a criminal prosecution. Conviction for a crime involving the loss of such funds is not necessary before the employee may be dismissed. (*San Miguel Corporation v. National Labor Relations Commission*, 128 SCRA 180). There is more reason for dismissal where the acts of misconduct and willful breach of trust are repeatedly committed by an employee (*Philippine Long Distance Telephone v. National Labor Relations Commission*, 122 SCRA 618).

Samahan ng Manggagawa sa v. phil Rabbit

Doctrine: Caragdag's dismissal was due to several instances of willful disobedience to the reasonable rules and regulations prescribed by his employer. The Voluntary Arbitrator pointed out that according to the hotel's Code of Discipline, an employee who commits three different acts of misconduct within a twelve (12)-month period commits serious misconduct. He stressed that Caragdag's infractions were not even spread in a period of twelve (12) months, but rather in a period of a little over a month. Records show the various violations of the hotel's rules and regulations were committed by Caragdag. He was suspended for violating the hotel policy on bag inspection and body frisking. He was likewise suspended for threatening and intimidating a superior while the latter was counseling his staff. He was again suspended for leaving his work assignment without permission. Evidently, Caragdag's acts constitute serious misconduct.

Padilla v. NLRC

Doctrine: The pressure and influence exerted by a faculty member on his colleague to change a failing grade to a passing one, as well as his misrepresentation that a student is his nephew, constitute serious misconduct.

Asian Design and Manufacturing v. hon Deputy (foul language)

Using foul language is a just cause for termination

Facts:

Lavarez Jr. (employee) challenged his dismissal by Asian Design (employer).

The Regional Director dismissed his complaint for lack of merit (dismissal was valid). Company Rules and Regulations provide that using obscene, offensive, or insulting language against employer results in the immediate discharge of erring employee

In this case, Lavarez used foul language against his superior (Mrs. Alice Ermac) and made the ff statements:

- a. If you don't give a goat to the foreman you will be terminated. If you want to remain in this company, you have to give a goat.
- b. You render overtime work so that you can buy a coffin.
- c. Notice to all Sander-Those who want to remain in this company, you must give anything to your foreman. Failure to do so will be terminated - Alice '80.

Ministry of Labor ruled in favor of the employee since employer's allegations not supported by substantial evidence.

o It is not clear WON the statements were against the foreman/superior

Issues:

WON Lavarez was dismissed for just cause

Ruling:

Yes. Lavarez was validly dismissed since he uttered foul language against his superior.

Lavarez referred specifically to his superior when he made the statement "If you don't give a goat to the foreman, you will be terminated. If you want to remain in this company, you have to give a goat."

Elizalde International v. CA

Doctrine: Sale of competitor's products is a just cause since such act constitutes adverse or disloyal interest of the employee. Employer has the right to expect loyalty from its employees during the term of employment.

Villarama v. NLRC (sexual harassment - NOTE: events occurred prior to passage of RA 7877 and RA 11313)

Doctrine: Sexual harassment is a valid cause for separation from service, especially if inflicted by those with moral ascendancy over their victims.

Facts:

Villarama (Head of Materials Dept) was charged with sexual harassment by Divina Gonzaga (Clerk-Typist in Materials Dept)

In her resignation letter, she states:

- a. She resigned due to the sexual harassment
- b. Gonzaga and 3 other girls were invited to have dinner by Mr. Villarama, Mr. Olaybar, and Mr de Jesus but the other 3 girls decided not to join. After dinner, they decided to take her home, however,



Gonzaga was taken to a motel.

Pres Prieto (Golden Donuts Inc) called Villarama to a meeting and was required to explain the allegations in Gonzaga's resignation letter.

Villarama agreed to tender his resignation (graceful resignation)

He also took a leave of absence preparatory to the separation

Later, Villarama changed his mind and sought reconsideration of the management's decision to terminate him: Considering his significant contribution to the Materials Dept as its Head. His performance outweighs the "error" he committed

Since Villarama did not tender his resignation, he was dismissed by Golden Donuts Inc. When Villarama filed an illegal dismissal case:

LA ruled in favor of Villarama since due process was not observed and there was no valid cause for dismissal (no RA 7877 and RA 11313)

NLRC found that the dismissal was valid but ordered Golden Donuts to indemnify Villarama due to its procedural lapses.

Issues:

WON Villarama was dismissed for just cause

Ruling:

Yes, Villarama was dismissed based on loss of trust and confidence.

Jurisprudence provides that employers are given wider latitude of discretion in terminating managerial employees due to lack of trust and confidence. It is the duty of every employer to protect its employees from over sexed superiors.

In this case, Golden Donuts lost its trust and confidence in Villarama. As a managerial employee, Villarama is bound by a more exacting work ethics. He failed to live up to this higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against Gonzaga, his subordinate, such is a justifiable ground for his dismissal for lack of trust and confidence.

Dela Rosa v. ABS-CBN Corporation

Doctrine: Misconduct has been held to be an improper or wrong conduct; a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To be considered a valid cause for dismissal within the meaning of the Labor Code, the misconduct must be of such a grave and aggravated character and not merely trivial or unimportant

Philippine National Construction v. NLRC (accepting bribes)

Doctrine: Accepting bribes constitutes serious misconduct which is a just cause for termination. If the valid dismissal is based on serious misconduct or those reflecting his moral character, he is not entitled to separation pay on the ground of social justice

Facts: Angeles and Pablo (employees) were employed by Philippine National Construction Corp as tollway guards, but their services were terminated on the ground of serious misconduct.

Maravilla complaint to Tollway Gen Manager Paulino about the mulcting (bribing) activities of some security personnel at the North Luzon Tollway.

When the investigating team staged an entrapment (illegally transporting dogs), the employees were found to accept bribes and a sack containing a dog.

Paulino issued a Notice of Dismissal to the employees and required them to answer the charge of serious misconduct. During the formal investigation, the investigating team testified against the employees.

The employees' dismissal was recommended to the management. After which, a Notice of Termination was issued to the employees.

The employees filed a complaint for illegal dismissal on the ground that the entrapment was staged by Hidalgo (part of the investigating team and former manager of North Luzon Tollway) in retaliation as they have been very critical of his administration.

Issues:

WON the employees were validly dismissed for serious conduct – YES

Ruling: Yes. Jurisprudence provides that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay on the ground of social justice.

In this case, accepting bribes constitutes serious misconduct. Employees had the duty to maintain peace and order at the North Luzon Expressway and to ensure that all tollway rules and regulations are followed but they were the first to violate the rules they were tasked to enforce.

Philippine National Bank v. Tinga

Doctrine: For misconduct to be a just cause of termination, misconduct must be serious, relates to the performance of the employee's duties, and show that the employee has become unfit to continue working for the employer

Falsification of bank documents (passbook) done by a bank officer (who is also a depositor of said bank) and said falsification is for their benefit constitutes serious misconduct.

North Camarines Lumber Co., Inc. v. Barreda (physical violence)



Facts:

1. The Ministry of Labor and Employment in its order ordered North Camarines Lumber Company, Inc. to reinstate Francisco Barreda to his former position without loss of seniority rights and to pay him backwages for two years without reduction or qualification.
2. Barreda was employed as a scaler by petitioner company in 1963. In 1978, he became supervisor of the fell and buck section.
3. It appears that in 1979 Barreda committed two offenses for which he was suspended for a total of twenty days.
4. In 1979, he committed the alleged unpardonable third offense.
5. He figured in a boxing incident with Fernando Fernandez, a security guard of petitioner. The incident, as admitted by petitioner, occurred in the store of one Floriano Barreda located within the company auxiliary compound where the veneer plant proper and the residential houses of petitioner's staff officers are situated.
6. The following day, petitioner addressed a memorandum to Barreda terminating him for having assaulted a fellow employee without sufficient provocation and placing him under suspension pending clearance from the Ministry of Labor.
7. petitioner filed with the MOLE an application for clearance to terminate Barreda's employment.
8. The regional director granted the required clearance but on appeal the MOLE set it aside.

Issues:

Whether or not the termination was proper?

Ruling: No, the termination of Barreda was not proper. We hold that the MOLE did not commit any grave abuse of discretion in ordering the reinstatement of Barreda with backwages. Whether the third offense attributed to Barreda was committed while the latter was off duty and outside the company premises is not the crucial issue here. Rather, it is the inequitable manner by which Barreda was discharged. While conceding the employer's basic right to regulate the conduct of its employees while inside company premises, we cannot help but notice the unusual zeal and haste displayed by petitioner in applying the full force of its rules on Barreda. Undoubtedly, the boxing episode was completely blown out of proportion. The fisticuffs were plainly a private matter between the two employees which had no apparent deleterious effect on the substantial interests of the company. Considering Barreda's length of service with petitioner, coupled with the attendant circumstances, the penalty of dismissal was certainly not commensurate with his alleged misconduct. We affirm his reinstatement with backwages for two years.

Stanfilco - A Division of DOLE v. Tequillo

Elements of Serious Misconduct:

- 1) The misconduct must be serious
- 2) it must be related to the performance of duty, showing that the employee is unfit to continue working for the employer.
- 3) It must have been performed with wrongful intent

The mauling of the respondent was because the latter failed to give the incentive to Tequillo, which according to the Court was sufficient proximate cause of the incident which

was work related. Also it was so perverse that it is no longer feasible and retaining Tequillo will endanger, not only the business, but as well as his co-workers.

Hot-tempered personality

Abacast Shipping and Management v. NLRC

Doctrine: All the shipmaster says in his report is that he considered Nelson Modelo to be hot-tempered and he was apprehensive the seaman might get into trouble. Such apprehension is, of course, not a ground for dismissal. It contradicts his own statement that as shipmaster he could easily resolve differences between crew members on board the vessel. As for Rogelio Rapadas, the report merely says that he often drank liquor with Modelo and when intoxicated the two would go ashore together; but surely that is not an offense either. At any rate, there is no statement in the report that the two of them ever got into any serious trouble at any time in the course of their aborted employment.

Borrowing money from a client

Medical Doctors, Inc. v. NLRC

Doctrine: BORROWING MONEY BY A PROBATIONARY EMPLOYEE NOT A GROUND FOR DISMISSAL; CASE AT BAR.
– Borrowing money is neither dishonest, nor immoral nor illegal, much less criminal. Private respondent paid the money she borrowed from the hospital patient. She was even recommended for permanent appointment from her probationary status, from clerk to secretary, by her immediate superior, Sis. Consolacion Briones. It may be added that she must have been compelled to borrow P50.00 from her patient because of economic necessity, which circumstance should evoke sympathy from this Court, the very constitutional organ mandated by the fundamental law to implement the social justice guarantee for the protection of the lowly, efficient and honest employee, who is economically disadvantaged, like herein petitioner

Teacher in a relationship with student

Chua-Qua v. Clave

Facts: Private respondent Tay Tung High School, Inc. is an educational institution in Bacolod City. Petitioner had been employed therein as a teacher since 1963 and, in 1976 when this dispute arose, was the class adviser in the **sixth grade** where one Bobby Qua was enrolled. Since it was the policy of the school to extend remedial instructions to its students, Bobby Qua was imparted such instructions in school by petitioner.

In the course thereof, the couple fell in love and got married in a civil ceremony solemnized in Iloilo City.

Private Respondent applied for the termination of petitioner for abusive and unethical conduct



unbecoming of a dignified school teacher and that her continued employment is inimical to the best interest, and would downgrade the high moral values, of the school.

Issues: Whether or not there is substantial evidence to prove that the marriage between petitioner-teacher and her student constitute immorality and or grave misconduct

Ruling: NO. To constitute immorality, the circumstances of each particular case must be holistically considered and evaluated in the light of prevailing norms of conduct and the applicable law. Contrary to what petitioner had insisted on from the very start, what is before us is a factual question, the resolution of which is better left to the trier of facts.

There is no substantial evidence of the imputed immoral acts, it follows that the alleged violation of the Code of Ethics governing school teachers would have no basis.

Private respondent utterly failed to show that petitioner took advantage of her position to court her student. If the two eventually fell in love, despite the disparity in their ages and academic levels, this only lends substance to the truism that the heart has reasons of its own which reason does not know. But, definitely, yielding to this gentle and universal emotion is not to be so casually equated with immorality. The deviation of the circumstances of their marriage from the usual societal pattern cannot be considered as a defiance of contemporary social mores.

In termination cases, the burden of proving just and valid cause for dismissing an employee rest on the employer and his failure to do so would result in a finding that the dismissal is unjustified.

| Iconic case.

| "The heart has reasons reason does not know."

Sr. Quiambao formally directed the petitioner to explain in writing why she should not be dismissed for engaging in pre-marital sexual relations and getting pregnant as a result thereof, which amounts to serious misconduct and conduct unbecoming of an employee of a Catholic school.

Petitioner explained that her pregnancy out of wedlock does not amount to serious misconduct or conduct unbecoming of an employee.

Issues: Whether pregnancy out of wedlock by an employee of a catholic educational institution is a cause for the termination of her employment.

Ruling: NO. The fact of the petitioner's pregnancy out of wedlock, without more, is not enough to characterize the petitioner's conduct as disgraceful or immoral. There must be substantial evidence to establish that pre-marital sexual relations and, consequently, pregnancy out of wedlock, are indeed considered disgraceful or immoral.

The totality of the circumstances surrounding the conduct alleged to be disgraceful or immoral must be assessed against the prevailing norms of conduct.

it is not the totality of the circumstances surrounding the conduct per se that determines whether the same is disgraceful or immoral, but the conduct that is generally accepted by society as respectable or moral. If the conduct does not conform to what society generally views as respectable or moral, then the conduct is considered as disgraceful or immoral. Tersely put, substantial evidence must be presented, which would establish that a particular conduct, viewed in light of the prevailing norms of conduct, is considered disgraceful or immoral.

Thus, the determination of whether a conduct is disgraceful or immoral involves a two-step process: first, a consideration of the totality of the circumstances surrounding the conduct; and second, an assessment of the said circumstances vis-à-vis the prevailing norms of conduct, i.e., what the society generally considers moral and respectable.

That the petitioner was employed by a Catholic educational institution per se does not absolutely determine whether her pregnancy out of wedlock is disgraceful or immoral. There is still a necessity to determine whether the petitioner's pregnancy out of wedlock is considered disgraceful or immoral in accordance with the prevailing norms of conduct.

The petitioner's pregnancy out of wedlock is not a disgraceful or immoral conduct since she and the father of her child have no impediment to marry each other

To stress, pre-marital sexual relations between two

Immorality, pre-marital sexual relations

Leus v. St. Scholastica's College

Facts: SSCW is a catholic and sectarian educational institution in Silang, Cavite. Sometime in 2003, the petitioner and her boyfriend conceived a child out of wedlock. When SSCW learned of the petitioner's pregnancy, Sr. Edna Quiambao (Sr. Quiambao), SSCW's Directress, advised her to file a resignation letter.

In response, the petitioner informed Sr. Quiambao that she would not resign from her employment just because she got pregnant without the benefit of marriage.



consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94 (e) of the 1992 MRPS.

| *Is pre-marital sex a serious misconduct?*

| **Atty:** I dont think the ER has the right intrude on your business especially if your partner is not a co-employee.

| But in this case, the ER was a Catholic school. The SC held that it was not serious misconduct. While you can use **immorality as a form of serious misconduct** as ground to dismiss an employee, the guage of immorality has to be from a **secular perspective and not a religious religious perspective**.

| While for Catholics, premarital sex is immoral, but for most people its not offensive (it is a norm). It would then be unfair to apply a religious standard to the ee-er relationship. If the SC allowed this, it would be like they were favoring a certain religion (a bill of rights issue). Your guage has to be neutral.

demanded by his profession, petitioner Jose Santos was dismissed from his employment on the ground of immorality. We uphold his dismissal.

We have consistently held that in order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code, and (b) the employee must be accorded due process, basic of which are the opportunity to be heard and defend himself.

Under Article 282 of the Labor Code, as amended, the following are deemed just causes to terminate an employee:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willfull breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorize representative; and
- (e) Other causes analogous to the foregoing."

Moreover, it is provided inter alia under Section 94 of the Manual of Regulations for Private Schools: "Section 94. Causes of Terminating Employment. In addition to the just cases enumerated in the Labor Code, the employment of school personnels, including faculty, may be terminated for any of the following causes:

E. Disgraceful or immoral conduct."

Private respondent, in justifying the termination of the petitioner, contends that being a teacher, he "must live up to the high moral standards required of his position." In other words, it asserts that its purpose in dismissing the petitioner was to preserve the respect of the community towards the teachers and to strengthen the educational system.

We cannot overemphasize that having an extra-marital affair is an affront to the sanctity of marriage, which is a basic institution of society. Even our Family Code provides that husband and wife must live together, observe mutual love, respect and fidelity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Undoubtedly, the question of immorality by the petitioner is factual in nature

Immorality, extra-marital relations

Santos v. NLRC

Facts: Jose Santos, a married man, was allegedly having illicit relationship with Arlene Martin, also married. Both worked as teachers in Hagonoy Institute. Earlier, the school prohibited Martin from further teaching due to the alleged relationship. Martin filed an illegal dismissal case which she won due to failure of the school to accord due process. Learning from its mistake, the school set up a committee to investigate Santos, this time following the proper procedure of twin notice and hearing. The school committee found the allegations of illicit relationship between Santos and Martin to be true, and Santos was dismissed from the school. Santos filed a case of illegal dismissal.

Issues: WON Santos was validly dismissed on the grounds of immorality

Ruling: Yes. It is to state the obvious that schools, next only to the home, wield a weighty influence upon the students, especially during the latters' formative years, for it instills in them the values and mores which shall prepare them to discharge their rightful responsibilities as mature individuals in society. At the vanguard in nurturing their growth are the teachers who are directly charged with rearing and educating them. As such, a teacher serves as a role model for his students. Corollarily, he must not bring the teaching profession into public disrespect or disgrace. For failure to live up to the exacting moral standards



This is a case involving an extra-marital affair but **BOTH of the parties were employees**. They both had spouses. And their affair was made known to the entire school. Hence, they were both dismissed for on the ground of immorality as a form of serious misconduct.

The SC agreed because marriage does not only have a religious connotation, but also a special contract of permanent union. Its sanctity is protected by the State. The State has an interest in protecting marriage. In this case, the parties were ignoring their matrimonial obligations because they were having an extra-marital affair.

Hence, it was a form of immorality in relation to serious misconduct because objectively, even from a secular standpoint, they were disregarding the sacred contract of marriage to engage in an affair with another married person, and it came to the point where the co-teachers and students also knew about it. It was serious misconduct because as teachers, they were supposed to set a good example to the students.

Requirements:

1. **Is it serious?** Yes, this can be considered a crime
2. **Is it related to their job performance, showing that they were unfit for the job?** Yes, the other party to the affair was a co-teacher. Their students are also impressionable.
3. **Was there wrongful intent?** Yes. You know that you are married and you will have an affair with a co-worker. Intent is apparent.

Q: If the ee sexually harassed another person who is not a co-employee?

A: It depends on the level of harassment and degree of publicity. At the end of the day, the employer cannot interfere with the personal rights of the employees.

If let's say the reputation of the ER was impacted, then the latter would have grounds to investigate. It is not clear yet if it can be considered misconduct.

overtaking. He also admitted that once in a while, he sped up to make up for lost time in making trips.

Issues: Whether or not Sagad's dismissal was for a valid and just cause.

Ruling: Yes, Sagad's dismissal was for a valid and just cause.

First. It is not disputed that the company called Sagad's attention to his negative actions as a bus driver, which were reported by a company evaluator who boarded his bus on September 21, 2006. The evaluator reported that he was driving recklessly, racing and jostling for position on the road, thereby jarring the passengers on their seats, and picking up passengers on the middle of the road. He disputed the evaluator's observations, claiming that he could not have been driving as reported because his pregnant wife and one of his children were with him on the bus at the time. He admitted, however, that on one occasion, he chased an "Everlasting" bus to warn its driver not to block him. He also admitted that once in a while, he sped up to compensate for lost time in his trips. Sagad's explanation reveals more than what it stated. During his brief employment with the company, he exhibited the tendency to speed up when he finds the need for it, very obviously in violation of traffic rules, regulations and company policy. Instead of negating the evaluator's observations, his admissions make them credible.

Second. He was also asked to react to the comments of conductors who had worked with him (Hemoroz and Lucero) to the effect that he proposed to them that they cheat on the company by making early (but not to be reported) bus trips. Further, there was Castillo's evaluation dated October 13, 2006, rating Sagad's work performance as poor on account of: (1) the low revenue of Sagad's bus; (2) his inability to make all his scheduled trips; and (3) his habit of bringing his wife with him on his trips. Castillo also heard of talks of Sagad's orders to the conductors to earn money in a questionable way.

Lastly, the company cites Sagad's involvement in a hit-and-run incident on September 9, 2006 while driving his assigned bus (with Plate No. NYK-216 and Body No. 3094). Once more, he denies the charge, claiming that it was not his bus, but two other vehicles, a Honda City and an Elf truck, which figured in the incident. To prove his point, he submitted the "SALAYSAY" of his replacement driver, Carlito Laude, for September 10, 2006, saying that there was no dents or scratches on the bus.

b. Willful disobedience

Reckless driving

Sampaguita Auto Transport Corp. v. NLRC

Facts: Allegedly, on September 21, 2006, an evaluator boarded Sagad's bus. The evaluator described Sagad's manner of driving as "reckless driver, nakikipaggitgit, nakikipaghabal, nagsasakay sa gitna ng kalsada, sumusubso ang pasahero." Sagad disputed the evaluator's observations. In an explanation (rendered in Filipino), he claimed that he could not have been driving as reported because his wife (who was pregnant) and one of his children were with him on the bus. He admitted though that at one time, he chased an "Everlasting" bus to serve warning on its driver not to block his bus when he was



In serious misconduct, it is a broader more general term, as the actions of the employee speaks for themselves. But willful disobedience applies only if the employer gave a lawful order to the employee. There has to be a lawful and reasonable order given to the employee, that the employee willfully violated and ignored.

Example: No smoking rule. Company policy about maintaining or driving vehicles. Orders on teaching load.

What if the ER ordered the EE to have sex with him?

That is not a legal or lawful order. Hence, the EE cannot be faulted from disobeying that order.

2 elements of willful disobedience:

1. Conduct must be intentional
2. Order must be reasonable, lawful and made known to the employee, and must be related to their duties

Conduct must be intentional

Example: EE is a delivery man for Jolibee. He was ordered to deliver the food in 30min. He encountered a road accident up ahead and he was re-routed to one that was a kilometer longer. He was not able to deliver within 30min.

A: In this case you could say that there was disobedience of an order. But because it was not willful or intentional, you cannot use that ground on the employee.

Q: The employee was an errand boy and was tasked to deposit money in the bank. There was a robbery and he gave up the money to the robbers.

Was there disobedience on the part of the ee? Yes

Was there a lawful order? Yes, to deliver the money

But the disobedience was not willful on the part of the employee.

Order must be lawful, and must be related to their duties

Q: If you ask a hospital nurse to help in the preparing of the patient's food or mop the floor, and the nurse refuses, can you say that it is a willful disobedience of a lawful order?

A: No. Preparation of food or mopping the floor are not related to the duties of a nurse.

Order made known to the employee

If the ee was never informed of the order, you cannot blame them for an order they did not know about.

Atty: There has to be an accountability on the part of

the employee. There are employees who ignore group chats, emails, etc. because they don't want to deal with the extra work. Because of that they can give an excuse like "I was not able to see your message". In my opinion, that should be taken against the employee. Why did they not open their emails, knowing that there could be messages for them. The employee was wilfully ignoring the messages. One can argue that their disobedience of the order because they wilfully distance themselves from the possibility of being informed by an order.

Order must be reasonable

Example: If the EE is a delivery man and was ordered to deliver all the orders within 30 minutes. The order was given for the drivers in Cebu city and the recipient is in Compostela. Taking into account the traffic, the EE would take 2 hours to deliver. The order is lawful and the order is legal but is the order reasonable? No, even if the order is related to his duties, the order must be reasonable.

Example: If the EE was an inhouse counsel and that he was given a case in which he has to file a comprehensive position paper due tomorrow and a motion for extension is not allowed. The order is lawful and related to his duties but this is not a reasonable order.

Elements of Willful Disobedience:

1. The conduct has to be willful and Intentional
2. The order must be:
 - a. reasonable;
 - b. lawful – most important requisite. If the order is unlawful to begin with, do not bother anymore with the other requisite;
 - c. made known to the employee; and
 - d. related to their duties.

The order must be "Lawful":

Example: The EE was asked to deal with a client relating to a party-planning business, and the client was unhappy with the work. The EE was asked to "satisfy" the client. The EE is within the right to refuse because the order was unlawful.

Other examples of Disobeying an order that is "reasonable":

- Maintaining the cleanliness of the workplace.
- No smoking rule
- Wearing a mask in the workplace

Company policy on use of vehicles

Soco v. Mercantile Corporation

Doctrine: the prerogative of an employer company to



prescribe reasonable rules and regulations necessary or proper for the conduct of its business and to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with. A rule prohibiting employees from using company vehicles for private purpose without authority from management is, from our viewpoint, a reasonable one.

Rules on smoking

Northern Motors, Inc. v. National Labor Union

Doctrine: Consistently with the policy of promoting the welfare of labor, the interest of justice demands that capital should not be abused. Where the employer imposed and insisted in a regulation against smoking in a painting booth to protect the very lives of its laborers, a violation thereof by the latter is a just cause for outright dismissal.

Orders on teaching loads

Cruz v. Medina

Doctrine: Loss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt is not required. All that is needed is for the employer to establish a sufficient basis for the dismissal of an employee. The grant of teaching loads to a Dean was only a privilege since as Dean, her first and primary function was to administer the particular college under her care and authority. Hence, the decision of Roosevelt Colleges to take away her six (6) teaching loads so that she can handle the Agro-Forestry Program, with the same pay is reasonable and lawful.

Elements of disobedience

Gold City Integrated Port Services, Inc. v. NLRC

Facts: Private respondent Jose Bacalso was employed as an admeasurer by the petitioner Gold City Integrated Port Services, Inc. ("Gold City"). He was suspected by management of under measuring cargo. Hence, the cargo control officer ordered two (2) other admeasurers to re-measure three (3) pallets of bananas which had already been measured by private respondent. The re-measurement revealed that respondent had under-measured the bananas by 1.427 cubic meters.

Bacalso felt insulted by the re-measurement and so the next day he went to the office of the Chief Admeasurer, Rolando Guanaco, and there confronted Nigel Mabalacad, one of the two (2) admeasurers who had re-checked his work, regarding the matter.

Bacalso quarreled with Mabalacad in the presence of Guanaco, their immediate superior, inside the latter's office. Guanaco directed Bacalso to stop provoking Mabalacad and told both that being in his office, they should behave properly. Bacalso ignored this oral directive and a fistfight erupted then and there between him and Mabalacad. Both were eventually pacified by their co-workers.

Bacalso was then charged with assaulting a co-employee and falsifying reports and records of the company relative to the performance of his duties, and was preventively suspended pending investigation of his case by the union-management grievance committee.

Issues: WON Bacalso is guilty of wilful disobedience.

Ruling: YES. Bacalso is guilty of wilful disobedience but his services were not lawfully terminated. Bacalso completely disregarded the courtesy and respect due from a subordinate to his superior. However, there proportionality between the wilful disobedience by the employee and the penalty imposed therefor. Termination of his services was a disproportionately heavy penalty. Suspension without pay for three (3) months would be an adequate penalty for the assault on a co-worker and act of insubordination that Bacalso actually committed.

Wilful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of **at least two (2) requisites:**

(1) the employee's assailed conduct must have been wilful or intentional, the wilfulness being characterized by a "wrongful and perverse attitude"; and

(2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

ICAB, both requisites are present. By private respondent's own admission, he felt insulted by the re-measurement of the cargo he had already measured.

Order must be lawful reasonable

Star Paper Corp. v. Simbol

Facts: Petitioner Star Paper Corporation is a corporation engaged in trading principally of paper products. It has a company policy promulgated in 1995, viz.:

1. New applicants will not be allowed to be hired if in case he/she has a relative, up to the 3rd degree of relationship, already employed by the company.

2. In case of two of our employees (both singles, one male and another female) developed a friendly relationship during the course of their employment and then decided to get married, one of them should resign to preserve the policy stated above.

Respondents were hired after they were found fit for



the job, but were asked to resign when they married a co-employee.

Issues: WON the policy of the employer banning spouses from working in the same company is a valid exercise of management prerogative.

Ruling: NO. The policy of the employer banning spouses from working in the same company is NOT a valid exercise of management prerogative.

An employer may not discriminate against an employee based on the identity of the employee's spouse unless the employer can prove that the reasonable demands of the business require a distinction based on marital status and there is no better available or acceptable policy which would better accomplish the business purpose. This is known as the bona fide occupational qualification exception.

In this case, there is no reasonable business necessity. Petitioners' sole contention that "the company did not just want to have two (2) or more of its employees related between the third degree by affinity and/or consanguinity" is lame. That the second paragraph was meant to give teeth to the first paragraph of the questioned rule is evidently not the valid reasonable business necessity required by the law.

Change of policy

Ymbong v. ABS-CBN Broadcasting

Facts: Ymbong started working for ABS-CBN in 1993 at its regional station in Cebu as a television talent, co-anchoring Hoy Gising and TV Patrol Cebu.

On January 1, 1996, the ABS-CBN Head Office in Manila issued Policy No. HR-ER-016 or the "Policy on Employees Seeking Public Office." The pertinent portions read:

1. Any employee who intends to run for any public office position, must file his/her letter of resignation, at least thirty (30) days prior to the official filing of the certificate of candidacy either for national or local election.

3. Further, any employee who intends to join a political group/party or even with no political affiliation but who intends to openly and aggressively campaign for a candidate or group of candidates (e.g., publicly speaking/endorsing candidate, recruiting campaign workers, etc.) must file a request for leave of absence subject to management's approval. For this particular reason, the employee should file the leave request at least thirty (30) days prior to the start of the planned leave period.

It was only after the elections that ABS-CBN found out that Ymbong actually ran for public office himself at the eleventh hour.

Issues:

- (1) WON Policy No. HR-ER-016 is valid. YES
- (2) WON Ymbong is deemed resigned when he ran for councilor. YES

Ruling: (1) Yes. Policy No. HR-ER-016 is valid because working for the government and the company at the same time is clearly disadvantageous and prejudicial to the rights and interest not only of the company but the public as well. In the event an employee wins in an election, he cannot fully serve, as he is expected to do, the interest of his employer. The employee has to serve two (2) employers, obviously detrimental to the interest of both the government and the private employer.

(2) YES. Ymbong is deemed resigned when he ran for councilor. Ymbong's overt act of running for councilor of Lapu-Lapu City is tantamount to resignation on his part. He was separated from ABS-CBN not because he was dismissed but because he resigned. Since there was no termination to speak of, the requirement of due process in dismissal cases cannot be applied to Ymbong. Thus, ABS-CBN is not duty-bound to ask him to explain why he did not tender his resignation before he ran for public office as mandated by the subject company policy.

As Policy No. HR-ER-016 is the subsisting company policy and not Luzon's March 25, 1998 Memorandum, Ymbong is deemed resigned when he ran for councilor.

Orders for transfers

Examples:

Transfer is part of the management prerogative of the ER because it is a business judgment of the ER. It is part of their discretion in determining the manpower needed in the workplace. **But is a transfer a valid order?**

A: As a general rule, if the transfer is done in good faith and with the intention of protecting the interest of the business, it is a valid order. If the EE disobeys the order, he can be charged with willful disobedience.

What if the transfer is inconvenient for the EE? For example, you are living in Guadalupe and you are assigned to the Labangon branch office but the Employer told you that he/she will be transferring you to their Naga branch office. Is the transfer a reasonable transfer? Is it an invalid transfer?

A: It is a valid transfer. Mere inconvenience on the part of the employee does not make the order for transfer invalid. Mere inconvenience does not invalidate an order.



What if there is a pending investigation against the EE?
Let us say in this branch, there was an accusation against an employee for stealing a thousand pesos from the cash register and the employer said that pending investigation, the employee has to be transferred from the Labangon branch to their Mandaue branch office. The EE refused to obey. Is there willful disobedience?

A: Yes there is willful disobedience. Even if it is inconvenient for the EE, it was still a valid order from the employer. It is the prerogative of the management to determine where the employees should go. It is only reasonable for the employer to transfer so he/she could investigate the pending case against the employee properly.

What if the transfer is from Cebu City to Tawi-Tawi and the EE disobeyed? Can there be willful disobedience?

A: There is no willful disobedience. The order is lawful. The order is related to the work. However, the order is not reasonable because the order would uproot the employee from where he/she lives and places them in a different island. While inconvenience is still a valid order, the inconvenience must still be within the scope of reason.

NOTE: Simple inconvenience, like a longer commute time, will not invalidate an order. But uprooting an employee and placing them somewhere far away would be an invalid or unreasonable order.

What if the EE was a union officer and was transferred to Tawi-Tawi?

A: You could argue that there is ULP. The transfer of an officer, by itself, is not ULP. However, if the transfer is bolstered by an anti-union sentiment, then you can argue that there is ULP.

What if the EEs that were transferred out to a Manila branch company were all Cebuanos only? Is there a valid order?

A: One could argue that it is an invalid order since there is discrimination among the Cebuano employees.

The company is predominantly a supporter of Lacson and the Pacquiao supporters were transferred out. Is there a valid transfer?

A: No, the order is unreasonable.

Valid transfer order, business need

Abbot Laboratories v. Alcaraz

Facts: Petitioner Abbott Laboratories, Philippines (Abbott) caused the publication in a major broadsheet newspaper of its need for a Regulatory Affairs

Manager. Alcaraz submitted her application.

Later, Abbott offered the position to Alcaraz who was then a Regulatory Affairs and Information Manager at Aventis Pasteur Philippines.

In Abbott's offer sheet, it stated that Alcaraz was to be employed on a probationary basis which Alcaraz accepted. She then signed the probationary employment contract which stated: *"Unless renewed, probationary appointment expires on the date indicated subject to earlier termination by the Company for any justifiable reason."*

Abbott's PPSE procedure mandates that the job performance of a probationary employee should be formally reviewed and discussed with the employee at least twice.

During the course of her employment, Alcaraz noticed that some of the staff had disciplinary problems so she reprimand them but her method of management was considered by Walsh, her immediate supervisor, to be too strict. Later, Alcaraz was called by Walsh and Terrible (Abbot's former HR Director) and was informed that she failed to meet the regularization standards for the position of Regulatory Affairs Manager and was requested to tender her resignation or they will be forced to terminate her services.

Issues:

(1) WON Alcaraz was validly terminated from her employment.

(2) WON Abbott breached its contractual obligation to Alcaraz when it failed to abide by its own procedure in evaluating the performance of a probationary employee.

Ruling: (1) Yes, Alcaraz was validly terminated from her probationary employment.

A probationary employee may also be terminated for a just, an authorized cause, or when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer. If the termination is brought about by the failure of the probationary employee to meet the standards of the employer for regularization, it shall be sufficient that a written notice is served to the employee within a reasonable time from the effective date of termination.

In this case, Alcaraz was served the written notice of her termination and the reasons for her termination which meets the criteria set forth by the Labor Code. Hence, the termination was valid.

(2) YES. Abbott breached its contractual obligation to Alcaraz when it failed to abide by its own procedure in evaluating the performance of a probationary



employee.

Despite the existence of a sufficient ground to terminate Alcaraz's employment and Abbott's compliance with the Labor Code termination procedure, it is readily apparent that Abbott breached its contractual obligation to Alcaraz when it failed to abide by its own procedure in evaluating the performance of a probationary

Vерitably, a company policy partakes of the nature of an implied contract between the employer and employee. Hence, given such nature, company personnel policies create an obligation on the part of both the employee and the employer to abide by the same. In this light, while there lies due cause to terminate Alcaraz's probationary employment for her failure to meet the standards required for her regularization, and while it must be further pointed out that Abbott had satisfied its statutory duty to serve a written notice of termination, the fact that it violated its own company procedure renders the termination of Alcaraz's employment procedurally infirm, warranting the payment of nominal damages.

Valid transfer order, pending investigation

Ruiz v. Wendel Osaka Realty, G.R. No. 189082. 11 July 2012

Facts: Petitioner was hired as secretary to respondent (Delfin), the president of DMWAI thereafter appointed as executive assistant to the president of respondent WORC. Sometime in 2002, the BIR informed Delfin of the tax deficiency allegations against his companies. In November 2002, he discovered that "various very important files"¹¹ of DMWAI were missing. He required the employees to answer a questionnaire but the petitioner failed to comply. Thus Delfin sent a letter¹⁷ to petitioner informing her that she would be placed under a 30-day preventive suspension and another 15 days with pay. After a 45 day period, she reported back to work and was transferred to the Cavite city branch. Thereafter, petitioner amended her Complaint for illegal suspension to include constructive illegal dismissal.

Issue: W/N the transfer is valid.

Ruling: When petitioner was assigned to Cavite, there was an ongoing investigation of the charges filed against her. Having lost his trust and confidence in petitioner, respondent Delfin had the right to transfer her to ensure that she would no longer have access to the companies' confidential files. Although it is true that petitioner has yet to be proven guilty, respondents had the authority to reassign her, pending investigation.

Re-assignments made by management pending investigation of irregularities allegedly committed by an employee fall within the ambit of management prerogative. The purpose of reassignments is no different from that of preventive suspension which management could validly impose as a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.

Invalid transfer order: unreasonable

Escobin v. NLRC, G.R. No. 118159, 15 April 1998

Facts: Some seventy security guards of PISI were assigned to UP-NDC Basilan Plantation. When placed under the agrarian reform program, the plantation had to reduce the number of security guards. Fifty-seven of them were placed on "floating status." While in that status they were instructed to report to PISI head office at San Juan, M.M. for posting to clients in Metro Manila. The guards did not reply nor comply. PISI reiterated the instruction and threatened the guards with disciplinary action. Still, no reply or compliance. PISI terminated their employment on ground of insubordination or willful disobedience. Late in the day, they wrote the PISI general manager that they had

Valid transfer order, business need

Abbot Laboratories v. NLRC, G.R. No. 76959, 12 October 1987

Facts: AB, employed in Abbot in May 1982 as a medical representative, received instruction in 1983 transferring him from Manila to Cagayan Valley. AB objected. The company explained that it was company practice to reassign its "med reps" from one territorial area to another. Moreover, in his application for employment AB had agreed to accept assignments anywhere in the Philippines. Still AB did not comply. Ultimately he was dismissed for disobedience.

Issue: Is the transfer order valid? Is the disobedience justified?

Ruling: An employer, except when limited by special laws, has the right to regulate, according to his own discretion and judgment, all aspects of employment, which includes, among others, hiring, work assignments, place and manner of work, working regulations and transfer of employees in accordance with his operational demands and requirements.

By the very nature of his employment, a drug salesman or medical representative is expected to travel. He should anticipate reassignment according to the demands of their business. It would be a poor drug corporation which cannot even assign its representatives or detail men to new markets calling for opening or expansion or to areas where the need for pushing its products is great. More so if such reassessments are part of the employment contract.



no intention to abandon their employment, nor to defy fair, reasonable and lawful orders. They complained of illegal termination by way of constructive dismissal.

Labor Arbiter found that complainants are residents of Basilan, have families in Basilan, have never been assigned beyond Mindanao or Visayas, were not provided with fare money. Neither were they assured of compensation similar to what they used to receive in Basilan, nor of continued posting while in Manila. Their transfer would surely entail great inconvenience to complainants and their families. Thus, the labor arbiter held that the transfer order was unreasonable and, therefore, could not be sustained. On appeal, the NLRC reversed the Labor Arbiter's decision, holding that petitioners' refusal to comply with said Order and their "wanton disregard of the order to explain their inability to comply and obey lawful orders from their employer" constituted the "proximate cause for their dismissal.

Ruling: One of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. The reasonableness and lawfulness of a rule, order or instruction depend on the circumstances availing in each case. Reasonableness pertains to the kind or character of directives and commands and to the manner in which they are made. In this case, the order to report to the Manila office fails to meet this standard.

1. First, it was grossly inconvenient for petitioners, who were residents and heads of families residing in Basilan, to commute to Manila. The distance to Manila from Basilan is considerably greater than that from Tarlac. Such transfer would have necessarily entailed separation of the petitioners from their families.
2. Second, petitioners were not provided with funds to defray their transportation and living expenses.
3. Third, the alleged transportation allowance was given only after petitioners had already been terminated from service.
4. Fourth, no reason was given by private respondent company explaining why it had failed to inform petitioners of their specific security assignments prior to their departure from Basilan.

If you are a manager in Cebu City and you were transferred to Lapu-Lapu where you are not a manager at all, your benefits may decrease and one could argue that it is illegal and it could fall as illegal dismissal.

Going back to demotion, it has to follow due process. The employer must show reason to demote the employee (e.g. poor work performance, clients complained, previous misconduct, etc). Aside from suspension, termination, you can also demote the employee by option. If you cannot justify the

demotion, the order to demote them would be invalid.

Invalid transfer order: ULP

Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment, G.R. No. 75656, 28 May 1990

Facts:

Private respondents George Halili and Amado Magno were employed by petitioner Yuco Chemical Industries which is engaged in the manufacture/assembly of ice boxes in Barangay Matatalaib, Tarlac, Tarlac. The petitioner addressed a memorandum to private respondents directing them to report for work within one week from notice at their new place of work at Felix Huertas Street, Sta. Cruz, Manila. The memorandum further stated that private respondents would be paid with a salary of P27.00 and an additional allowance of P2.00 to meet the higher cost of living in Manila. Instead of complying with the memorandum, private respondents filed a complaint with the provincial labor office for illegal dismissal. The Ministry of Labor and Employment ruled that the petitioner company had singled out the 2 plain laborers out of the 50 employees to man the Manila operations. The private respondents were discriminated against because of their union activities and their refusal to disaffiliate from the union.

Issue: Whether or not private respondents Halili and Magno had a valid reason to refuse the Manila reassignment.

Ruling:

The reassignment of Halili and Magno to Manila is legally indefensible on several grounds.

1. Firstly, it was grossly inconvenient to private respondents. They are working students. When they received the transfer memorandum directing their relocation to Manila within seven days from notice, classes had already started. The move from Tarlac to Manila at such time would mean a disruption of their studies.
2. Secondly, there appears to be no genuine business urgency that necessitated their transfer. The fabrication of aluminum handles for ice boxes does not require special dexterity. Many workers could be contracted right in Manila to perform that particular line of work.

Therefore, the transfer was not prompted by legitimate reasons. Petitioner company had indeed discriminated against Magno and Halili when the duo was selected for reassignment to Manila. The transfer was timed at the height of union concerted activities in the firm, deliberately calculated to demoralize the



other union members. Under such questionable circumstances, private respondents had a valid reason to refuse the Manila reassignment.

Invalid transfer order: discrimination

Misamis Oriental II Electric Service Cooperative v. V.M. Cagalawan, G.R. No. 175170, 05 September 2012

Facts:

MORESCO II hired Cagalawan as a Disconnection Lineman on a probationary basis. Then Cagalawan was appointed to the same post this time on a permanent basis. He was later on designated as Acting Head of the disconnection crew in Balingasag sub-office. MORESCO II transferred Cagalawan to Area I sub-office in Gingoog City, Misamis Oriental as a member of the disconnection crew. The transfer was done "in the exigency of the service." Cagalawan assailed his transfer claiming he was effectively demoted from his position as head of the disconnection crew to a mere member thereof. He also averred that his transfer to the Gingoog sub-office is inconvenient and prejudicial to him as it would entail additional travel expenses to and from work. The Labor Arbiter declared that Cagalawan's transfer constituted illegal constructive dismissal.

Issue: Was the respondent constructively dismissed by the petitioner?

Ruling: MORESCO's evidence is not enough to show that the transfer was required by the exigency of the electric cooperative's business interest. The evidence sought to be admitted by MORESCO II is not substantial to prove that there was a genuine business urgency that necessitated the transfer.

The only evidence adduced by MORESCO II to support the legitimacy of the transfer was the letter-request of Engr. Canada. However, this piece of evidence cannot in itself sufficiently establish that the Gingoog sub-office was indeed suffering from losses due to collection deficiency so as to justify the assignment of additional personnel in the area. Engr. Canada's letter is nothing more than a mere request for additional personnel to augment the number of disconnection crew assigned in the area. MORESCO II could have at least presented financial documents or any other concrete documentary evidence showing that the collection quota of the Gingoog sub-office has not been met or could not be reached. It should have also submitted such other documents which would show the lack of sufficient personnel in the area. Unfortunately, the area manager's letter provides no more than bare allegations which deserve not even the slightest credit.

Homeowners Savings and Loan Association, Inc. v. NLRC, G.R. No. 97067, 26 September 1996

Facts: The complainant employee (M . Cabatbat) has been assigned as an accountant in the employer bank's branch at San Carlos (Pangasinan). She received a memorandum from the head office transferring her to Urdaneta (Pangasinan). She would be reimbursed the cost of transportation and would receive a salary increase. She asked that the transfer be deferred because she was sixth-month pregnant. The request was granted. But after the delivery she still refused to comply with the transfer order. She reasoned that the transfer would entail additional expenses and physical exhaustion since San Carlos is only about five or six kilometers away from her residence in Calasiao (Pangasinan) while Urdaneta is thirty kilometers away. The bank explained why her services were needed in Urdaneta. She still did not comply with the transfer order. Eventually the Bank terminated her employment. The transfer, admittedly, would inconvenience the complainant.

Issue: Was her non- compliance justified?

Ruling: The fact that private respondent, together with the other employees who were transferred, were given salary increases should not be construed to mean that they were promoted. Promotion is the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Apparently, the indispensable element for there to be a promotion is that there must be an "advancement from one position to another" or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee. Here, although private respondent was moved from the San Carlos Branch to the Urdaneta Branch, she retained her old position as Branch Accountant. This is only a lateral movement which does not amount to a promotion, but a mere transfer.

The reason for respondent's transfer was "due to the exigency to uplift the operational efficiency" of the Urdaneta Branch, and that her continued failure to report to said branch has "continuously exposed the bank to lack of control in its cash operation" and has also "resulted to a backlog in its recordkeeping and delay in the accomplishment of reportorial requirements," all of which fall under the scope of the responsibilities of the Branch Accountant. An employer's decision to transfer an employee, if made in good faith is a valid exercise of management prerogative although it may result in personal inconvenience or hardship to the employee.

Inconveniences doesn't necessarily invalidate an order



Invalid transfer: transfer amounting to demotion

Blue Dairy Corp. v. NLRC

Facts: Elvira was hired by petitioner corporation as food technologist, a highly technical position requiring the use of her mental faculty, in its laboratory but was later transferred without prior notice to the vegetable processing section where she performed mere mechanical work. The transfer was made after Elvira, as narrated by the company driver, made use without prior permission of the company vehicle during office hours. Aggrieved by the transfer, she then filed a complaint for constructive dismissal against petitioners who, however, claimed loss of trust and confidence on Elvira on account of her dishonesty in using the company car in scouting for her new residence.

Ruling:

Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

In the present case, petitioners failed to justify Recalde's transfer from the position of food technologist in the laboratory to a worker in the vegetable processing section. What triggered Recalde's transfer was the incident where she was found to have allegedly utilized a company vehicle in looking for a new residence during office hours without permission from management.

The focus should be on the comparison between the nature of Recalde's work in the laboratory and in the vegetable processing section. As food technologist in the laboratory, she occupied a highly technical position requiring use of her mental faculty. As a worker in the vegetable processing section, she performed mere mechanical work. It was virtually a transfer from a position of dignity to a servile or menial job. The radical change in Recalde's nature of work unquestionably resulted in, as rightly perceived by her, a demeaning and humiliating work condition. The transfer was a demotion in rank, beyond doubt.

What if the employee refuses an order to promote them? Can you force the employee to be promoted?

A: No. Jurisprudence provides that promotion is sort of like a gift, and the employee has the right to refuse that. Hence, refusing to be promoted only means refusal to accept the gift.

Usually, willful disobedience is interchangeable with insubordination. But for the sake of congruency with the Labor Code, just stick to the term willful disobedience.

Refusal of promotion is not insubordination

Dosch v. NLRC, G.R. No. 51182, 05 July 1983

Facts: Petitioner Dosch, an American citizen, married to a Filipina, was the resident Manager of Northwest Airlines, Inc. in the Philippines for nine years. He received an inter-office communication from Northwest's Vice President for Orient Region, promoting him to the position of Director of International Sales and transferring him to Northwest's General Office in Minneapolis, USA. He acknowledged receipt of the above memo, expressed appreciation for the promotion but at the same time regretted that "for personal reasons and reasons involving my family, I am unable to accept a transfer from the Philippines." The Vice President replied that because of his refusal, his status as an employee of the company ceased and he is considered to have resigned from office. The NLRC en banc ruled that the hiring, firing, transfer, demotion and promotion of employees has been traditionally identified as a management prerogative. This is a function associated with the employer's inherent right to control and manage effectively its enterprise. Dosch petitioned the Supreme Court to review the N L R C decision.

Ruling:

Jenkins letter directing the promotion of the petitioner from his position as Philippine manager to Director of International Sales in U.S.A is not merely a transfer order alone but it is more in the nature of a promotion. The inter-office communication of Vice President Jenkins is captioned "Transfer" but it is basically and essentially a promotion for the nature of an instrument is characterized not by the title given to it but by its body and contents. The communication informed the petitioner that he was to be promoted to the position of Director of International Sales, and his compensation would be upgraded, and the payroll accordingly adjusted. Petitioner was, therefore, advanced to a higher position and rank and his salary was increased and that is a promotion. It has been held that promotion denotes a scalar ascent of an officer or an employee to another position, higher either in rank or salary.

The refusal of promotion is NOT insubordination because there is no law that compels an employee to accept a promotion, as a promotion is in the nature of a gift or a reward, which a person has a right to refuse. When the petitioner refused to accept his promotion to Director of International Sales, he was exercising a right and he cannot be punished for it as *qui jure suo utitur neminem laedit*. He who uses his own legal right injures no one.

Philippine Telegraph & Telephone Corp. v. Court of



Appeals, G.R. No. 152057, 29 September 2003

Doctrine: The increase in the respondents' responsibility can be ascertained from the scalar ascent of their job grades. With or without a corresponding increase in salary, the respective transfers of the private respondents were in fact promotions. The indispensable element for there to be a promotion is that there must be an advancement from one position to another" or an upward vertical movement of the employee's rank or position. Any increase in salary should only be considered incidental but never determinative of whether or not a promotion is bestowed upon an employee.

An employee cannot be promoted, even if merely as a result of a transfer, without his consent. A transfer that results in promotion or demotion, advancement or reduction or a transfer that aims to lure the employee away from his permanent position cannot be done without the employees' consent. There is no law that compels an employee to accept a promotion for the reason that a promotion is in the nature of a gift or reward, which a person has a right to refuse. Hence, the exercise by the private respondents of their right cannot be considered in law as insubordination, or willful disobedience of a lawful order of the employer. As such, there was no valid cause for the private respondents' dismissal.

c. Gross and habitual neglect of duty

As opposed to serious misconduct and willful disobedience, gross and habitual neglect of duty is based on negligence. Hence, there is a lack of intent. Case law provides that this pertains to negligence that is gross and habitual, not gross OR habitual.

uncooperative work attitude as compelling ground for his termination. It contends that the private respondent was only willing to do his specific job and refused to help out as floorman when asked to do so. From the moment of his arrival at the work-site in Saudi Arabia, private respondent's was immediately assigned as floorman and not as crane operator, which was his job specification, on the flimsy excuse that a floorman, not a crane operator, was more needed at the work-site. It was only because the private respondent was bold enough to resist and insist on his proper designation that his foreign supervisors grudgingly relented. In retaliation to such perceived "uncooperative work attitude," private respondent was assigned to work at unholy hours or the so-called "graveyard shift," i.e., from twelve o'clock midnight to twelve o'clock noon. He was not familiarized with nor given helpful instructions in the operation of relatively modern cranes. Instead, after subjecting him to a supposed performance evaluation wherein his performance and work attitude were allegedly found wanting, private respondent was again designated as floorman, albeit with the salary of a crane operator. A few days later he was dismissed and repatriated to the Philippines. The Court cannot accept as a justifiable ground for his termination his alleged uncooperative work attitude.

Citibank v. Gatchalian, G.R. No. 111222, 18 January 1995

Doctrine: Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

The evidence on record succinctly established the gross negligence of respondent Llonillo. All of her acts and omissions were in patent violation of petitioner bank's policy that an employee may take delivery of newly approved and unused credit cards issued in another's name, but in doing so, he/she assumes the responsibility of delivering the credit card to the cardholder concerned or to the latter's duly authorized representative. Respondent Llonillo's negligence is habitual. It was proved that she picked up the newly approved and unsigned Mastercard credit cards on five (5) separate occasions and carelessly delivered the same to Verendia and the latter's messenger. Certainly, these repetitive acts and omissions speak of habituality.

Case law provides that Gross Negligence means a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. There is a disregard of consequences without exerting any effort to avoid them. Hence, there is a very high degree of

Definition

Orient Express Placement Phil. v. NLRC, G.R. No. 113713, 11 June 1997

Facts: Antonio was hired by Orient Express as crane operator subject to a 3-month probationary period. After only one month and five days, he was dismissed. When he filed a complaint for illegal dismissal, Orient Express claimed that he was terminated for poor job performance. Orient Express did not inform Antonio about the standards of work required of him by which his competency would be judged. When he was dismissed, Orient Express did not point out the reasonable standards of work by which he was evaluated and how he failed to live up to such standards.

Issue: W/N poor job performance and uncooperative work attitude justify his dismissal.

Ruling: Petitioner cites private respondent's alleged



negligence, and no slightest care on the part of the employee. But there are cases where the SC held that the habituality requirement is not necessary, such as in the case of School of Holy Spirit vs Taguiam.

Associated Bank v. NLRC, G.R. No. 86023, 19 June 1989

Doctrine: "S" was guilty of gross negligence which warrants his dismissal. The huge disparity in the values arrived at is itself proof indicative of his gross negligence. Moreover, he admittedly went to appraise the property on a Sunday and merely asked the people residing there for the land valuation without confirming it with the City Assessor's office. If employees are allowed to do their work in the same way "S" discharged his assignment, no bank would survive. He did not exercise ordinary diligence and care.

petitioners lost their trust and confidence in the respondent. Loss of trust and confidence to be a valid ground for dismissal must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. As a teacher who stands in loco parentis to her pupils, respondent should have made sure that the children were protected from all harm while in her company. The Respondent should have known that leaving the pupils in the swimming pool area all by themselves may result in an accident. A simple reminder "not to go to the deepest part of the pool" was insufficient to cast away all the serious dangers that the situation presented to the children, especially when the respondent knew that Chiara Mae cannot swim. Dismally, the respondent created an unsafe situation which exposed the lives of all the pupils concerned to real danger. This is a clear violation not only of the trust and confidence reposed on her by the parents of the pupils but of the school itself.

Dispensation of habituality requirement

School of Holy Spirit of Quezon City v. Taguiam, G.R. No. 165565, 14 July 2008

Facts: Respondent Corazon P. Taguiam was the Class Adviser of the petitioner, School of the Holy Spirit of Quezon City. The class president wrote a letter to the grade school principal requesting permission to hold a year-end celebration at the school grounds. The principal authorized the activity and allowed the pupils to use the swimming pool. Before the activity started, the respondent warned the pupils who did not know how to swim to avoid the deeper area. Unfortunately, while the respondent was away, Chiara Mae drowned. When the respondent returned, the maintenance man was already administering cardiopulmonary resuscitation on Chiara Mae. She was still alive when the respondent rushed her to the General Malvar Hospital where she was pronounced dead on arrival. Petitioners dismissed the respondent on the ground of gross negligence resulting in loss of trust and confidence.

Issue: whether respondent's dismissal on the ground of gross negligence resulting in loss of trust and confidence was valid.

Ruling: Respondent's negligence, although gross, was not habitual. However, because of the considerable resultant damage, there is a cause sufficient to dismiss the respondent. This is not the first time that we have departed from the requirements laid down by the law that neglect of duties must be both gross and habitual. The sufficiency of the evidence as well as the resultant damage to the employer should be considered in the dismissal of the employee. In this case, the damage went as far as claiming the life of a child.

As a result of gross negligence in the present case,

In this case, the SC held that the employee's negligence, although gross, was not habitual in view of the considerable resulted damage. It is clear in this case that the teacher was negligent because she left the children alone, and it only happened once. But the SC held that if you consider the resulted damage of neglect, the grossness is sufficient to dismiss the employee. This is not the first time the SC did not consider the habituality element. Here, the SC took into account the overall damage resulting from the neglect of the employee to the point that it would have been even worse if the teacher continued with her employment.

Simple negligence is not enough, like failure to submit documents or mistake in taking the clients information. It has to be gross.

Fuentes v. NLRC, G.R. No. 75955, 28 October 1988

Doctrine: Requisites for Valid Retrenchment:

- a. it is to prevent losses;
- b. written notices were served on the workers and the Department of Labor and Employment (DOLE) at least one (1) month before the effective date of retrenchment; and
- c. separation pay is paid to the affected workers.

I. Abandonment

Flores v. Nuestro



Doctrine: To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning back.

Shoemart, Inc. v. NLRC

Doctrine: Soriano was earlier dismissed, also for abandonment, but was allowed to work while the first case was pending before the labor arbiter. There was likewise misrepresentation if not deception because on February 21, 1982 the respondent led an application for maternity leave stating that February 22, 1982 or the following day was her expected date of delivery. This expected date was supported by a medical certificate giving May 15, 1981 as her last menstrual period. Almost two months from the expected date or on April 15, 1982, Soriano sent word that the baby had not yet been delivered. The Labor Arbiter not only found the delay "unusual" but the alleged miscarriage of that same child on August 4, 1982 was declared "highly unbelievable and improbable." (p. 30, Rollo)

Otherwise stated, the petitioner was justified in assuming that Soriano was no longer interested in resuming her employment. "Abandonment" of work is manifest. It can not be said that Soriano was not aware of the consequences of her acts under the circumstances of this case. The petitioner cannot be faulted for not continuing Soriano in her employment.

Elements of abandonment, effect of immediate filing of labor case

Labor v. NLRC

Doctrine: To constitute abandonment, two elements must concur:

- (1) the failure to report for work or absence without valid or justifiable reason, and
- (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient.

It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. The filing by an employee of a complaint for illegal dismissal is proof enough of his desire to return to work.

Elements of Abandonment:

1. Failure to report to work or absence without valid or justifiable reason
2. Clear intention to sever the EE-ER relationship

What could be proof that the employee does not want to go back to his job anymore?

A: If he found another job, or if he submitted a resignation letter. The mere fact that the employee is absent will not suffice. There must be proof that he wants to sever the employee-employer relationship.

What about the absences in itself? Can it be considered gross and habitual neglect of duty?

A: Yes. If there are frequent enough. But abandonment is an interesting form of neglect of duty because it has the additional requirement of the intention to sever employer relationships.

Why do we have abandonment when we could also charge them with absenteeism or absence without leave?

A: This is because abandonment can go immediately to termination as a penalty. With absences and tardiness, it has to be built up over time.

What if the employee files a labor case for illegal dismissal after the employee terminated his employment due to abandonment? Can you say that there is abandonment of duty?

A: No, because the fact that he filed a labor case indicates that he wants to continue with his employment, even if the absences were unjustified.

What happens if you cannot prove abandonment?

A: You have to charge the employee with absenteeism or tardiness, and you have to deal with the requirement of building up such absences or tardiness before you terminate the employee.

Effect of filing of labor case as leverage against employer

Arc-Men Food Industries Corp. v. NLRC

Doctrine: While the burden of refuting a complaint for illegal dismissal is upon the employer, fair play as well requires that, where the employer proffers substantial evidence of the fact that it *had not*, in the first place, *terminated the employee but simply laid him off due to valid reasons*, neither the Labor Arbiter nor the NLRC may simply ignore such evidence on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not indeed been dismissed.

I. Absenteeism and Tardiness

Sajonas v. NLRC

Doctrine: The acts of insubordination, coupled with habitual tardiness, are sufficient causes for petitioners' dismissal, especially considering the fact that the employees involved in this case were not



mere rank and file employees but supervisors who owed more than the usual fealty to the organization and were, therefore, expected to adhere to its rules in an exemplary manner. Petitioners did not even reflect upon and consider the undesirable example that they were setting to those who were under their supervision.

On the charge of insubordination, the failure of petitioners to follow the instructions of their superior is inexcusable. They cannot exculpate themselves therefrom on the puerile and obviously contrived pretext that they were confused as to who their superior was. The appointment of one Romeo Real, Jr., as overall coordinator of Leo products operations and, as such, the immediate superior of petitioners, was contained in writing and duly made known to the personnel of the department where petitioners were assigned. At the very least, petitioners could have readily inquired and ascertained the fact of which they now affect lack of knowledge.

Coffee Bean and Tea Leaf v. Arenas

Doctrine: For wilful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been wilful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. Tested against these standards, it is clear that Arenas' alleged infractions do not amount to such a wrongful and perverse attitude. Though Arenas may have admitted these wrongdoings, these do not amount to a wanton disregard of CBTL's company policies. As Arenas mentioned in his written explanation, he was on a scheduled break when he was caught eating at CBTL's al fresco dining area. During that time, the other service crews were the ones in charge of manning the counter. Notably, CBTL's employee handbook imposes only the penalty of a written warning for the offense of eating non-CBTL products inside the store's premises. CBTL also imputes gross and habitual neglect of duty to Arenas for coming in late in three separate instances. Gross negligence implies a want or absence of, or failure to exercise even a slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. There is habitual neglect if based on the circumstances; there is a repeated failure to perform one's duties for a period of time. In light of the foregoing criteria, we rule that Arenas' three counts of tardiness cannot be considered as gross and habitual neglect of duty. The infrequency of his tardiness already removes the character of habitualness. These late attendances were also broadly spaced out, negating the complete absence of care on Arenas' part in the performance of his duties. Even CBTL admitted in its notice to explain that this violation does not merit yet a disciplinary action and is only an

aggravating circumstance to Arenas' other violations.

Philippine Airlines, Inc. v. NLRC

Doctrine: The use by Sangel of a weighing scale which he knew to be defective (possibly tampered) at the time of the shipment in order to benefit the shipper and defraud the airline constitutes serious misconduct and dishonesty justifying his dismissal from the service.

San Miguel Corporation v. NLRC

Doctrine: The complainants were former security guards of the petitioner which dismissed them for falsification of their lame cards. They made false entries in their time cards showing that they reported for work on February 19 and 20, 1983 when the truth was that they went on a hunting trip to San Juan, Batangas, with their chief Major Martin Asaytuno, then head of the Administrative Services Department of the Security Directorate of the petitioner.

The falsification and fraud which the private respondents committed against their employer were inexcusable. Major Asaytuno's initials on the false entries in their time cards did not purge the documents of their falsity. Their acts constituted dishonesty and serious misconduct, lawful grounds for their dismissal under Art. 282

Firestone Tire and Rubber Company of the Philippines v Lariosa

Doctrine: There is no gainsaying that theft committed by an employee constitutes a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property are a different matter.

Thus, under Article 283 of the Labor Code, an employer may terminate an employment for "serious misconduct" or for "fraud or willful breach by the employee of the trust reposed in him by his employer or representative."

If there is sufficient evidence that an employee has been guilty of a breach of trust or that his employer has ample reasons to distrust him, the labor tribunal cannot justly deny to the employer the authority to dismiss such an employee.⁹

As a tire builder, Lariosa was entrusted with certain materials for use in his job. On the day in question, he was given two bundles of wool flannel swabs [ten pieces per bundle] for cleaning disks. He used four swabs from one pack and kept the rest [sixteen pieces] in his "blue travelling bag." Why he placed the



swabs in his personal bag, which is not the usual receptacle for company property, has not been satisfactorily explained.

If Lariosa, by his own wrong-doing, could no longer be trusted, it would be an act of oppression to compel the company to retain him, fully aware that such an employee could, in the long run, endanger its very viability.

The employer's obligation to give his workers just compensation and treatment carries with it the corollary right to expect from the workers adequate work, diligence and good conduct.

Bravo v. Urios College

Doctrine: A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions:

1. The employee whose services are to be terminated must occupy a position of trust and confidence.
 - two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees.
 - Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential and delicate matters."
 - Fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians," selling tellers, 104 and sales managers.
2. The presence of some basis for the loss of trust and confidence
 - This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers.

d. Fraud or willful breach of trust and confidence

Fraud is pretty straightforward in itself: dishonesty, lying to clients, employers, falsification of time cards, manipulating work records to make it seem like he worked when he did not, making it seem like he went to work when he did not.

Elements of Willful Breach of Trust and Confidence

1. The employee must occupy a position of trust and confidence

2. There has to be a reasonable basis for the loss of trust and confidence

What are positions of trust and confidence?

A: There are two classes:

1. Managerial employees
2. Fiduciary rank-and-file employees
 - a. Cashiers, auditors, property custodians, those persons who in the regular course of their duties are vested with significant amounts of money or property of the employer

For example, what if the company janitor was entrusted with 200 pesos and then he lost it, can you say that he/she is occupying a position of trust and confidence?

I would argue no. Because for a fiduciary rank-and-file employee to be considered as such, they must hold in trust and confidence the property and equipment of the employer in their regular course of their duties. Meaning, regularly, frequently, and consistently, they handle the money and properties of the employer. So as for the janitors, it is not all the time that they are entrusted with money or property of the employer. So definitely they are not considered as fiduciary rank-and-file employees.

What about a delivery driver? Can you say that they are fiduciary rank-and-file employees?

It would depend.

What about a delivery driver who carries cargo for the employer?

We can say that they are fiduciary rank-and-file. Why? Because they are entrusted with the property of the employer. So definitely they can fall under this category. Obviously this is on a case-to-case basis but you have to check on the nature of the employee's job. Is he regularly entrusted with money or property? Or is this only a one-time occurrence? Because if it's only a one-time occurrence, he cannot be considered as a fiduciary rank-and-file employee.

Let's go to the second requirement. **First requirement is occupying a position of trust and confidence.** For occupying a position of trust and confidence, we have learned that it's either they are managerial or fiduciary rank-and-file employees. **Second ground, there has to be a reasonable basis for the loss of trust and confidence.** For the employer, at first glance it seems very subjective - loss of trust and confidence. What if the employee was merely told "we don't trust you anymore"? Trust and confidence are not things that we can measure objectively. So that is why we have this second requirement. There has to be a reasonable basis for the loss of trust and confidence. Meaning, there has to be an event or action on the part of the employee that the employer used as a basis for the loss of trust and confidence. Keep in mind that the employer cannot just simply say "I have lost my trust



and confidence in you." There has to be a reasonable basis for the loss of trust and confidence. Maybe the employee committed theft; or lost a significant amount of money; or maybe they can't account for the thing that was entrusted to them. At least there has to be a reasonable ground. What if the employee has a poor performance? Maybe the delivery driver always gives things that are damaged; or maybe he is reckless in driving; or maybe the cashier always has to correct their erroneous entries. Those are definitely basis for loss of trust and confidence.

However, keep in mind the quantum of evidence needed for managerial employees is actually more lax compared to the quantum of evidence for fiduciary rank-and-file employees. Why? With managerial employees, you hold them to a higher regard as compared to rank-and-file employees. The Supreme Court actually said that, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question. The mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, mere existence of a basis for believing that such employee has breached the trust and confidence of the employer would suffice for the dismissal. In the case of managerial employees, proof beyond reasonable doubt is not required it being sufficient that there is some basis for such loss of trust and confidence such as when the employer has reasonable grounds to believe that the employee concerned is responsible for the purported conduct and the nature of his participation therein renders them unworthy of the trust and confidence provided by his position. Just note that for both kinds of employees, you definitely need to have evidence. But the degree of evidence needed for managerial employees is less compared to rank-and-file employees. For example, you can say that for rank-and-file employees there has to be proof that they were the ones who lost the money. The fact that the money was lost is not enough. You have to prove that they lost it. But for the managerial employee, let's say they were not the ones who lost the money but their subordinate. Now because the requirement for loss of trust and confidence of a managerial employee is less stringent, you could argue that that would be enough for the loss of trust and confidence and they could be dismissed. Whereas the fiduciary rank-and-file, you would have to prove that they were the ones who handled the money. With the manager, it's no longer necessary because they have a higher degree of accountability. Just keep in mind that the requirement is less stringent for managerial employees.

Types of confidential employees, managerial employees

Wesleyan University Philippines v. Reyes

Doctrine: There are two classes of positions of trust:

managerial employees and fiduciary rank-and-file employees.

Managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, etc., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

PJ Lhuillier v. Camacho

Doctrine: The law contemplates two (2) classes of positions of trust. The first class consists of managerial employees. They are as those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc., who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

Fiduciary rank-and-file employees

Santos v. Shing Hung Plastics Co., Inc.

Doctrine: For the purpose of applying the provisions of the Labor Code on *who may join unions of the rank-and-file employees*, jurisprudence defines "confidential employees" as those who "assist or act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations."

However, for the purpose of applying the Labor Code provision on *loss of confidence as a just cause for the dismissal of an employee*, jurisprudence teaches that: x x x [L]oss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and [to] the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly



handle significant amounts of money or property.

Alvarez v. Golden Tri Bloc, Inc.

Doctrine: Loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

The second requirement for dismissal due to loss of trust and confidence is further qualified by jurisprudence. The complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. **The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.**

There must be actual basis for loss of trust and confidence

Mabeza v. NLRC

Doctrine: More importantly, we have repeatedly held that loss of confidence should not be simulated in order to justify what would otherwise be, under the provisions of law, an illegal dismissal. "It should not be used as a subterfuge for causes which are illegal, improper and unjustified. It must be genuine, not a mere afterthought to justify an earlier action taken in bad faith."

Basis for loss of trust and confidence

Bravo v. Urios College

Doctrine: Due to the nature of his occupation, petitioner's employment may be terminated for willful breach of trust under Article 297(c), not Article 297(a), of the Labor Code. A dismissal based on willful breach of trust or loss of trust and confidence under Article 297 of the Labor Code entails the concurrence of two (2) conditions.

First, the employee whose services are to be terminated must occupy a position of trust and confidence. There are two (2) types of positions in which trust and confidence are reposed by the employer, namely, managerial employees and fiduciary rank-and-file employees. Managerial employees are considered to occupy positions of trust and confidence because they are "entrusted with confidential and delicate matters." On the other hand, fiduciary rank-and-file employees refer to those employees, who, "in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property." Examples of fiduciary rank-and-file employees are "cashiers, auditors, property custodians," selling tellers, and sales managers. It must be emphasized, however, that the nature and scope of work and not the job title or designation determine whether an employee holds a position of trust and confidence.

The second condition that must be satisfied is the presence

of some basis for the loss of trust and confidence. This means that "the employer must establish the existence of an act justifying the loss of trust and confidence." Otherwise, employees will be left at the mercy of their employers.

San Miguel Corporation v. Gomez

Doctrine: Article 297 [282](c) of the Labor Code provides that an employer may terminate the services of its employee for "[f]raud or willful breach x x x of the trust reposed in him by his employer or duly authorized representative." As a rule, employers have the discretion to manage its own affairs, which includes the imposition of disciplinary measures on its employees. Thus, "employers are generally given wide latitude in terminating the services of employees who perform functions which by their nature require the employer's full trust and confidence."

Nonetheless, employers may not arbitrarily dismiss their employees by simply invoking Article 297 [282](c). The loss of confidence must be genuine and cannot be used as a "subterfuge for causes which are improper, illegal or unjustified." In *Matis v. Manila Electric Co.*, We have pointed out that "[l]oss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature.

PNOC Development and Management Corp. v. Gomez

Doctrine: Jurisprudence is replete with guidelines on citing loss of trust and confidence as ground for termination. *Bravo*, 826 SCRA 340 (2017), to reiterate, requires the employer to not only demonstrate that the employee concerned is holding a position of trust, but also prove the existence of an act justifying the supposed loss of trust and confidence.

PJ Lhuillier, Inc. v. Camacho, 818 SCRA 561 (2017), declares that there should be proof of involvement in the events in question, and that mere uncorroborated assertion and accusation by the employer will not suffice. *Wesleyan University-Philippines v. Reyes*, 731 SCRA 516 (2014), citing *General Bank & Trust Company v. Court of Appeals*, 135 SCRA 569 (1985), warns that it may not be used as a subterfuge for causes which are improper, illegal or unjustified, nor arbitrarily asserted in the face of overwhelming evidence to the contrary.

More importantly, its assertion as a ground for termination must be genuine, and not a mere afterthought to justify an earlier action taken in bad faith. Indeed, this ground must be employed with much caution, lest it be open to abuse in curtailment of rights to security of tenure.

Poor performance as basis for loss of confidence

Reyes-Rayel v. Philippine Luen Thai Holdings

Doctrine: Petitioner, in the present case, was L&T's CHR Director for Manufacturing. As such, she was directly responsible for managing her own departmental staff. It is therefore without question that the CHR Director for



Manufacturing is a managerial position saddled with great responsibility. Because of this, petitioner must enjoy the full trust and confidence of her superiors.

Not only that, she ought to know that she is "bound by more exacting work ethics" and should live up to this high standard of responsibility. However, petitioner delivered dismal performance and displayed poor work attitude which constitute sufficient reasons for an employer to terminate an employee on the ground of loss of trust and confidence.

The burden of proving that the termination was for a valid cause lies on the employer. Here, respondents were able to overcome this burden as the evidence presented clearly support the validity of petitioner's dismissal.

Poor performance as a ground for dismissal, performance standards must be shown

Universal Staffing Services v. NLRC

Doctrine: Morales was not accorded due process. Under Article 277(b) of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself. There was no showing that Al Sandos warned Morales of her alleged poor performance. Likewise, Morales was not served the first notice apprising her of the particular acts or omissions on which her dismissal was based together with the opportunity to explain her side. The only notice given to Morales was the letter dated December 14, 2002 informing her that she was already terminated.

Failure to reach sales quota not breach of trust

Norkis Distributors, Inc. v. Descallar

Facts: Descallar was assigned by Norkis at Iligan City. Norkis is a distributor of Yamaha motorcycles.

Descallar was promoted as Branch Manager. He acted as branch administrator and had supervision and control of all the employees. He was also responsible for sales and collection.

Descallar was required to explain in writing for being absent AWOL or rendering under-time service on certain dates. He admitted that he used company time for his personal affairs but only for a few hours and not the whole day. Findings of the investigations also revealed that he disbursed sales commissions to unauthorized persons.

Issue: Whether or not the failure to reach the monthly sales quota amounts to willful breach of trust?

Ruling: NO. To our mind, the failure to reach the monthly sales quota cannot be considered an intentional and unjustified act of respondent amounting to a willful breach of trust on his part that would call for his termination based on loss of confidence. This is simply not the willful breach of trust and confidence contemplated in Article 282(c) of the Labor Code. Indeed, the low sales performance could be attributed to several factors which are beyond respondent's control. To be a valid ground for an employee's dismissal,

loss of trust and confidence must be based on a willful breach. To repeat, a breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse. Petitioners having failed to establish by substantial evidence any valid ground for terminating respondent's services, we uphold the finding of the Labor Arbiter and the CA that respondent was illegally dismissed.

The failure on the part of the employee to reach the sales quota is not a ground for loss of trust and confidence. Usually the salespersons and insurance agents have sales quota that every month they have to sell x amount of the product. The employee was dismissed on the ground of loss of trust and confidence. The Supreme Court held that this won't amount to loss of trust and confidence because it's something beyond the control of the employee. So it cannot be loss of trust and confidence.

Pecuniary gain not an element

Santos v. San Miguel Corp.

Doctrine: Indeed, we find substantial ground for respondent's loss of confidence in petitioner. She does not deny encashing her personal checks at respondent's sales offices and diverting for her own private use the latter's resources. The audit investigation accounted for all the checks she encashed, some of which were dishonored for insufficiency of funds. The Investigating Panel concluded that petitioner not only encashed her personal checks at respondent's sales offices, but also used company funds to temporarily satisfy her insufficient accounts. This Court has held that misappropriation of company funds, although the shortages had been fully restituted, is a valid ground to terminate the services of an employee of the company for loss of trust and confidence.

e. Commission of crime

Another ground for dismissal is commission of a crime. Under the Labor Code, the commission of the crime has to be against the person of the employer or their immediate family member or the representative of the employer. And it's interesting because it's only a limited enumeration. It says person of the employer, so the crimes against property won't fall under this category. For example, physically attacking the employer, an immediate member of their family, or their representative. However, one could argue that representative could mean manager or supervisor. So attacking your subordinate would fall under this category. Keep in mind that for this ground to apply, criminal conviction or even criminal prosecution is not a necessary element. The employee cannot argue that he cannot be dismissed because charges were not filed or he was not convicted. It does not matter. The



use of the word "commission of a crime" already speaks volumes. It doesn't say prosecution of a crime or conviction of a crime. The mere fact that they committed the crime is already enough to invoke this ground.

What happens when there is a crime against property? Or what if it is a crime against the person of a co-employee?

Then you would go to the next ground which is analogous causes.

Criminal prosecution not necessary

Starlite Plastic Industrial Corp. v. NLRC

Facts: Edgar Gomez was employed as a factory worker of Starlite. On 22 June 1984, Starlite dismissed him on the ground that he was caught attempting to steal one ballast costing P80.00.

Starlite reported the matter to the police on 19 July 1984, after grievance meetings failed to resolve the controversy. A criminal complaint was filed against Gomez, but the investigating fiscal dismissed the same saying that Starlite failed to establish a *prima facie* case against Gomez. On 13 August 1983, Gomez filed a complaint for illegal dismissal against Starlite.

The Labor Arbiter dismissed the complaint for lack of merit. The NLRC reversed the ruling of the Labor Arbiter.

Issue: Whether or not the decision of the NLRC was rendered in grave abuse of discretion?

Ruling: NO. The doctrine goes on further to include the basic rule that the conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer and that the fact that a criminal complaint against the employee has been dropped by the city fiscal is not binding and conclusive upon a labor tribunal.

The Court, however, has time and again stressed that the right of an employer to dismiss employees on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause; that although the dropping of a criminal prosecution for an employee's alleged misconduct does not bar his dismissal and proof beyond reasonable doubt is not necessary to justify the same, still the basis thereof must be clearly and convincingly established.

Piedad v. Lanao del Norte Electric Cooperative

Doctrine: Perhaps, viewed by itself as an isolated incident in the petitioner's service, a shortage in the amount of P299.99, appropriated then immediately returned by the erring employee, does not warrant so severe a penalty as dismissal. However, the shortage is not an isolated circumstance in the petitioner's career with the cooperative. Unrebutted evidence on record shows that the petitioner had been remiss in his duties as collector. He had been warned and reprimanded for not visiting all points in his route, inefficiency, insufficient collections, and cash shortage in

the past.

f. Analogous causes

This means something similar to the other grounds but they don't exactly fall under the other grounds. So if it's a commission of a crime against property of the employer, it would fall under here. Or if it's a commission of a crime against a person like a co-employee, it would fall under here because it's analogous.

Breach of contract would also fall under this. For example, some contracts having anti-competition stipulations. You can have a second job but you cannot have a second job at your employer's competitor. For example, you work for a drug store (Mercury Drug) and it's in the contract that you cannot get a second job at a rival pharmaceutical company (e.g., Rose Pharmacy). The employer can dismiss you for breach of contract as an analogous cause. It's similar to willful disobedience of a lawful order but not exactly a lawful order but a contractual stipulation. So it's similar but not exactly. But again, the contractual stipulation must be legal.

What if a contract stipulation prohibits the disclosure of trade secrets to rival companies?

For example, the 11 herbs and spices of KFC. You are their worker and you are prohibited from disclosing them to another company. And then the employee disclosed them to McDonald's. So the employee can be charged with breach of contractual stipulation as an analogous cause for dismissal. It's not disobedience of a lawful order because technically it's a stipulation in a contract. It's still a ground for termination.

What if the contract provides that you cannot get married? Do you think it's a valid contractual stipulation? Or what about you cannot get pregnant?

Not valid. Why? Because it's discriminatory. You are also fighting against the institution of marriage. Again, like the lawful orders, contractual stipulations also have to be lawful.

What if the contract stipulates that you can't get married to a co-employee?

Case-to-case basis. Depending on what the employer is trying to justify. One could argue that it's valid because you're trying to prevent distractions in the workplace.

What about you can't get married to someone from a rival company?

So definitely it's valid contractual stipulation because you're trying to maintain the integrity of your workforce. To make sure there are no conflicts of



interest. If it's a valid contractual stipulation and you violate it, you can be dismissed for breach of contract as an analogous cause.

Theft from co-employee

John Hancock Life Insurance Corp. v. Davis

Facts: Respondent Joanna Cantre Davis was agency administration officer of petitioner John Hancock Life Insurance Corporation.

Patricia Yuseco, petitioner's corporate affairs manager, discovered that her wallet was missing. She immediately reported the loss of her credit cards to AIG and BPI Express. To her surprise, she was informed that "Patricia Yuseco" had just made substantial purchases using her credit cards in various stores in the City of Manila. She was also told that a proposed transaction in Abenson's-Robinsons Place was disapproved because "she" gave the wrong information upon verification.

Because loss of personal property among its employees had become rampant in its office, petitioner sought the assistance of the NBI. The NBI, in the course of its investigation, obtained a security video from Abenson's showing the person who used Yuseco's credit cards. Yuseco and other witnesses positively identified the person in the video as respondent.

Petitioner placed respondent under preventive suspension and instructed her to cooperate with its ongoing investigation. Instead of doing so, however, respondent filed a complaint for illegal dismissal alleging that the petitioner terminated her employment without cause.

Issue: Whether or not petitioner John Hancock Life Insurance Corporation substantially proved the presence of valid cause for respondent's termination?

Doctrine: YES. In this case, petitioner dismissed respondent based on the NBI's finding that the latter stole and used Yuseco's credit cards. But since the theft was not committed against petitioner itself but against one of its employees, respondent's misconduct was not work-related and therefore, she could not be dismissed for serious misconduct. Nonetheless, Article 282(e) of the Labor Code talks of other analogous causes or those which are susceptible of comparison to another in general or in specific detail. For an employee to be validly dismissed for a cause analogous to those enumerated in Article 282, the cause must involve a voluntary and/or willful act or omission of the employee.

A cause analogous to serious misconduct is a voluntary and/or willful act or omission attesting to an employee's moral depravity. Theft committed by an employee against a person other than his employer, if proven by substantial evidence, is a cause analogous to serious misconduct.

Facts: Dr. Ma. Mercedes L. Barba was chosen by respondent to be the recipient of a scholarship grant to pursue a three-year residency training in Rehabilitation Medicine at the Veterans Memorial Medical Center (VMMC). The Scholarship Contract 6 provides: "5. That the SCHOLAR after the duration of her study and training shall serve the SCHOOL in whatever position the SCHOOL desires related to the SCHOLAR's studies for a period of not less than ten (10) years." After her residency training, she was appointed as the Dean of the College of Physical Therapy of respondent Liceo de Cagayan University, Inc. Due to the low number of enrollees, she was informed by the school's president that her services as dean will end at the close of the school year. The College of Physical Therapy ceased operations. Later, she was instructed to go back to work, report to the Acting Dean of the College of Nursing, to receive her teaching load and to be assigned as full-time faculty member. She did not follow the instruction as she says that she had never committed to teach in the College of Nursing and that her employment is not dependent on any teaching load. She requested for the processing of her separation benefits but the school did not grant such request. Instead, the school insisted for her to report already, otherwise, she will be dismissed from employment on the ground of abandonment. Dr. Barba filed a complaint before the Labor Arbiter for illegal dismissal, alleging that her transfer is a demotion amounting constructive dismissal.

Issue: Whether or not Dr. Barba was validly dismissed for failing to serve the remaining two (2) years of the Scholarship Contract.

Ruling: Yes.

Petitioner's subsequent transfer to another department or college is not tantamount to demotion as it was a valid transfer. There is therefore no constructive dismissal to speak of. That petitioner ceased to enjoy the compensation, privileges and benefits as College Dean was but a logical consequence of the valid revocation or termination of such fixed-term position. Indeed, it would be absurd and unjust for respondent to maintain a deanship position in a college or department that has ceased to exist.

Under the circumstances, giving petitioner a teaching load in another College/Department that is related to Physical Therapy – thus enabling her to serve and complete her remaining two (2) years under the Scholarship Contract – is a valid exercise of management prerogative on the part of respondent.

When Dr. Barba refuses to go back to work, such refusal is already a breach of her contractual obligation with the Liceo. Hence, there is no constructive dismissal in this case.

2. Consider: valid exercise of Management Prerogative

3. AUTHORIZED CAUSES

Are there other grounds for terminating employment?
What are they?

Breach of Contractual Stipulation

Barba v. Liceo de Cagayan University



Yes. The other grounds are authorized causes:

- a) installation of labor-saving devices;
- b) redundancy;
- c) retrenchment to prevent losses;
- d) closure and cessation of business; and
- e) disease / illness.

[see Art. 298 & 299]

Art. 298. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x

Art. 299. Disease as ground for termination. An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees x x x]

Contract stipulations must be legal

Philippine National Bank v. Cabansag

Facts: Florence O. Cabansag was given a temporary appointment by the Singapore PNB Branch as Credit Officer and that upon her successful completion of her probation to be determined solely, by the Bank, she may be extended at the discretion of the Bank, a permanent appointment. However, after the probation period, she was subsequently ordered to resign since PNB Singapore Branch will be sold or transformed into a remittance office and that, in either way, Cabansag had to resign from her employment. Her resignation was imperative as a 'cost-cutting measure' of the Bank.

Issue: Whether or not Cabansag was illegally dismissed.

Ruling: Yes, Cabansag was illegally dismissed. The Court finds that there was no valid cause for dismissal in this case.

Contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, petitioner overlooks the qualification that those terms and conditions agreed upon must not be contrary to law, morals, customs, public policy or public order. The employment Contract between petitioner and respondent is governed by Philippine labor laws. Hence, the stipulations, clauses, and terms and conditions of the Contract must not contravene our labor law provisions.

Moreover, a contract of employment is imbued with public interest. The Court has time and time again reminded

parties that they "are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other." Also, while a contract is the law between the parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.

Basic in our jurisprudence is the principle that when there is no showing of any clear, valid, and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal.

Backwages Incompatible with Separation Pay for Authorized Causes

Philippine Airlines, Inc. v. NLRC

Doctrine: Article 279 of the Labor Code applies to employees who are unjustly dismissed from work. In contrast, Article 283 governs termination for causes such as installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of establishment or undertaking. The two provisions accord different reliefs. Under Article 279, an employee who is unjustly dismissed from work is "entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement." On the other hand, an employee whose services is terminated due to any causes under Article 283 is "entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher." Undoubtedly, the Labor Arbiter should have applied Article 283 inasmuch as the termination of private respondents' services was caused by redundancy. Thus, private respondents are entitled to separation pay only. The award of backwages to them has no basis in law.

a. Installation of labor-saving devices (Automation)

How is installation of labor-saving devices being considered as an authorized cause for dismissal?

Installation of labor-saving devices. This is alternatively known as "Automation."

Because of technology, there are jobs that are replaced with machines. One example is toothpaste. Toothpaste caps are screwed manually to the toothpaste tubes. But now, there are machines that drill the caps onto the tubes. The employees are essentially replaced with machines. It would be impractical for the employer to continue paying employees that do the same jobs as the machines, and also pay maintenance for the machines. So essentially, the employer will keep the machine and let go of the employees since the latter's employment has no purpose anymore.



b. Redundancy

What does redundancy in employment mean?

Redundancy means duplication of the work of the employee. Duplication of work means there are two persons performing the same job, but the services of one of them is no longer needed. Usually this happens when the company decides to downsize. There are two employees doing the same job, but since there is little work that needs to be done, the services of one of them is no longer needed and is now considered to be redundant, and there is no more need for two employees to do the same job.

Is it necessary that the employee contributes to the financial losses of the company?

No. Keep in mind that it is not necessary that the employee contributes to the financial losses of the company.

Our example is downsizing of a company. An employer has a management prerogative to downsize a company, depending on the needs of the business. Concrete example: A hospital has 20 beds in a ward section. They decided to downsize, leaving 10 beds in such a ward. There are two nurses in that ward. There are two nurses in such a ward. As a standard, one nurse caters 10 patients/beds in such a ward. It seems that one of the nurses is already redundant since the downsize would now provide two nurses for 10 beds. There is duplicity in the same position/work. They can already let go of the services of the other nurse.

What happens if shortly after the employee is dismissed due to redundancy, the employer hires another person to do essentially the same job? Is the dismissal of the former employee valid?

No. When you let an employee go because of redundancy, it implies that you don't need another employee. The nature of redundancy is to prevent duplication of work. "We don't need you because we have enough people to handle the same work or task with only a few things to be done. We have five employees, but we only need two persons for this job, we have to let the three of you go."

The nature of redundancy implies that because there is duplicity of the work, you don't need new employees for that position. If you don't need the other three employees, why would you need more employees? If there is a situation like that, it implies that the employer is using redundancy as a means of getting rid of a particular employee. It is a dismissal in the guise of redundancy. The employer is using redundancy as an excuse to get rid of this particular employee. Maybe they don't like the employee or such

employee is too outspoken, too rebellious. But in any case, they let go of the employee and hired a new one. It really wasn't redundant. The issue is not redundancy, it is just that they don't want that employee anymore, and they use redundancy as a convenient excuse to get rid of the employee they don't like.

What if the company lets employees go because of redundancy and decides to hire independent contractors instead? An airline sees that the Baggage handlers and ground personnel are already redundant, so it has to let go of them. But the airline, as replacement, availed the services of the employees of an agency to do the work. Is there a valid dismissal because of redundancy? [see International Harvester Macleod, inc. v. IAC case]

Yes. The SC held that it is a management prerogative to decide which aspects of the work that you will contract out and which you will keep with the employees. You can validly dismiss them for redundancy and substitute them with agency workers since it is a management prerogative. Skim through the case, the SC held that it is a legitimate management prerogative if you need to engage contractors instead of employees because of the advantages it gives. For one thing, you don't have to pay benefits, you don't have to deduct taxes, etc. The SC held that the dismissal due to redundancy was made in good faith since there was no showing that they were invoking redundancy just to get rid of the employees.

Nature of redundancy, duplication of work or contribution of employee to company's financial problems not necessary

Wiltshire File Co., Inc. v. NLRC

Facts: Vicente T. Ong was the Sales Manager of petitioner Wiltshire File Co., Inc. Upon his return from a business and pleasure trip abroad, he was informed by the President of Wiltshire that his services were being terminated. Ong maintains that he tried to get an explanation from management of his dismissal but to no avail. After several attempts to speak with the president, the company's security guard handed him a letter which formally informed him that his services were being terminated on the grounds of redundancy. The company alleged that the termination of respondent's services was a cost-cutting measure. The company had experienced an unusually low volume of orders; and that it was in fact forced to rotate its employees in order to save the company. Despite the rotation of employees, petitioner alleged, it continued to experience financial losses and Ong's position, Sales Manager of the company, became redundant.

Issue: Whether or not there was a valid dismissal on the grounds of redundancy.

Ruling: Yes. The SC explains that redundancy, for purposes of our Labor Code, exists where the services of an employee



are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.

In the case at bar, petitioner Wiltshire, in view of the contraction of its volume of sales and in order to cut down its operating expenses, effected some changes in its organization by abolishing some positions and thereby effecting a reduction of its personnel. Thus, the position of Sales Manager was abolished and the duties previously discharged by the Sales Manager simply added to the duties of the General Manager, to whom the Sales Manager used to report. It is of no legal moment that the financial troubles of the company were not of private respondent's making. *Private respondent cannot insist on the retention of his position upon the ground that he had not contributed to the financial problems of Wiltshire.* The characterization of private respondent's services as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgment on the part of the petitioner company.

Management Prerogative to Abolish Positions or Departments

San Miguel Corporation v. NLRC

Doctrine: In abandoning the grievance proceedings and stubbornly refusing to avail of the remedies under the CBA, private respondent violated the mandatory provisions of the collective bargaining agreement. Abolition of departments or positions in the company is one of the recognized management prerogatives. Noteworthy is the fact that the private respondent does not question the validity of the business move of the petitioner. In the absence of proof that the act of petitioner was ill-motivated, it is presumed that petitioner San Miguel Corporation acted in good faith.

Requirements for valid dismissal on the ground of redundancy

SPI Technologies v. Mapua

Facts: Victoria K. Mapua (Mapua) was the Corporate Development's Research/Business Intelligence Unit Head and Manager of SPI Technologies, Inc. (SPI). After failing to meet a work deadline, her supervisor informed her that her position is realigned and she will now become a subordinate of co-manager Sameer Raina (Raina). There was an organizational restructuring which caused Mapua to be terminated due to redundancy. In her legal battle against, she was able to discover that SPI was in fact actively looking for her replacement after she was terminated.

Issue: Whether or not Mapua was illegally dismissed.

Ruling: Yes. The SC in Asian Alcohol Corporation v. NLRC pronounced that for a valid implementation of a redundancy program, the employer must comply with the following

requisites:

- (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of termination;
- (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher;
- (3) good faith in abolishing the redundant position; and
- (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.

In this case, focusing on the contention that there was no redundancy by abolishing Mapua's position, it must be noted that change in the job title is not synonymous to a change in the functions. A position cannot be abolished by a mere change of job title. "It is not the job title but the actual work that the employee performs." In cases of redundancy, the management should adduce evidence and prove that a position which was created in place of a previous one should pertain to functions which are dissimilar and incongruous to the abolished office.

Instead of explaining how the functions of a Marketing Communications Manager differ from a Corporate Development Manager, SPI hardly disputed Mapua when it stated that, "[j]udging from the titles or designation of the positions, it is obvious that the functions of one are entirely different from that of the other." SPI, being the employer, has possession of valuable information concerning the functions of the offices within its organization. Nevertheless, it did not even bother to differentiate the two positions. There is no clear showing of good faith, and fair and reasonable criteria in abolishing the alleged redundant position, hence, Mapua was illegally dismissed.

Redundancy Selection Criteria

Golden Thread Knitting Industries, Inc. v. NLRC

Doctrine: The SC have laid down the principle that in selecting the employees to be dismissed, a fair and reasonable criteria must be used, such as but not limited to:
(a) less preferred status (e.g., temporary employee);
(b) efficiency; and
(c) seniority.

The records disclose that no criterion whatsoever was adopted by petitioners in dismissing Rivera and Macaspac. This is considered as a procedural lapse on the part of the company. Another procedural lapse committed by petitioners is the lack of written notice to the DOLE required under Art. 283 of the Labor Code. The purpose of such notice is to ascertain the verity of the cause of termination of employment.

Creation of functionally similar positions does not necessarily invalidate declaration of redundancy

Santos v. Court of Appeals

Doctrine: Redundancy exists when the service capability of the work force is in excess of what is reasonably needed to



meet the demands of the enterprise. A redundant position is one rendered superfluous by a number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service previously undertaken by the business.

The two (2) positions, Complimentary Distribution Specialists and Account Development Manager, being different, it follows that the redundancy program instituted by PEPSI was undertaken in good faith. CDS and ADM positions would show that the two (2) were very different in terms of the nature of their functions, areas of concerns, responsibilities and qualifications. In this case, petitioners have not established that the title Account Development Manager was created in order to maliciously terminate their employment. Nor have they shown that PEPSI had any ill motive against them. It is therefore apparent that the restructuring and streamlining of PEPSI's distribution and sales systems were an honest effort to make the company more efficient. . . . While it is true that management may not, under the guise of invoking its prerogative, ease out employees and defeat their constitutional right to security of tenure, the same must be respected if clearly undertaken in good faith and if no arbitrary or malicious action is shown.

Demotion due to Redundancy

Great Pacific Life Assurance Corp. v. NLRC

Doctrine: It is, of course, a management prerogative to abolish a position which it deems no longer necessary and this Court, absent any findings of malice on the part of management, cannot erase that initiative simply to protect the person holding that office. And We do not see anything that would indicate that Allado's position was abolished to ease her out of employment. The deletion of Allado's office, therefore, should be accepted as a valid exercise of management prerogative. But GREPALIFE sought to accommodate Allado by ordering her to transfer to a position recently vacated. Whether that position is two grades lower than a Regional Cashier is immaterial because GREPALIFE could have then terminated Allado's services when it abolished her position. Her proposed transfer was merely an accommodation. It is erroneous, therefore, to conclude that a situation was created by GREPALIFE to force Allado to resign.

Hence, there is no illegal dismissal in this case. The SC adopted by analogy Article 283 of the Labor Code which provides that in case of termination of employment due to installation of labor-saving devices or redundancy, the worker affected shall be entitled to a separation pay.

Redundancy in Good Faith: Replacing employees with independent contractors

International Harvester Macleod, inc. v. IAC.

Facts: Diosdado L. Joson was hired as assistant attorney in its Legal Department, and was later on promoted and was then finally appointed as the Government Sales Department of International Harvester. He was informed by the vice president that he was being transferred to the Fleet Account

Sales Department as a Fleet Account Salesman with a salary of P1,000.00 a month, without allowance but he was entitled to commissions. Surprised by the sudden demotion, Joson asked for the reasons. It was explained that his position as Government Relations Officer had become redundant in view of the appointment of the International Heavy Equipment Corporation as the Company's Dealer with the Government.

Issue: Whether or not Joson was illegally dismissed.

Ruling: Yes. Well established is the rule that while it is true that to dismiss or lay off an employee is management's prerogative, it must be done without abuse of discretion, for what is at stake is not only the petitioner's position but also his means of livelihood. An employer has a much wider discretion in terminating the employment relationship of managerial personnel as compared to rank-and-file employees. However, such prerogative of management to dismiss or lay-off an employee must be made without abuse of discretion, for what is at stake is not only the private respondent's position but also his means of livelihood.

A searching review of the records fails to show that petitioner in demoting private respondent and later terminating his services acted oppressively, unjustly or arbitrarily. Evidence on record fails to show bad faith on the part of the employer. There is no argument against the fact that with the hiring of IHEC (independent contractor), it was no longer economical to retain the services of private respondent; . . . it is not precluded from adopting a new policy conducive to a more economical and effective management.

Serrano v. NLRC

Doctrine: The case at bar specifically involves Article 283 of the Labor Code which lays down four (4) authorized causes for termination of employment. These authorized causes are: (1) installation of labor-saving devices; (2) redundancy; (3) retrenchment to prevent losses; and (4) closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the law. It also provides that prior to the dismissal of an employee for an authorized cause, the employer must send two written notices at least one month before the intended dismissal – one notice to the employee and another notice to the Department of Labor and Employment (DOLE). We have ruled that the right to dismiss on authorized causes is not an absolute prerogative of an employer. We explained that the notice to the DOLE is necessary to enable it to ascertain the truth of the cause of termination. The DOLE is equipped with men and machines to determine whether the planned closure or cessation of business or retrenchment or redundancy or installation of labor saving device is justified by economic facts. For this reason too, we have held that notice to the employee is required to enable him to contest the factual bases of the management decision or good faith of the retrenchment or redundancy before the DOLE. In addition, this notice requirement gives an employee a little time to adjust to his joblessness.

Labor Code v. Civil Code

"The requirement to hear an employee before he is dismissed should be considered simply as an application of the Justinian precept, embodied in the Civil Code, to act with justice, give everyone his due, and observe honesty and good faith toward one's fellowmen." It then rules that



violation of this norm will render the employer liable for damages but will not render his act of dismissal void. The faultline of this ruling lies in the refusal to recognize that employer-employee relationship is governed by special labor laws and not by the Civil Code. Article 279 of the Labor Code specifically provides that "in cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." This provision of the Labor Code clearly gives the remedies that an unjustly dismissed employee deserves. It is not the Civil Code that is the source of his remedies.

Redundancy in Bad Faith: used as a means of replacing an employee with another

Manila Polo Club Employees Union v. Manila Polo Club, Inc.

Doctrine: The closure of the F & B Department was due to legitimate business considerations, a resolution which the Court has no business interfering with. We have already resolved that the characterization of the employee's service as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer; the determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or arbitrary or malicious action on the part of the employer is shown.

There is nothing on record to indicate that the closure of respondent's F & B Department was made in bad faith. It was not motivated by any specific and clearly determinable union activity of the employees; rather, it was truly dictated by economic necessity. Despite petitioner's allegations, no convincing and credible proofs were presented to establish the claim that such closure qualifies as an act of union-busting and ULP. No evidence was shown that the closure is stirred not by a desire to avoid further losses but to discourage the workers from organizing themselves into a union for more effective negotiations with the management.

The SC summarized:

1. Closure or cessation of operations of establishment or undertaking may either be partial or total.
2. Closure or cessation of operations of establishment or undertaking may or may not be due to serious business losses or financial reverses. However, in both instances, proof must be shown that: (1) it was done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement; and (2) a written notice on the affected employees and the DOLE is served at least one month before the intended date of termination of employment.
3. The employer can lawfully close shop even if not due to serious business losses or financial reverses

but separation pay, which is equivalent to at least one month pay as provided for by Article 283 of the Labor Code, as amended, must be given to all the affected employees.

4. If the closure or cessation of operations of establishment or undertaking is due to serious business losses or financial reverses, the employer must prove such allegation in order to avoid the payment of separation pay. Otherwise, the affected employees are entitled to separation pay.
5. The burden of proving compliance with all the above-stated falls upon the employer.

Great Pacific Life v. NLRC

Facts: Ms. Rosa Allado alleged that she was hired by GREPALIFE as clerk in its regional office in Laoag, Ilocos Norte. After only three (3) months on the job, she was promoted to Regional Cashier at the same station and was later on transferred to Baguio City. After some time, she was informed by their HR of the management's decision to transfer her to Manila. Allado requested for reconsideration since with the salary she was receiving she could not afford to live in a highly urbanized area as Metro Manila, and "more importantly," she wrote, she has "dependents who are studying in Baguio City whom she cannot simply leave" behind. However, such a request was denied. The president explained that management had decided to abolish her item since the volume of business in her station "can more than adequately be handled by the Regional Administrator." It was emphasized that "the only existing vacancy in the company suitable at present to [her] qualification will be one at the IL Accounting Department" and that there "will be no demotion in rank or pay." She pleaded her case to the company's legal department, but to no avail. She just now tendered her resignation and she signed a quitclaim and release in favor of GREPALIFE renouncing any claim or action she might have against the corporation. Thereafter, she was paid gratuity pay and other employee benefits.

Issue: Whether or not the corporation constructively dismissed Allado or forced her to resign. NO.

Whether or not Allado is entitled to separation pay. YES.

Ruling: The SC explained that it is a management prerogative to abolish a position which it deems no longer necessary and this Court, absent any findings of malice on the part of management, cannot erase that initiative simply to protect the person holding that office. The Court did not see anything that would indicate that Allado's position was abolished to ease her out of employment. The deletion of Allado's office, therefore, should be accepted as a valid exercise of management prerogative.

But GREPALIFE sought to accommodate Allado by ordering her to transfer to a position recently vacated. Whether that position is two grades lower than a Regional Cashier is immaterial because GREPALIFE could have then terminated Allado's services when it abolished her position. Her proposed transfer was merely an accommodation. It is erroneous, therefore, to conclude that a situation was created by GREPALIFE to force Allado to resign. Allado's services could have been terminated after her position as Regional Cashier was abolished.



The SC adopted by analogy Article 283 of the Labor Code which provides that in case of termination of employment due to installation of labor-saving devices or redundancy, the worker affected shall be entitled to a separation pay of at least one (1) month pay or to at least one (1) month pay for every year of service whichever is higher. We took consideration of the fact that Allado's proposed transfer to Makati, Metro Manila would indeed entail much sacrifice on her part and the finding of the NLRC that the position Allado was to assume is two grades lower than a Regional Cashier so much so that GREPALIFE's accommodation to her is almost illusory. *Thus, in the interest of justice, Allado should be entitled to receive one (1) month pay for every year of service as her separation pay.*

General Milling Corp. v. V.L. Viajar

Doctrine: While it is true that the "characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer," 36 the exercise of such judgment, however, must not be in violation of the law, and must not be arbitrary or malicious. The Court has always stressed that a company cannot simply declare redundancy without basis. To exhibit its good faith and that there was a fair and reasonable criteria in ascertaining redundant positions, a company claiming to be over manned must produce adequate proof of the same.

In this case, the respondent presented proof that the petitioner had been hiring new employees while it was firing the old ones, negating the claim of redundancy. It must, however, be pointed out that in termination cases, like the one before us, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It was incumbent upon the petitioner to show by substantial evidence that the termination of the employment of the respondent was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.

The Court cannot overlook the fact that Viajar was prohibited from entering the company premises even before the effectiveness date of termination; and was compelled to sign an "Application for Retirement and Benefits." These acts exhibit the petitioner's bad faith since it cannot be denied that the respondent was still entitled to report for work until November 30, 2003. The demand for her to sign the "Application for Retirement and Benefits" also contravenes the fact that she was terminated due to redundancy. Indeed, there is a difference between voluntary retirement of an employee and forced termination due to authorized causes.

Criteria for redundancy

1st Criteria - PERMANENCE. When it comes down between Regular v. probationary employee, you must let go of the probationary employee first. When it comes down between regular and contractual, let go of the contractual first. Give favor to those who attained the status of permanence in the company.

2nd Criteria - SENIORITY. Who has been with the company the longest? This is like the First in, Last out Doctrine. Not really a doctrine but it is a phrase in

labor law saying that if you have been with the company the longest, you are the last one to be let go by the company because you already have seniority.

3rd Criteria - EMPLOYMENT RECORD. Another factor to consider in redundancy and this also applies to retrenchment. Remember these factors because they also apply to retrenchment. Employment record of the worker. Do they have a clean record? Because most likely you would keep those employees that have a good record. You will not be faulted for going with the employees who have a good track record. *For example, if two employees have the same length of service, both regular, but one of them is always late and absent, was always undergoing admin hearing and suspension. Obviously, you would go with the employee who has a good record.*

Redundancy is quite difficult because you have to consider the management prerogative of the employer. There was one case where the employer decided to hire independent contractors and then terminated his employees on the ground of redundancy. The SC held that **it is a valid exercise of management prerogative to replace employees with independent contractors if it was done in good faith.**

IN THIS CASE, upon investigation, it was found that the employer had less issues with independent contractors because of less expenses, and maintenance. It was done in good faith, the employer did not abolish the position and make the position redundant to get rid of the employees but **because they wanted to do what is best for their business, i.e. to choose contractors over employees.** That is one sign of good faith, if it was done for the good of the business and not intended to discriminate or get rid of a particular employee. This is not a jurisprudential test but this is a personal test of mine to look at the reason for the employer's act, was it for the good of the business or was it to get rid of the employee or to discriminate against the employee. If it is for the good of the business, then it is most likely a valid management prerogative, and also a valid redundancy.

Under the Labor Code, in Redundancy, separation pay is one month per year of service. If ever you will be terminated on the ground of redundancy, do not forget to demand your separation pay.

Financial struggles is not a requirement in redundancy. For example, the company imposes redundancy because of financial problems and keeping the company afloat, this is not required. It is enough that the company, in the exercise of management prerogative, decided to rearrange/reorganize its structure, not necessarily because they are experiencing financial hardships.



c. Retrenchment

Another authorized cause is retrenchment. This is very significant during the pandemic, it is a ground always invoked by the employers when they let their employees go at the start of the pandemic because of loss of income. Important to note, the complete ground under the labor code is retrenchment to prevent losses, so the complete ground is **retrenchment to prevent losses**. What does this mean? It is clear that with this ground, **you take into account the financial aspect** unlike in redundancy because it says "to prevent losses". This indicates that either the company is struggling or is anticipating a financial struggle soon. Why is this a valid ground for dismissal? A company cannot be forced to bleed itself dry just to keep its employees. It cannot force itself to hemorrhage all of its money just to keep the employees that it no longer needs. The employer will ultimately have to let the employees go just to keep the business afloat and the SC does not begrudge an employer who does that, provided that there is payment of separation pay. The separation pay is half -month salary for every year of service. Why is it lower compared to the other grounds? Because the company is already struggling or is already anticipating financial struggle, so it's only fair to require a lesser amount of separation pay. If you require the one month salary for every year of service, the company might have to close.

The criteria/grounds for retrenchment is similar to redundancy.

1. Seniority
2. Permanence
3. employment record

Going back to redundancy, those grounds that I mention will only apply if there are multiple employees potentially to be declared as redundant. If there is only one employee to be declared as redundant then the grounds are pointless.

An important thing to note in retrenchment is that it hinges on existing or potential losses. Because of this ground, the employer has to present proof of serious business losses or potential business losses that are at the very least admissible in a quasi-judicial agency. The employer has to show proof that it is experiencing actual losses (meaning its income is negative) or the employer is anticipating losses arguing that they cannot maintain the employees anymore.

The proof has to be admissible. Self-serving statements of the employer are not enough.

Example: Affidavit from the president of the company stating "we are experiencing financial losses. We can no longer sustain our

operations without letting a few employees go" – self-serving testimony

The best document would probably be audited financial statements from independent auditors, financial records of the company showing the trend of its income over the past few years. It was explicit in some cases that audited financial statements are the best evidence to justify the letting go of employees on the ground of retrenchment.

Similar to redundancy, the employer cannot retrench an employee just because it does not like the employee (examples: does not like the employee for being problematic; being a member of the union; bad-mouthing the company). The employer cannot use retrenchment as a disguise for hatred towards the employee. Ultimately, you have to prove that the retrenchment was on a valid ground. You have to prove that there was in fact financial losses or financial losses are imminent. You also have to provide evidence of these circumstances. Take also into account the factors in retrenching employees. Did the employee have a bad track record? Was the employee only there for a short time? Was the employee a casual employee or a seasonal employee as opposed to the regular employees. Sometimes, some employers arbitrarily invoke the grounds saying that the employee is redundant or that the employee was retrenched because of financial losses but in reality they just wanted to get rid of the employees for one reason or another. There has to be a valid reason for letting the employee go.

In temporary retrenchment, the employer has the commitment to take back the employee. This kind of thing is usually six months at maximum. This happened at the start of the pandemic where the DOLE allowed employers to temporarily retrenched the employees for up to six months so that the employer can regain some of its losses. There was even a DOLE memorandum the employer can extend the six months to one year with the consent of the employees. If the employer for whatever reason failed to bring back the employee after the lapse of the period, the employee can claim that as a form of constructive dismissal.

An employee can volunteer to be retrenched If the employer announces that it can no longer keep up with the number of employees and decides to retrench some of its employees. This is valid. Some employees volunteer because they want to receive the separation pay. This is actually a good strategy if you have another job lined up and then it happens that the employer is retrenching, might as well volunteer to receive a separation pay.

Atty's opinion: The stability of having a job outweighs the promise of separation pay because the separation

pay is only half a month's salary for every year of service. You only get a couple of months' salary before having the risk of losing money. Again, it is a case-to-case basis because other workers volunteer to ensure receiving separation pay.

Right of Employer, nature of retrenchment

Cabaobas v. Pepsi-Cola Products, Phil., Inc.

Doctrine: Essentially, the prerogative of an employer to retrench its employees must be exercised only as a last resort, considering that it will lead to the loss of the employees' livelihood. It is justified only when all other less drastic means have been tried and found insufficient or inadequate. Corollary thereto, the employer must prove the requirements for a valid retrenchment by clear and convincing evidence; otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning losses or reverses in their business ventures in order to ease out employees. These requirements are:

- (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
- (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; DIAcTE
- (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher;
- (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
- (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

The Court agrees to NLRC's discussion on PCPPI's compliance with the requirement that for a retrenchment to be valid, such must be reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real.

Criteria for who to Retrench

Asiaworld Publishing House, Inc. v. Ople

Facts: Private respondent Concepcion Joaquin was hired by Asiaworld as its advertising sales director. Due to the respondent's able management and hard work, Asiaworld's income from sales advertising increased tremendously.

Respondent was eventually designated to take charge of the advertising sales work for Asia Forum. In 1977, the private respondent was appointed Vice President for marketing in a concurrent capacity and her monthly compensation was increased to P2,300.00. On May 3, 1978, the petitioner advised the private respondent in writing that her services would be terminated because of continued losses and offered to pay her one (1) month's salary for her more than three (3) years of service. The private respondent filed a complaint for illegal dismissal.

Issue: Whether or not private respondent was illegally dismissed. YES

Ruling: There must be fair and reasonable criteria to be used in selecting employees to be dismissed, such as:

- (a) less preferred status (e.g., temporary employee);
- (b) efficiency rating, and
- (c) seniority.

IN THIS CASE

The only justification presented by the petitioner for dismissing the private respondent was its financial statement showing a loss of P196,087.83 for the year 1977. Asiaworld failed to show that fair and reasonable standards were used in ascertaining who would be dismissed and who would be retained among its employees.

Petitioner never denied the fact that the private respondent was performing her job satisfactorily so much so that its income from sales advertising increased.

Income Contribution as Criteria for Retrenchment

Talam v. NLRC

Doctrine: As long as it is not done in bad faith, a company is allowed to look into the margins of a consultant's contribution to the income of the company as primary retrenchment standard.

IN THIS CASE

Talam was dismissed due to a cause authorized by law which is retrenchment to prevent losses.

"Last in, First out" rule

Dela Salle University v. Dela Salle University Employees Association

Facts: The University uses the "last-in-first-out" method in case of retrenchment and transfer of employees to other schools or units.

Issue: Whether or not the method is valid. YES

Ruling: The "last-in-first-out" method use in case of lay-off, termination due to retrenchment and transfer of employees, is a valid exercise of management prerogative, the University has the right to adopt valid and equitable grounds as basis for terminating or transferring employees. As ruled in the case of Autobus Workers' Union (AWU) and Ricardo Escanlar vs. National Labor Relations Commission, "[a] valid



exercise of management prerogative is one which, among others, covers: work assignment, working methods, time, supervision of workers, transfer of employees, work supervision, and the discipline, dismissal and recall of workers. Except as provided for, or limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment."

Losses in Redundancy

Lopez Sugar Corporation v. Federation of Free Workers

Facts: Petitioner, Lopez Sugar, allegedly to prevent losses due to major economic problems, and exercising its privilege caused the retrenchment of a number of its employees.

Issue: Whether the retrenchment was valid. NO

Ruling: An employer may reduce its workforce to prevent losses, however, these losses must be serious, actual and real. "To prevent losses means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the losses anticipated are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until sometime after losses shall have in fact materialize

IN THIS CASE

No proof of actual declining gross and net revenues was submitted. No audited financial statements showing the financial condition of petitioner corporation during the above mentioned crop years were submitted. Since financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company, it is not easy to understand why the petitioner should have failed to submit such financial statements.

Moreover, while petitioner made passing reference to cost reduction measures it had allegedly undertaken, it was, once more, a fairly conspicuous failure to specify the cost-reduction measures actually undertaken in good faith before resorting to retrenchment. Upon the other hand, it appears from the record that the petitioner, after reducing its workforce, advised 110 casual workers to register with the company personnel officer as extra workers.

Proof of Serious Business Losses, Modicum of Admissibility

Uichico v. NLRC

Facts: Private respondents were employed by Crispa, Inc. for many years in the latter's garments factory. They were terminated on the ground of retrenchment due to alleged serious business losses suffered by Crispa, Inc. Thereafter, respondent employees filed complaints for illegal dismissal.

Issue: Whether the retrenchment was valid. NO

Ruling: Retrenchment, or "lay-off" is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized

and affirmed by this Court. Nevertheless, while it is true that retrenchment is a management prerogative, it is still subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence. And since retrenchment strikes at the very core of an individual's employment, which may be the only lifeline on which he and his family depend for survival, the burden clearly falls upon the employer to prove economic or business losses with appropriate supporting evidence. Any claim of actual or potential business losses must satisfy certain established standards before any reduction of personnel becomes legal, viz:

1. The losses expected and sought to be avoided must be substantial and not merely *de minimis* in extent;
2. The substantial losses apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer;
3. The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses.
4. The alleged losses, if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.

IN THIS CASE

The Statement of Profit and Losses submitted by the respondent *does not bear the signature of a certified public accountant or audited by an independent auditor*. Briefly stated, it has no evidentiary value. As such, the alleged financial losses which caused the temporary closure of respondent CRISPA, Inc. has not been sufficiently established.

The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents.

Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.

Doctrine: The following elements under Article 283 of the Labor Code must concur or be present, to wit:

- (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
- (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;
- (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half ($\frac{1}{2}$) month pay for every year of service, whichever is higher;



(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and,

(5) That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

In the absence of one element, the retrenchment scheme becomes an irregular exercise of management prerogative.

IN THIS CASE

The strike, which PAL used as a basis to undertake the massive retrenchment, is not an authorized cause. The strike was a temporary occurrence that did not necessitate the immediate and sweeping retrenchment of 1,400 cabin or flight attendants. There was no reason to drastically implement a permanent retrenchment scheme in response to a temporary strike, which could have ended at any time, or remedied promptly, if management acted with alacrity. PAL must still prove that it implemented cost-cutting measures to obviate retrenchment, which under the law should be the last resort. By PAL's own admission, however, the cabin personnel retrenchment scheme was one of the first remedies it resorted to, even before it could complete the proposed downsizing of its aircraft fleet.

Retrenchment cannot be used as a means of getting rid of undesirable employees

Bogo-Medellin Supercane Planters Association v. NLRC

Facts: The respondent employees were dismissed. The company strongly maintained that their dismissal was validly carried out in accordance with corporate powers to prevent losses. To support this stand they submitted a comparative statement of Revenue and Expenses for the crop years 1983-1984 and 1984-1985, to show they suffered losses in the amount of P54,692.31 in the crop year ending August 1985.

Issue: Whether the retrenchment was valid. NO

Ruling: To justify retrenchment, the employer must prove serious business losses. Indeed, not all business losses suffered by the employer would justify retrenchment under this article. The Court has held that the "loss" referred to in Article 283 cannot be just any kind or amount of loss; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees."

IN THIS CASE

No financial statement, or statement of profit and loss or books of account have been presented to substantiate the alleged losses. It is also dubious why the said *Comparative Statement of Revenue and Expenses* was prepared by the office manager instead of their accountant.

A comparative statement of revenue and expenses for two years, by itself, is not conclusive proof of serious business losses. The Court has previously ruled that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss

performance of a company.

Retrenchment Employees, Engagement of Independent Contractors

Asian Alcohol Corp. v. NLRC

Facts: The Parsons family, who originally owned the controlling stocks in Asian Alcohol, were driven by mounting business losses to sell their majority rights to Prior Holdings, Inc. The next month, Prior Holdings took over its management and operation.

To thwart further losses, Prior Holdings implemented a reorganizational plan and other cost saving measures. Some 117 employees out of a total workforce of 360 were separated. 72 of them occupied redundant positions that were abolished. Of these positions, 21 were held by union members and 51 by non-union members.

The 6 private respondents are among those union members whose positions were abolished due to redundancy. The 6 private respondents filed with the NLRC complaints for illegal dismissal.

Issue: Whether or not the dismissal of the employees on ground of redundancy/retrenchment was valid. YES

Ruling:

The audited financial documents show that petitioner had accumulated losses.

The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. Financial statements must be prepared and signed by independent auditors. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.

In the instant case, the audited financial documents show that petitioner has accumulated losses amounting to P306,764,349.00 and showing nary sign of abating in the near future. The allegation of union busting is bereft of proof. Union and non-union members were treated alike. The records show that the positions of fifty one (51) other non-union members were abolished due to business losses.

Retrenchment to prevent losses

Article 283 of the Labor Code uses the phrase "retrenchment to prevent losses". In its ordinary connotation, this phrase means that retrenchment must be undertaken by the employer before losses are actually sustained. The employer need not keep all his employees until after his losses shall have materialized. Otherwise, the law could be vulnerable to attack as undue taking of property for the benefit of another.

In the case at bar, Prior Holdings took over the operations of Asian Alcohol in October 1991. Plain to see, the last quarter losses in 1991 were already incurred under the new management. There were no signs that these losses would abate. Irrefutable was the fact that losses have bled Asian Alcohol incessantly over a span of several years. They were



incurred under the management of the Parsons family and continued to be suffered under the new management of Prior Holdings. Ultimately, it is Prior Holding that will absorb all the losses, including those incurred under the former owners of the company. The law gives the new management every right to undertake measures to save the company from bankruptcy.

The reorganizational plan and comprehensive cost-saving program to turn the business around were not designed to bust the union of the private respondent. Retrenched were one hundred seventeen (117) employees. Seventy two (72) of them including private respondent were separated because their positions had become redundant. In this context, what may technically be considered as redundancy may verily be considered as retrenchment measures. Their positions had to be declared redundant to cut losses.

Redundancy exist when the service capability of the work is in excess of what is reasonably needed to meet the demands on the enterprise. A redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity priorly undertaken by the business. Under these conditions, **the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.**

For the implementation of a redundancy program to be valid, the employer must comply with the following requisites:

1. written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment;
2. payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service whichever is higher;
3. **good faith in abolishing the redundant positions;** and
4. fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.

As to the Contention of the Private respondents that casuals were hired to replace Carias, Martinez and Sendon as water pump tenders at the Ubay wells.

An employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of the services of an independent contractor to replace the services of the terminated employees. The reduction of the number of workers in a company made necessary by the introduction of the services of an independent contractor is justified when the latter is undertaken to effectuate more economic and efficient methods of production.

In the case at bar, private respondent failed to proffer any proof that the management acted in a malicious or arbitrary manner in engaging the services of an independent contractor to operate the Laura wells. Absent such proof, the Court has no basis to interfere with the bona fide decision of management to effect more economic and efficient methods of production.

Preventive Retrenchment, Indicators of Retrenchment in Good Faith

Pantoja v. SCA Hygiene Products Corp

Doctrine: Petitioner has voluntarily separated himself from service by opting to avail of the separation benefits of the

company instead of accepting reassignment/transfer to another position of equal rank and pay.

Retrenchment was utilized by the respondent only as an available option in case the affected employee would not want to be transferred. Respondent did not proceed directly to retrench. This, to our mind, is an **indication of good faith** on respondent's part as it **exhausted other possible measures other than retrenchment**. Besides, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a **measure of last resort, after less drastic means have been tried and found wanting**. Giving the workers an option to be transferred without any diminution in rank and pay specifically belie petitioner's allegation that the alleged streamlining scheme was implemented as a ploy to ease out employees, thus, the absence of bad faith.

"Temporary lay-off" vs. Retrenchment

Sebuguero v. NLRC

Facts: The petitioners were temporarily laid off by GTI Sportswear Corporation. The reason for the lay-off was because of business losses in the cancelled orders of its clients from abroad.

After the lapse of a period of six months, the employees were not recalled nor were they served with written notices that they would be retrenched. GTI merely conveyed to the employees the impossibility of having them recalled in view of the continued unavailability of work as the economic recession of the respondent's principal market persisted.

The LA ruled in favor of the employees. It held that the retrenchment was valid but since GTI did not recall the employees or serve them notices, it amounted to an illegal dismissal and hence ordered backwages and separation pay.

The NLRC agreed with the LA's findings but modified the decision to delete the award of backwages since it was duly proven by GTI that it indeed suffered losses.

Issue: Whether or not the retrenchment had valid ground.
YES

Ruling:

The SC agreed that the retrenchment was indeed valid but that it was procedurally flawed. The requisites of retrenchment are:

- (1) the **retrenchment is necessary to prevent losses** and such losses are proven;
- (2) **written notice to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;** and
- (3) **payment of separation pay equivalent to one month pay or at least 1/2 month pay for every year of service, whichever is higher.**

In the present case, the business losses of GTI was duly proven as found by both the LA and the NLRC. Since the findings of quasi-judicial bodies are accorded with respect and finality.

The second requisite is lacking as there is no evidence that



the DOLE nor the Employees were served with **written** notices of the retrenchment **one month prior** to the date of the intended retrenchment. Failing this, the retrenchment was procedurally flawed.

As to the third requisite, although there is evidence that GTI offered to pay the employees separation pay and that 22 out of 38 employees accepted this, there is no evidence as to when the offer was made. Nevertheless, since the second requisite is missing, the SC held that the retrenchment was procedurally flawed.

Hence, the retrenchment was valid but defective since there was only a violation of the procedure prescribed under Art. 283 of the Labor Code. Since it is valid, the employees are not entitled to backwages but are entitled to damages in the amount of 2000 each.

REDUNDANCY VS. RETRENCHMENT

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as over-hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.

Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is the termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. **Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.**

PERIOD OF TEMPORARY LAY-OFF

Article 283 of the Labor code which covers retrenchment, reads as follows:

Art. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by servicing a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

This provision, however, speaks of a permanent retrenchment as opposed to a temporary lay-off as is the case here. There is no specific provision of law which treats of a temporary

retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. These employees cannot forever be temporarily laid-off.

To remedy this situation or fill the hiatus, Article 286 may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status. Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.

Redundancy vs. Retrenchment

Edge Apparel, Inc. v. NLRC

Facts: Pursuing its retrenchment program, petitioner Edge Apparel, Inc., dismissed the 6 private respondents herein, Antipuesto et al.

The respondents consulted with the DOLE who advised them that it would be best for them to receive the separation pay being offered by the corporation, an advice which they took. However, the subsequent receipt of their separation pay benefits, nevertheless, did not deter Antipuesto, et al., from filing a complaint for illegal dismissal against the corporation.

They claim that the retrenchment program was a mere misrepresentation by Edge Apparel.

Edge Apparel countered that its financial obligations, amounting to about P8 Million, had begun to eat up most of its capital outlay and resulted in unabated losses of P681,280.00 in 1989, P262,741.00 in 1990, P162,170.00 in 1991 and P749,294.00 in 1992, constraining the company to adopt and implement a retrenchment program.

Issue: Whether or not redundancy was the cause of their termination. – NO. Retrenchment

Ruling:

Redundancy exists where the services of an employee are in excess of what would reasonably be demanded by the actual requirements of the enterprise. A position is redundant when it is superfluous. An employer has no legal obligation to keep on the payroll employees more than the number needed for the operation of the business.

Retrenchment, in contrast to redundancy, is an economic ground to reduce the number of employees. In order to be justified, the termination of employment by reason of retrenchment must be due to business losses or reverses which are serious, actual and real. It is an act of the employer of reducing the work force because of losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business. Retrenchment is, in many ways, a measure of last resort.

In this case, the Labor Arbiter and the NLRC both concluded that there had been a valid ground for the retrenchment of



private respondents. The documents presented in evidence were found to "conclusively show that (petitioner) suffered serious financial losses." The elements needed for the retrenchment to be valid were adequately shown:

- that the losses expected are substantial and not merely de minimis in extent;
- that the expected losses are reasonably imminent such as can be perceived objectively and in good faith by the employer;
- that the retrenchment is reasonably necessary and likely to effectively prevent the expected losses; and
- that the imminent losses sought to be forestalled are substantiated

The payment of separation pay would be due when a dismissal is on account of an authorized cause. **The amount of separation pay depends on the ground for the termination of employment.**

A dismissal due to the installation of labor saving devices, redundancy (Article 283) or disease (Article 284), entitles the worker to a separation pay equivalent to "one (1) month pay or at least one (1) month pay for every year of service, whichever is higher."

When the termination of employment is due to retrenchment to prevent losses, or to closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay is only an equivalent of "one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher." In the above instances, a fraction of at least six (6) months is considered as one (1) whole year.

Constructive Retrenchment

International Hardware, Inc. v. NLRC

Doctrine: It is admitted that private respondent had not been terminated or retrenched by petitioner but that due to financial crisis the number of working days of private respondent was reduced to just two days a week. Petitioner could not have been expected to notify DOLE of the retrenchment of private respondent under the circumstances for there was no intention to do so on the part of petitioner.

Nevertheless, considering that private respondent had been rotated by petitioner for over six (6) months due to the serious losses in the business so that private respondent had been effectively deprived a gainful occupation thereby, and considering further that the business of petitioner was ultimately closed and sold off, the Court finds, and so holds that the NLRC correctly ruled that private respondent was thereby constructively dismissed or retrenched from employment. Under Article 286 of the Labor Code, it is provided as follows:

"ART. 286. When employment not deemed terminated. – The bona fide suspension of the operation of a business or undertaking for a period not exceeding six months, or the fulfillment by the employee of a military or civic duty shall not terminate employment in all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one month from

the resumption of operations of his employer or from his relief from the military or civic duty."

From the foregoing it is clear that **when the bona fide suspension of the operation of a business or undertaking exceeds six (6) months then the employment of the employee shall be deemed terminated.**

d. Closure

Under the Labor Code, closure as a ground for dismissal is not qualified by financial losses. Retrenchment was qualified by the phrase "to prevent further losses" but closure or cessation of business does not have a similar qualifier meaning it is not necessary that the business is closing because of a deficit. If the business is closing just because they want to close, it is still an authorized cause and the employee is entitled to separation pay - one half month salary for every year of service. Financial losses is not a requirement for closure as an authorized ground.

Right to Close Because of Economic Loss

LVN Pictures Employees and Workers Assn. v. LVN Pictures, Inc.

Doctrine: An employer may close his business, provided the same is done in good faith and is due to causes beyond his control. To rule otherwise would be oppressive and inhuman.

LVN suffered tremendous losses, completely depleting its capital which was needed to operate and continue its business of producing moving pictures. We consider it oppressive to compel the LVN to continue its business of producing movies when to do so would only result in its incurring further losses.

Under the Termination Pay Law (R.A. 1052, sec. 1, as amended by R.A. 1787), one of the just causes for terminating an employment without a definite period by the employer, is the closing or cessation of operations of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of the said law.

Right to Close Even Without Financial Losses

Catatista v. NLRC

Facts: Antonio Catatista, et al. were regular plantation workers in Hacienda Binanlutan, one of the six haciendas operated and managed by private respondent Victorias Milling Company (VMC).

VMC decided to permanently stop and close its sugarcane operations in Hacienda Binanlutan "due to low sugar prices which affected the viability and profitability of said hacienda" and convert it instead into an ipil-ipil plantation.



In a letter, each of the thirteen petitioners was formally informed of VMC's decision to close and stop sugarcane operations and the reason for such closure. In said letter, VMC informed petitioners that "considering that they have been hired specifically for Hacienda Binanlutan's operations and considering further that there is no plan to revive sugarcane operations at said company farm," their services would be terminated effective August 1, 1984.

Petitioners received their termination pay or retirement pay under the pension plan, whichever was higher. Petitioners filed a complaint against VMC with the NLRC for illegal dismissal, damages and attorney's fees.

Issue: Whether or not petitioners were illegally terminated from work resulting from the closure of Hacienda Binanlutan. NO

Ruling:

Having determined that private respondent suffered losses and had to resort to retrenchment of its employees in Hacienda Binanlutan to prevent further losses, this Court holds that private respondent was within its rights in closing Hacienda Binanlutan and in terminating the service of petitioners.

Article 283 of the Labor code provides, *inter alia*, that the employer may terminate the employment of his employees to prevent losses. For an employer to validly terminate the service of his employees under this ground, he has to comply with two requirements, namely: (a) serving a written notice on the workers and the Department of Labor and Employment at least one month before the taking effect of the closure, and (b) payment of separation pay equivalent to one month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, with a fraction of at least six months to be considered one whole year.

This Court holds that private respondent had sufficiently complied with the above requirements.

In any case, Article 283 of the Labor Code is clear that an employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service. It would, indeed, be stretching the intent and spirit of the law if we were to unjustly interfere in management's prerogative to close or cease its business operations just because said business operation or undertaking is not suffering from any loss.

Serious Financial Losses, exception to obligation to pay separation pay - MOST RECENT CASE in a long line of cases on the matter

North Davao Mining Corporation v. NLRC

Doctrine: Art. 283 of the Labor Code does NOT obligate an employer to pay separation benefits when the closure is DUE TO LOSSES.

Facts:

Petitioner North Davao completely ceased operations due to serious business reverses. Subsequently, respondent Wilfredo Guillema and 271 other separated employees filed a complaint with respondent Labor Arbiter by for: additional separation

pay of 17.5 days for every year of service; back wages equivalent to two days a month; transportation allowance; hazard pay; housing allowance; food allowance; post-employment medical clearance; and future medical allowance, all of which amounted to P58,022,878.31 as computed by private respondent.

Issue:

Whether or not an employer whose business operations ceased due to serious business losses or financial reverses is obliged to pay separation pay to its employees separated by reason of such closure

Ruling: NO. Here, it gave 30-days' separation pay to its employees when it was still a going concern even if it was already losing heavily. As a going concern, its cash flow could still have sustained the payment of such separation benefits. But when a business enterprise completely ceases operations, i.e., upon its death as a going business concern, its vital lifeblood — its cashflow — literally dries up. Therefore, the fact that less separation benefits were granted when the company finally met its business death cannot be characterized as discrimination. Such action was dictated not by a discriminatory management option but by its complete inability to continue its business life due to accumulated losses. Indeed, one cannot squeeze blood out of a dry stone. Nor water out of parched land.

As stated, Art. 283 of the Labor Code does NOT obligate an employer to pay separation benefits when the closure is due to losses. In the case before us, the basis for the claim of the additional separation benefit of 17.5 days is alleged discrimination, i.e., unequal treatment of employees, which is proscribed as an unfair labor practice by Art. 248 (e) of said Code.

Under the facts and circumstances of the present case, the grant of a lesser amount of separation pay to private respondent was done, not by reason of discrimination, but rather, out of sheer financial bankruptcy — a fact that is not controlled by management prerogatives. Stated differently, the total cessation of operation due to mind-boggling losses was a supervening fact that prevented the company from continuing to grant the more generous amount of separation pay.

The fact that North Davao at the point of its forced closure voluntarily paid any separation benefits at all — although not required by law — and 12.5-days' worth at that, should have elicited admiration instead of condemnation. But to require it to continue being generous when it is no longer in a position to do so would certainly be unduly oppressive, unfair and most revolting to the conscience.



In the landmark case of North Davao Mining Corporation v. NLRC, the business closed because of a deficit. It was proven that there are financial losses. The Supreme Court held that North Davao Mining Corporation cannot be held to pay separation pay because the financial losses were so severe the assets of the company could no longer shoulder all the separation pay due to all the employees that they were letting go. This is a rare case where the separation pay was not enforced.

One cannot squeeze blood out of a dry stone. You cannot force a company to pay the benefits even if it is a legally mandated benefit if the company does not have money to begin with.

If the company is no longer financially unstable, the employee can demand for his or her separation pay.

If you have a business with zero finances, you can invoke the *North Davao Mining case*. This will not require you to pay separation pay.

The only time employers are not compelled to pay separation pay is when they closed their establishments or undertaking due to serious business losses or financial reverses. In this case, the Court upheld G.J.T. Rebuilders' decision to close its establishment as a valid exercise of its management prerogative. G.J.T. Rebuilders closed its machine shop, believing that its "former customers . . . seriously doubted [its] capacity . . . to perform the same quality [of service]" after the fire had partially damaged the building where it was renting space. Nevertheless, it finds that G.J.T. Rebuilders failed to sufficiently prove its alleged serious business losses.

The two-year period covered by the financial statement was found insufficient for G.J.T. Rebuilders to have objectively perceived that the business would not recover from the loss. Unlike in North Davao Mining Corporation, Manatad, and LVN Pictures Employees and Workers Association (NLU), no continuing pattern of loss within a sufficient period of time is present in this case. In fact, in one of the two fiscal years covered by the financial statement presented in evidence, G.J.T. Rebuilders earned a net income. The Court, therefore, agrees with the Labor Arbiter and the Court of Appeals that G.J.T. Rebuilders closed its machine shop to prevent losses, not because of serious business loss.

Obligation to pay separation pay still applies in closures to prevent losses

To prove serious business losses, employers must present in evidence financial statements showing the net losses suffered by the business within a sufficient period of time. Generally, it cannot be based on a single financial statement showing losses. Absent this proof, employers closing their businesses must pay the dismissed employees separation pay equivalent to one-month pay or to at least one-half-month pay for every year of service, whichever is higher

G.J.T. Rebuilders v. Ambos

Facts: G.J.T. Rebuilders is a single proprietorship owned by the Spouses Godofredo and Juliana Trillana (Trillana spouses). It was engaged in steel works and metal fabrication, employing Ricardo Ambos (Ricardo), Russell Ambos (Russell), and Benjamin Putian (Benjamin) as machinists. G.J.T. Rebuilders rented space in the Far East Asia (FEA) Building which was partially destroyed by fire.

Having lost their employment without receiving separation pay, Ricardo, Russell, and Benjamin filed a Complaint for illegal dismissal before the Labor Arbiter.

Issue: Whether petitioners sufficiently proved that G.J.T. Rebuilders suffered from serious business losses

Ruling: NO. G.J.T. Rebuilders must pay respondents their separation Article 283 of the Labor Code allows an employer to dismiss an employee due to the cessation of operation or closure of its establishment or undertaking. pay for failure to prove its alleged serious business losses

Sale in good faith where purchaser did not absorb existing employees - separation pay

San Felipe School of Mandaluyong, Inc. v. NLRC

Facts: Petitioners were incorporators, stockholders and/or trustees of a corporation, San Felipe Neri School of Mandaluyong which owned and operated petitioner school. Private respondents were formerly teachers.

In 1981, petitioner school and the Roman Catholic Archbishop of Manila (RCAM) executed a Deed of Absolute Sale of Real and Personal Properties. RCAM required respondents teachers to apply as new employees subject to the usual. Demoted to probationary status and their past services not recognized by the new employer.

Issue: Whether or not respondent teachers' employment were terminated by the sale and transfer of San Felipe Neri School of Mandaluyong

Ruling: Yes, respondent teachers' employment were terminated. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process. Such dismissal or termination should not, however, be interpreted in



such a manner as to insulate the employer or selling corporation (petitioner school) from its obligation to its employees, particularly the payment of separation pay. Such situation is not envisioned in the law. It strikes at the very concept of social justice

A close scrutiny of the pertinent Deed of Sale dated April 18, 1981 reveals no express stipulation whatsoever relative to the continued employment by the transferee, RCAM, of the employees (herein private respondents) of the erstwhile employer (petitioner). On the contrary, records show that RCAM expressly manifested its unwillingness to absorb the petitioner school's employees or to recognize their prior service. As correctly found by the Labor Arbiter and the NLRC, respondent-teachers' employment has been effectively terminated and there was in effect a closure (Rollo, pp. 37 and 62). Obviously, therefore, the fate of private respondents under the new owner (RCAM) appeared unprovided for. And there is no law which requires the purchaser to absorb the employees of the selling corporation

If you decide to sell your business to another company, is this a form of closure?
Yes, the Supreme Court held it as a form of closure if the sale was done in good faith. If you are selling your company to another person or company, and the other company does not absorb your employees, the employees can be let go subject to separation pay.

Simulated sale - illegal termination

A change in ownership of the business must be done in good faith as a condition for exemption from liability for illegal dismissal. Thus, where the change of ownership is done in bad faith, or is used to defeat the rights of labor, the successor-employer is deemed to have absorbed the employees and is held liable for the transgressions of his or her predecessor

Peñafrancia Tours & Travel Transport v. Sarmiento

Facts: Sarmiento and Catimbang worked as bus inspectors of Penafrancia Tours until their dismissal. Prior to their dismissal, they were introduced to Perez, the owner of ALPS Transportation. Perez was allegedly the new owner of Penafrancia Tours. They were then dismissed on the ground that their application with Penafrancia Tours was held in abeyance. However, they found out that Cu, the old president of Penafrancia Tours, continued to manage the business despite its alleged sale to Perez.

Issue: Whether or not the bus inspectors were illegally dismissed

Ruling: Yes, they were illegally dismissed. Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of the establishment, usually due to financial losses.

Closure of business, as an authorized cause for termination of employment under Art. 283 LC, aims to prevent further financial drain upon an employer who can no longer pay his employees since business has already stopped.

But, in this case, there is no successor-employer because there was no actual change of ownership. We sustain the uniform factual finding of both the NLRC and the CA that no actual sale transpired and, as such, there is no closure or cessation of business that can serve as an authorized cause for the dismissal of the bus inspectors.

Penafrancia Tours failed to show proof that it suffered business losses and that a sale was in fact made to Perez by Cu. Further, the verification and certification of non-forum shopping was signed by Cu. Thus, Penafrancia Tours is still owned and managed by the Cu family.

What if the sale was not in good faith, it was stimulated?

It is a form of illegal dismissal. If it was stimulated to avoid the employees, then it was done in bad faith. The law contemplates a sale in good faith. The employees can claim that they were illegally terminated.

How can the employees determine that the sale was done in bad faith?

It can be determined in documents that the sale was stimulated or to get rid of the employees. Keep in mind, that if two companies have the same owners or directors does not necessarily mean that it was a sale in bad faith. Companies or corporations have juridical personality. Same directors of two companies is not enough proof for the sale to be stimulated.

If the companies were used to defraud the employees, the doctrine of piercing corporate veil can be used.

Commitment to Employ Existing Employees

Marina Port Services, Inc. v. Iniego

Facts: Metro was an arrastre operator. The Ph Port Authority revoked its contract for gross violation of the terms and conditions of the management contract. The Authority granted the new contract to MARINA with the condition that it shall absorb all of Metro's employees and shall be liable for all benefits provided for in the existing CBA.

For failure to pay the appropriate backwages, the union filed a complaint against Metro before the NLRC

Issue: Whether or not MARINA is liable in the labor case between the union and Metro

Ruling: Yes, MARINA is liable. The contract to operate



awarded by the Authority to MARINA clearly states:

Labor and personnel of previous operator, except those positions of trust and confidence, shall be absorbed by grantee. Labor or employees benefits provided for under existing CBA shall likewise be honored.

x x x x x x x x x

Grantee shall be responsible for all obligations, liabilities or claims arising out of any transactions or undertakings in connection with their cargo handling operations as of the actual date of transfer thereof to grantee.

When the words and language of documents are clear and plain or readily understandable by an ordinary reader thereof, there is absolutely no room for interpretation or construction anymore (Leveriza vs. Intermediate Appellate Court, 157 SCRA 282). And therefore, when said contract was accepted by the grantee-petitioner, it had stepped in the shoes of its predecessor. Accordingly, petitioner had bound itself to whatever judgment that awaited MPSI in the labor case.

Sale of business

The new owner usually absorbs some of the employees. For example, Atty. Go bought St. Paul's Foundation, transformed it to another UC Campus. The employees were retained.

Buyer continues to employ the employees

No separation pay

I. Sale of Business, Merger and Consolidation

Obligation to Absorb in Mergers

Filipinas Port Services, Inc. v. NLRC

Facts: In view of the government policy which ordained that cargo handling operations should be limited to only one cargo handling operator-contractor for every port the different stevedoring and arrastre corporations operating in the Port of Davao were integrated into a single dockhandlers corporation, known as Filport.

As a result of the merger, PPA Administrative Order No. 13-77 mandated Filport to draw its personnel complements from the merging operators.

Thus, Filport's labor force was mostly taken from the integrating corporations, among them the respondents Liboon et al. Liboon et al filed a complaint before the DOLE seeking the payment of retirement benefits differentials from the time they started working with the predecessor operators until they were absorbed by Filport

Issue: Whether or not Filport is a mere alter ego of its

predecessor operators and therefore liable for retirement benefit differentials

Ruling: Yes, Filport is a mere alter ego. Under the principle of substitution, the successor firm is liable to the obligations of the predecessor firm notwithstanding the change in management or personality of the new contracting employer.

The SC stated that Filport being a mere alter ego of the different merging companies has at the very least the obligation not only to absorb into its employ workers of the dissolved companies, but also to absorb the length of service earned by the absorbed employees from their former employers. Under the circumstances, Filport is a successor-employer. As successor, it is liable to the lawful obligations of the predecessor employers.

Thus, granting that Filport had no contract whatsoever with the private respondents regarding the services rendered by them prior by the fact of the merger, a succession of employment rights and obligations had occurred between Filport and the private respondents.

Merger

One company absorbs another company. There is an obligation on the surviving company to absorb the existing employees of the other company. Under the Corporation Code, the surviving company obligates itself to take on liabilities and obligations of the other company. This includes the its employees.

Surviving company has already employees for the same position

The surviving company can let go of the employees of the other company. There is already redundancy.

e. Disease

Article 299. [284] Disease as Ground for Termination.

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

The employer can dismiss an employee on the ground that the latter has a disease.

The grounds could be:

- 1) the continued employment is prohibited by law; or



2) the continued employment would prejudice the health of the employee and the health of his co-employees.

Disease is actually one of the authorized causes but it's in a separate paragraph. Remember, authorized causes are those which are beyond the control of the employee. So as a general rule, the employee is entitled to separation pay as a form of compensation to make up for the fact that they are going to lose their job because of something beyond their control. But the amount of compensation depends on the ground for the dismissal.

May the services of an employee be terminated due to disease?

Yes. The employer may terminate employment on ground of disease only upon the issuance of a certification by a competent public health authority that the disease is of such nature or at such stage that it **cannot be cured within a period of six months even with proper medical treatment.**

They basically based this six months requirement from Tuberculosis since it is curable within six months if you just follow the medication regimen. I assume they based it on TB.

Disease considered as one of the authorized causes, it could be: 1) the continued employment is prohibited by law; or 2) the continued employment would prejudice the health of the employee and the health of his co-employees. If continued employment would be prejudicial to the other employees because the disease that one may have is contagious, the employer, provided that a medical certificate is issued by a competent health authority, would be well within their rights to terminate the employee's services subject to separation pay.

Does the disease have to be contagious?

No. It does not have to be contagious. Usually, the best examples for this provision are contagious because it talks about being detrimental to the health of the co-workers.

Example for non-contagious: A nurse is working in a clinic that serves patients with infectious diseases. She got infected with HIV which became AIDS, a disease which suppresses one's immune system. A little cold can turn into a pneumonia. If you don't have an immune system that can fight off something as small as a cold, how much more when one is exposed to infectious diseases? That is already prejudicial to the health of the employee. The employer can, well within their right, dismiss such employee since one of the authorized causes is that the continued employment is prejudicial to the health of the employee.

It may seem unfair that an employee who has a

disease loses his or her job, but in the long run, it is better because such employee's health condition might get worse or that employer's business might get affected since such employee cannot really do the work as required. It's better to cut their losses at the earliest possible time by dismissing the employee. Ultimately, such dismissal is for the advantage of both.

Requirement of Medical Certificate

The employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment.

Manly Express, Inc. v. Payong

Facts: Payong was the welder of Manly. He was diagnosed with eye cataract. Despite having the cataract removed in January of 2000, he was disallowed to return to his work by his doctor. Thus, Manly terminated him from service. Thus, a complaint for illegal dismissal with money claims was filed against Manly.

Issue: Whether or not Payong was illegally dismissed

Ruling: Yes, Payong was illegally dismissed.

Art. 284. Disease as ground for termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees

In the present case, there was no proof that Payong's continued employment was prohibited by law or prejudicial to his health and that of his co-employees. No medical certificate by a competent public health authority was submitted that Payong was suffering from a disease that cannot be cured within a period of six months. In the absence of such certification, Payong's dismissal must necessarily be declared illegal.

Under the LC, a **medical certificate** is an indispensable requirement. How else would an employer know if the employee really has a disease?

In a scenario where an employee, who is suffering from a disease, goes to the office and directly asks the employer to give him separation pay because of his disease, that cannot be done since the employer would typically ask for a medical certificate to confirm such. In one case, the Supreme Court explicitly said that there **SHOULD BE** a medical certificate.

Art. 299 does not apply to resignation



Padillo v. Rural Bank of Nabunturan

Facts: Padillo was employed by the bank as a bookkeeper. Padillo suffered a mild stroke due to hypertension. He wrote a letter addressed to respondent Oropeza **expressing his intention to avail of an early retirement package.** Despite several follow-ups, his request remained unheeded. He also stopped working as of September 2007.

Padillo was terminated due to his poor health as reflected in the certification issued by the bank. Hence, Padillo filed a complaint for recovery of retirement benefits and separation pay

Issue: Whether or not Padillo is entitled to separation pay

Ruling: No. The Labor Code provision on termination on the ground of disease under Article 297 [299] does not apply in this case, considering that it was the petitioner and not the Bank who severed the employment relations. As borne from the records, the clear import of Padillo's September 10, 2007 letter and the fact that he stopped working before the foregoing date and never reported for work even thereafter show that it was Padillo who voluntarily retired and that he was not terminated by the Bank.

Article 297 [299] of the Labor Code contemplates a situation where the employer, and not the employee, initiates the termination of employment on the ground of the latter's disease or sickness. Thus, given the inapplicability of Article 297 [299] of the Labor Code to the case at bar, it necessarily follows that petitioners' claim for separation pay anchored on such provision must be denied.

TN: Art. 299 does not apply to resignation. This contemplates a situation where the employer dismisses the services of the employee because of a disease. Based on a case, if the employee resigns because of the disease, Art. 299 does not apply, and the employer is not obliged to pay a separation pay. Resignation because of the disease, no payment of separation pay is required because this Article contemplates a dismissal by the employer, not resignation of the employee.

Practical example only: If ever an employee, who is probably a family member or a friend of yours contemplating on resigning due to having a disease which could possibly last for more than six (6) months, for me, it is advisable that he or she does not immediately resign since such resignation will not entitle him or her to a separation pay. Wait for the employer to dismiss you because of the disease so that you can claim for separation pay. It may sound cruel, considering that the disease could be

contagious but as lawyers, we make use of the system to the advantage of our clients.

Where the doctor put in the medical certificate that vaccines are experimental and that it is ok that employees are not vaccinated, the doctor is injecting his opinion into the medical certificate when the purpose of the medical certificate is that you are asking for a very objecting stand on the condition of the employee.

With regard to disease, there is separation pay based on the LC.

Art. 297. Disease as Ground for Termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid **separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.**

However, separation pay is only applicable if the termination is initiated by the employer. Separation pay is not demandable if the employee resigns because of his disease. If you have a disease which is not curable within 6 months, do not resign. Wait for the employer to terminate you and then ask for a separation pay, at least you have money for your treatment.

IX. PROCEDURAL DUE PROCESS AND TERMINATION OF SERVICE (PROCEDURAL)

A. Procedural due process vs. Substantial due process

SUBSTANTIAL DUE PROCESS	PROCEDURAL DUE PROCESS
employee was dismissed due to a just or authorized cause	employee was dismissed in accordance with the procedures laid down in the LC
Dismissal is invalid if this is not observed	Does not invalidate dismissal
Entitles employee to reinstatement without loss of seniority rights, full backwages inclusive of allowances, other benefits or their monetary	Obligates erring employer to pay employee nominal damages



equivalent	
Causes provided under LC	<p>Two Written Notices</p> <ul style="list-style-type: none"> • 1st: apprises the employee of the particular acts or omissions for which his dismissal is sought • 2nd: informs employee of the decision to dismiss <p>Hearing: complied as long as there is opportunity to be heard, not necessary that actual hearing was conducted</p>
Burden of proving that substantial and procedural due process was observed lies with employer	

Procedural due process

Agustin v. Alphaland Corporation

Doctrine: Procedural due process means that the employee must be accorded due process required under Article 292(b) of the Labor Code, the elements of which are the twin-notice rule and the employee's opportunity to be heard and to defend himself. In the case of Agustin's dismissal, neither of these elements was satisfied.

Procedural Due process, essentially:

- 1) Notice
- 2) Hearing

This is giving the employee the opportunity to be heard.

B. QUANTUM OF EVIDENCE

Quantum of evidence, burden of proof in dismissal cases

Heavylift Manila v. Court of Appeals

Facts: Heavylift informed Galay through a letter of her low performance rating and negative feedback from her team members regarding her work attitude. In the same letter, she was relieved of her other functions except the development of the new Access program.

In its Position Paper, Heavylift argued that: (1) Galay had an attitude problem and did not get along with her co-employees; (2) Her attitude resulted in the decrease of the company's efficiency and productivity; (3) Two notices were given (letter and notice were given

Issues: WON Heavylift sufficiently proved that Galay was validly terminated

Ruling: No. For termination to be valid, substantial and procedural due process must be met (see above notes) and the burden to prove observance of such (using substantial evidence) rests on the employer.

In this case, Heavylift failed to discharge the burden of proving its observance of substantial and procedural due process. SC found that mere mention of negative feedback from team members and letter are not proof of Galay's attitude problem. The letter did not inform her of the specific acts complained of and their corresponding penalty. She was never given an opportunity to explain herself.

Quantum of evidence: Substantial evidence

Enough evidence that would convince a reasonable person to believe in a particular conclusion.

In illegal dismissal cases, the burden of proof rests on the **employer**:

- 1) The ER has to prove that there was just or authorized causes in letting the employee go;
- 2) The ER has to prove that there was due process

In labor cases, it is enough for the employee to state that he was illegally dismissed. The mere **allegation already shifts the burden of proof to the employer**.

Precision Electronics Corporation v. NLRC

Doctrine: The employer bears the burden to prove his allegation of economic or business reverses with clear and satisfactory evidence it being in the nature of an affirmative defense. Otherwise, if the employer fails to prove it, it necessarily means that the dismissal of an employee was not justified

C. PROCEDURE FOR TERMINATION

AUTHORIZED CAUSES

Authorized causes of termination refer to:

- (a) Installation of labor-saving devices
- (b) Redundancy
- (c) Retrenchment or downsizing
- (d) Closure or cessation of operation; and
- (e) Disease

1. Two notices

- No hearing required



For **Just** and **Authorized Causes**: The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected:

- (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and
- (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.

Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory, in the absence of which any judgment reached by management is void and nonexistent.

For the **authorized causes**

- (a) one to the employee to be separated; and
- (b) another to the Department of Labor and Employment.

Each such notice must be served **thirty days** before the employee's separation takes effect.

Illustration: If you are planning to let the employee go on July 1; you have to give the employee the notice on July 1

Notice requirement to DOLE: reportorial requirement

Individual notice required; collective notice insufficient

Shoppers Gain Supermart v. NLRC

Facts: Due to the non-renewal of the lease contract of SGS, it was constrained to terminate its contracts with the labor only agency contractors and apply for business retirement. SGS paid separation benefits to its regular employees but not to the private respondents

Issues: WON procedural due process was observed in the termination of the private respondents

Ruling: No. Procedural due process requires the serving of written notice upon each worker to be terminated and upon DOLE at least 1 month prior to the date of termination. The rights of an employee to be informed beforehand of his proposed dismissal (or suspension) as well as of the reasons therefor, are rights personal to the employee.

In this case, the mere posting of the notice to terminate in the employees' bulletin board is not sufficient compliance.

Hence, it is not enough that you post a notice on the company bulletin board stating "the following

employees are going to be retrenched.."

Each employee must personally receive a written notice, informing them that they are to be retrenched.

Two-notice rule applies to Disease

Deoferio v. Intel Technology

Facts: Intel employed Deoferio and assigned him to the US but he was repatriated after 2 years and was confined for depression with psychosis.

After several consultations, a psychiatric report was issued stating that Deoferio's symptoms are not curable within 6 months and will negatively affect his work. As a result, Intel issued Deoferio a notice of termination.

Intel argued that Deoferio's dismissal was valid and that Twin-notice requirement on dismissals does not apply to terminations due to disease.

Issues: WON twin-notice rule applies to dismissals due to disease

Ruling: Yes. IRR expressly states that the employee should be afforded procedural due process in ALL cases of dismissals. The twin-notice rule in dismissals due to disease has also been consistently held by the Supreme Court.

While Disease is in a separate paragraph in the LC, for purposes of fairness the notice rule has to be applied to disease.

Voluntary arbitration is sufficient compliance with the 1-month notice

Revidad v. NLRC, G.R. No. 111105, 27 June 1995

Facts:

The company president directed the lay-off of 705 of the employees due to financial losses. Hence AG & P United Rank and File Association (URFA/union) staged a strike. In a conciliation conference over the labor dispute held before the NCMB, the parties agreed to submit to the legality of the lay-offs to voluntary arbitration. Since petitioners were not recalled by management, they filed a complaint for illegal dismissal and ULP Petitioners contend that assuming arguendo that indeed there was only one lay-off, their temporary lay-off supposedly due to retrenchment is illegal because no written notice of termination was submitted with the Department of Labor and Employment one month before the date of the temporary lay-off.

Issue: W/N hearing and investigation by the employer, where the reason for termination is retrenchment due



to financial reverses and not to an act attributable to the employee, is required. – NO

Ruling:

The proceedings before the voluntary arbitrator, where both parties were given the opportunity to be heard and present evidence in their favor, constitute substantial compliance with the requirement of the law. The purpose of this notice requirement is to enable the proper authorities to ascertain whether the closure of the business is being done in good faith and is not just a pretext for evading compliance with the just obligations of the employer to the affected employees. In fact, the voluntary arbitration proceedings more than satisfied the intendment of the law considering that the parties were accorded the benefit of a hearing, in addition to the right to present their respective position papers and documentary evidence.

Hearing and investigation by the employer, where the reason for termination is retrenchment due to financial reverses and not to an act attributable to the employee, is not even required because it is considered a surplusage under existing jurisprudence. Considering that the Office of the Voluntary Arbitrator is under the jurisdiction of the Department of Labor and Employment, it would be superfluous to still require the service of notice with the latter when proceedings have already been initiated with the former precisely to carry out the very purpose for which said notice is intended.

Notice not necessary when there is consent or voluntary application for retrenchment

International Hardware, Inc. v. NLRC

Facts:

Private respondent Bonifacio Pedroso was employed by petitioner International Hardware first, as a truck helper, and later as a delivery truck driver until December 1984 when the number of working days of private respondent was reduced to just two days a week due to the financial losses suffered by the business of petitioner. Private respondent filed a complaint for illegal dismissal and the payment of separation pay in the Department of Labor and Employment (DOLE).

Issue: Whether or not notice is necessary when there is consent or voluntary application for retrenchment

Ruling:

To effect termination of any employee, it is required that the employer must serve a written notice on the workers and the DOLE at least one (1) month before the intended date thereof. The purpose of such previous notice to DOLE must be to enable it to ascertain the verity of the cause for termination of employment.

In this case, the private respondent had not been terminated or retrenched by the petitioner but that due

to the financial crisis the number of working days of private respondent was reduced to just two days a week. Petitioner could not have been expected to notify DOLE of the retrenchment of private respondent under the circumstances for there was no intention to do so on the part of petitioner. By the same token, if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-serving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment.

No notice to employee required: If the EE volunteers to be retrenched as notice becomes redundant

✓ Notice to DOLE still required even if the EE volunteered to be retrenched

2. Payment of separation pay in the case of authorized causes

Automation or Redundancy	Closure or Retrenchment
Employee receives 1 month salary for every year of service	Employee receives $\frac{1}{2}$ month salary for every year of service

Exception: If the financial loss is so severe on the part of the employer, may be exempted from paying separation pay

Exception – closure due to huge business losses

North Davao Mining Corporation v. NLRC, G.R. No. 112546, 13 March 1996

Doctrine: Where the closure was due to business losses the Labor Code does not impose any obligation upon the employer to pay separation benefits, for obvious reasons. Art. 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to losses.

Basic salary that serves as basis for separation pay should include regular allowances transportation and emergency living allowances

Planters Products, Inc. v. NLRC, G.R. No. 78524, 20 January 1989



Doctrine: PPI erred in not integrating the allowances with the basic salary in the computation of the separation pay. The salary base properly used in computing the separation pay should include not just the basic salary but also the regular allowances that an employee has been receiving. The allowances of the remaining PPI employees were made part of their basic pay. This increased the computation bases for their terminal benefits.

Basic salary that serves as basis for separation pay should include regular allowances transportation and emergency living allowances

Santos v. NLRC, G.R. No. 76721, 21 September 1989

Facts:

Lydia Santos was Security Bank's former Branch Manager. In the illegal dismissal case filed by Santos against Security Bank, the Labor Arbiter found petitioner's dismissal to be illegal and ordered the private respondent Bank to reinstate her with backwages and other accrued benefits. The NLRC limited the benefits recoverable by Santos to (1) her separation pay, in lieu of reinstatement and backwages; and (2) gratuities which accrued in her favor during the period from her illegal dismissal.

Issue: Whether or not Santos is entitled to an award for backwages, in addition to: (1) her separation pay; and (2) gratuities accruing before the Labor Arbiter's order for reinstatement was modified.

Ruling:

Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. Separation pay is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.

In the computation of backwages and separation pay, the amount must be taken not only of the basic salary of the petitioner but also of her transportation and emergency living allowance.

The salary referred to in separation pay is the basic salary of the employee.

Basic salary (the pay received by the ee every month)

- **Includes:** allowances regularly received by ee
- Allowances are usually listed as separate items from your basic pay. However, if you receive them regularly enough, that in effect, they are essentially part of your monthly remuneration, they should be included when computing the

separation pay.

Example: 1 month salary/every year of service

Monthly salary:	20,000.00
Monthly allowance:	800.00

The P800 should be added tot he computation of separation pay. Hence, the basic pay for purposes of computation is P28,000.

Computation should not include commissions

Soriano v. NLRC, G.R. No. 75510. October 27, 1987

Facts:

Rufina Soriano was Kingly Commodities Traders and Multi-Resources, Inc.'s VP-Marketing. But she was charged with allowing or failing to supervise and monitor certain activities of investment counselors in her department. Because of the strained relations between petitioner and the Corporation, reinstatement of petitioner was not feasible. The Labor Arbiter required the respondent corporation to pay a separation fee to the petitioner. However, Soriano sought for the inclusion of the commissions in the base figure for purposes of computing the separation pay.

Issue: Whether commissions are properly not included in the salary base used in computing the separation pay.

Ruling:

The salary base properly used in computing the separation pay and the backwages due to petitioner should include not just the basic salary but also the regular allowances that petitioner had been receiving. In the petitioner's case, the base figure properly includes her: (a) basic salary of P3,000.00 a month; and (b) living allowance of P2,400 a month. The commissions also claimed by petitioner ("override commission" plus "net deposit incentive") are not properly includable in such base figure since such commissions must be earned by actual market transactions attributable to petitioner. Neither should "travels equivalent" and "commission in trading personal clients" be included in such base figure.

Commission - some sort of additional pay, like an extra bonus for every sale made

GR: Commission should not be included in the basic pay because there is no consistent value to it. It is not included as part of the computation of separation pay unless the employee could prove that the commission has been regularly received him/her. If not regularly received, it should not form part of the computation of separation pay, especially if the



commission is based on the work that you did not do. As long as the commissions are unpredictable and not given to the employee with any sense of regularity, it should not be part of the base salary in so far as the computation of separation pay is concerned.

Example: Pyramiding scheme wherein you are given a commission for each number of people that you have recruited. One could argue that the amount received should not be included as part of your base pay since the amount is unpredictable.

TN: If you receive the commissions regularly, it could form part of your base pay for purposes of computing the separation pay.

Labor Code only provides for computation of minimum separation pay

Jiao v. NLRC, G.R. No. 182331, 18 April 2012

Facts:

The petitioners were regular employees of Philbank. Thereafter, Philbank merged with Global Business Bank, Inc. As a result of the merger, complainants' respective positions became redundant. A Special Separation Program was implemented and the petitioners were granted a separation package equivalent to one and a half month's pay for every year of service based on their current salary. According to the petitioners, they are entitled to separation pay at a rate of one month salary for every year of service under the Labor Code and gratuity pay at a rate of one month salary for every year of service whether under the Old Plan or the New Gratuity Plan. Since what they received as separation pay was equivalent to only 150% or one and one-half of their monthly salaries for every year of service, the respondents are still liable to pay them the deficiency equivalent to one-half of their monthly salary for every year of service.

Issue: Whether the petitioners can claim the benefits thereunder in addition to or on top of what is required under the Article 283 of the Labor Code.

Ruling:

Article 283 of the Labor Code 30 provides only the required minimum amount of separation pay, which employees dismissed for any of the authorized causes are entitled to receive. Employers, therefore, have the right to create plans, providing for separation pay in an amount over and above what is imposed by Article 283. There is nothing therein that prohibits employers and employees from contracting on the terms of employment, or from entering into agreements on employee benefits, so long as they do not violate the Labor Code or any other law, and are not contrary to morals, good customs, public order, or public policy. For as long as the minimum requirements of the Labor Code are met, it is within the management prerogatives of employers to come up with separation packages that will be given in lieu of what is provided

under the Labor Code.

If the petitioners were allowed to receive separation pay from both the Labor Code, on the one hand, and the New Gratuity Plan and the SSP, on the other, they would receive double compensation for the same cause (i.e., separation from the service due to redundancy) even if such is contrary to the provisions of the New Gratuity Plan.

D. PROCEDURE FOR TERMINATION

JUST CAUSES

Article 297. [282] Termination by Employer.

An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing.

1. Twin notice rule and Hearing

- 5-days to respond; ample opportunity to be heard

Twin notice and hearing rule → Important case that outlined the procedure governing the twin notices and hearing rule is the case of *Unilever Philippines, Inc. v. Rivera*.

First notice requirement:

- The company issues a notice and this notice is also called a show cause notice. In this notice, you are listing down the charges of the employee and the factual background, the list of the charges against the employee. A lot of companies have internal manual or internal disciplinary procedures – these internal procedures should also be listed down in the show cause notice. For example, in insubordination of the superior's orders, if it is applicable to the facts, you should also include this as a ground and this is important because you cannot hold an employee guilty



of a ground that you did not mention in the notice. If for example you are charging the employee for loss of trust and confidence, but the notice never contained a charge for breach of loss of trust and confidence so the employee can claim that he was illegally dismissed because of this. Every charge has to be mentioned in the notice because otherwise, you cannot hold the employee guilty for that and you cannot terminate the employee based on that ground if it wasn't in the notice.

- Another thing you should mention in the notice that you would give them an opportunity to explain in writing. Meaning, you are asking them to respond to the notice within 5 days from the receipt of the notice. The 5 days is very important because the SC has held that the minimum opportunity for them to explain is 5 days because this is already a sufficient time for the EE to go over the charges, to go over the records, ask witnesses, and draft their own response within this period. The company can give a longer period but the SC said that the minimum is only 5 days.
- If the company plans to conduct a hearing, they should also inform the EE that they would conduct a hearing and they can present their own evidence, their witnesses, and they bring their own counsel. You are giving the employee an opportunity to be heard by allowing them to present their evidence, present their witnesses and even be represented.

TN: The show cause notice must contain the factual background on why you are charging the employee of the alleged acts, the charges themselves either those found in the Labor Code or in the company's manual, and all the applicable charges have to be mentioned in the notice because otherwise, you cannot charge the employee based on those grounds. It has to contain an instruction that the employee has to respond within 5 days or longer depending on the company in writing. In the hearing, the employees are given the opportunity to present evidence, present witnesses on their behalf and they can represent themselves or bring a representative of their choice. The representative does not necessarily mean a lawyer – it can be a family member, a co-employee and whoever they want to represent them.

For termination of employment based on just causes as defined in Article 97 of the Code:

- (a) A **written notice** served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
- (b) A **hearing** or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given

opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

- (c) A **written notice of termination** served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

Right to Representation

Representation does not necessarily mean you must be represented by a lawyer, but it is implied that it means having a lawyer. Representative can also be a family member, a co-employee, or whoever they want to represent them.

It is not necessary that there is a lawyer, a lawyer is not an indispensable requirement. The only requirement is that the employee is given the option to be represented. It is not even necessary that it should be a lawyer, there was a case where the employee complained that he was not allowed a lawyer, where in fact it is clear in the notice that he has the choice, he just did not act on his option.

First Notice

Going back to the first notice requirement, similar to notice in the case of authorized causes, it has to be individual. Each employee must be sent a notice. If for example you are charging a group of employees, each must be notified. A notice of suspension by itself is not notice. For example, you are charging an employee for preventive suspension thinking that he stole something, that is not enough because remember all those things you need to list in a notice must be there. The notice of preventive suspension can also be a notice to explain, you can merge 2 things together, as long as the things you need to mention in the first notice are there. But if it is a standard notice of preventive suspension informing the employee that he is preventively suspended, that is not enough. The initial notice and hearing does not need to be an adversarial face-to-face hearing. It's enough that there's an ample opportunity to be heard. Usually companies save the face-to-face hearing for serious grounds. But if it's not serious enough, the parties can just exchange letters and notices and that would be sufficient because there was an opportunity to be heard.

Second Notice

The second notice is simply a notice informing the



employee of the decision of the employer. Example: "after review, the evidence is not sufficient so we are dismissing this case against you". It merely informs the decision of the employer. It can be as benign as a warning or as heavy as suspension this notice applies to any sort of disciplinary action. Basically the employee is afforded the due process but it is more pronounced in termination because it is the question in labor cases.

Hearing: Opportunity to be Heard

Under the law, a hearing is not necessarily adversarial hearing. Hearing in this sense is less adversarial and usually there is only a table where there is a less strict conversation. The important thing is that the employee is given the opportunity to be heard. The Supreme Court held that opportunity to be heard is sufficient in some cases where there is no face-to-face hearing as long as both parties are allowed to submit position papers and respond to each other. The fact that they interacted through their papers is enough.

In hearing, it is not necessary that it is adversarial, as long as the employee has the chance to explain himself. The parties may only send letters and that would be sufficient compliance for the hearing requirement.

What happens during the hearing?

There is no strict protocol as long as there is an opportunity to air his side and an opp to counter the allegation of the complainant or company.

What about if there is a union sec clause?

Even if it was violated, the employer should still follow the hearing notice, because union sec clause is not automatic. The employee must be given due process by following this procedure, and this must be followed before the termination of the employee, because it would defeat the purpose of due process.

By the way, if the company has internal policies (e.g., the company manual provides that the immediate supervisor of the employee must be present during the administrative hearing), the employer is bound by those policies. Because essentially, the manual or the policy - even if its an internal arrangement only - its a contract between the employer and the employee so the employer is bound by it. If the protocol says that there has to be an initial fact-finding investigation before the notice is sent out, the employer is bound to follow that. If it says that the parties have to file a position paper with this kind of format, the employer is

bound by that. The employer cannot back out from it and is estopped since they were the ones who implemented it in the first place. So they have to strictly follow their own protocols.

However, the Supreme Court has held in certain cases that as long as there was an opportunity to be heard and an approximation of due process was followed, meaning the notice-hearing-notice, the internal policies of the employer can be dispensed with. But again, its essentially still a contract so the employer cannot hope that maybe the Labor Arbitrator, NLRC, or even the Supreme Court will side with them for not following their own rules and regulations. In fact, one could argue that they are already estopped and they might even be in bad faith for backing out of their own commitments to the employee.

As a general rule, internal policies have to be followed. However, for the sake of justice and equity, one could argue that as long as the notice-hearing-notice requirement was followed, then perhaps it can be argued that there was enough compliance with due process on the part of the employee. It would ultimately depend whose side you are defending.

Twin notice and hearing, 5-day requirement

Unilever Philippines, Inc. v. Rivera, G.R. No. 201701, 03 June 2013

Facts:

Rivera filed a complaint for Illegal Dismissal and other monetary claims against Unilever. The NLRC held that although she was legally dismissed from the service for a just cause, Unilever was guilty of violating the twin notice requirement in labor cases. Thus, Unilever was ordered to pay her P30,000.00 as nominal damages, retirement benefits and separation pay. Unilever questions the grant of nominal damages in favor of Rivera for its alleged non-observance of the requirements of procedural due process. It insists that she was given ample opportunity to explain her side, interpose an intelligent defense and adduce evidence on her behalf.

Issue: Whether Unilever observed the requirements of procedural due process. NO.

Ruling:

The following should be considered in terminating the services of employees:

1. The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management



must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

2. After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
3. After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

In this case, Unilever was not direct and specific in its first notice to Rivera. The words it used were couched in general terms and were in no way informative of the charges against her that may result in her dismissal from employment. Evidently, there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages.

Puncia v. Toyota Shaw/Pasig, Inc

Doctrine: In this case, at first glance it seemed like Toyota afforded Puncia procedural due process. However, a closer look at the records reveals that in the Notice to Explain, Puncia was being made to explain why no disciplinary action should be imposed upon him for repeatedly failing to reach his monthly sales quota, which act, as already adverted to earlier, constitutes gross inefficiency. On the other hand, a reading of the Notice of Termination shows that

Puncia was dismissed not for the ground stated in the Notice to Explain, but for gross insubordination on account of his non-appearance in the scheduled October 17, 2011 hearing without justifiable reason. In other words, while Toyota afforded Puncia the opportunity to refute the charge of gross inefficiency against him, the latter was completely deprived of the same when he was dismissed for gross insubordination – a completely different ground from what was stated in the Notice to Explain. As such, Puncia's right to procedural due process was violated

In order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice.

After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

Perez v. PT and T

Facts: Petitioners were placed on preventive suspension for 30 days for their alleged involvement in the anomaly of jacking up the value of the freight costs for goods shipped and that the duplicates of the shipping documents allegedly showed traces of tampering, alteration and superimposition. Their suspension was extended for 15 days twice.

Then in a Memorandum, petitioners were dismissed from the service for having falsified company documents. Petitioners filed a complaint for illegal suspension and illegal dismissal alleging that they were dismissed on November 8, 1993, the date they received the above-mentioned memorandum. Petitioners contend that there was no just cause for their dismissal, that they were not accorded due process and that they were illegally suspended for 30 days.

Issue: W/N petitioners were accorded due process?

Ruling: NO. Petitioners were neither apprised of the charges against them nor given a chance to defend themselves. They were simply and arbitrarily separated from work and served notices of termination in total disregard of their rights to due process and security of tenure. The labor arbiter and the CA correctly found that respondents failed to comply with the two-notice requirement for terminating employees.



To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices:

1. a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and
2. another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

1. "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.
2. a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.
3. the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations..

De Vera v. NLRC

Facts: Pending investigation, petitioner, who was an assistant cashier at the Taft Avenue Branch of BPI, received Notice of Preventive Suspension due to his alleged involvement in a forged transaction. Petitioner then received a Notice of Termination terminating his services on the ground of fraud or willful breach of trust and setting forth therein the transgressions he had allegedly committed.

Issue: W/N petitioner's termination was valid?

Ruling: NO

Definitely, the Notice of Preventive Suspension can not be considered adequate notice since the objectives of the petitioner's preventive suspension, as stated in the notice, were merely to ascertain the extent of the loss to the bank, and to pinpoint responsibility of the parties involved, and not to apprise the petitioner of the causes of his desired dismissal. Likewise, the subsequent interview is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges against him in order to give him an opportunity to refute the accusations levelled against

him, and it certainly does not consist of an inquiry conducted merely for the purpose of filing a criminal case against another person.

Furthermore, this Court has repeatedly held that the employer is mandated to furnish the employee sought to be dismissed two notices, the written charge, and the notice of dismissal, if, after hearing, dismissal is indeed warranted. No written charge was ever furnished the petitioner in this case.

The respondents then claim that the alleged defects in due process were cured when the petitioner presented his case and arguments before the NLRC. This is untenable. The case before the NLRC is the petitioner's complaint for illegal dismissal. At that time, he had already been terminated. What the Labor Code sets forth is the procedure prior to dismissal. "Fire the employee, and let him explain later" is not in accord with the due process under the law.

Century Textile Mills, Inc. v. NLRC

Facts: Eduardo Calangi was a machine operator of the petitioner company. However he was placed under preventive suspension by the petitioner company since he was accused of being a mastermind of a criminal plot against his supervisors. Eventually, he was terminated. It was alleged that Calangi instructed Torrena to put toxic substance in the drinking water of Calangi's supervisors.

Issue: Whether or not Calangi had been dismissed without just cause from his employment by Century?

Ruling: The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution.

The record of this case is bereft of any indication that a hearing or other gathering was in fact held where private respondent Calangi was given a reasonable opportunity to confront his accuser(s) and to defend against the charges made by the latter. Petitioner Corporation's "prior consultation" with the labor union with which private respondent Calangi was affiliated, was legally insufficient. So far as the record shows, neither petitioner nor the labor union actually advised Calangi of the matters at issue. The Memorandum of



petitioner's Personnel Manager certainly offered no helpful particulars. It is important to stress that the rights of an employee whose services are sought to be terminated to be informed beforehand of his proposed dismissal (or suspension) as well as of the reasons therefor, and to be afforded an adequate opportunity to defend himself from the charges levelled against him, are rights personal to the employee. Those rights were not satisfied by petitioner Corporation's obtaining the consent of or consulting with the labor union; such consultation or consent was not a substitute for actual observance of those rights of private respondent Calangi. The employee can waive those rights, if he so chooses, but the union cannot waive them for him. That the private respondent simply 'kept silent' all the while, is not adequate to show an effective waiver of his rights. Notice and opportunity to be heard must be accorded by an employer even though the employee does not affirmatively demand them.

Ruffy v. NLRC

Facts: Petitioner was employed in the Materials and Supply Section, Supply and Warehousing Department of the respondent Central Azucarera Don Pedro. It was gathered by the respondent that the bearings were sold to factoria de Nasugbu for P8,250 by Anastacio Maulleon, Jr., an employee of the respondent whose employment was terminated in connection with this case.

During the investigation, the complainant was asked whether Alfredo Role, also an employee of respondent, was the same person who received said bearings. In reply, complainant answered that he could not remember and denied having received said bearings. Later on, the complainant was dismissed from the service for breach of trust, gross negligence and flagrant inefficiency with forfeiture of all rights and privileges.

Issue: W/N petitioner's dismissal was valid

Ruling: NO

The law lays down the procedure prior to the dismissal of an employee. It need not be observed to the letter, but at least, it must be done in the natural sequence of notice, hearing and judgment.

In the case at bar, there is no doubt that at the very outset, that is, prior to investigation, the petitioner was informed that his services had been terminated. He was made to air his side subsequently, it is true, yet the stubborn fact remains that notwithstanding such an opportunity, if an opportunity it was, he had been dismissed from the firm. LibLex

The procedure under Batas Blg. 130 and the rules implementing it are conditions sine qua non, before

dismissal may be validly effected. It does not matter that the petitioner's termination, given on December 19, 1984, was effective on January 1, 1985, which, so the respondent Commission insists, gave him enough chance to present his side. This is not the "ample opportunity" referred to by the labor relations law of 1981. By "ample opportunity" is meant every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense. Under the rules indeed, the worker may be provided with a representative. In this case, although the interregnum between the date of the notice of dismissal and the date of its effectiveness ostensibly provided the petitioner time within which to defend himself, there really was nothing to defend, because the fact is, he had been fired. We can not countenance such a situation.

We reiterate that the process set forth by the law need not be obeyed according to its letter, but rather, according to its spirit, as a due process measure. "Fire the employee, and let him explain later" is not in accord with that expedient.

Lopez v. Alturas Group

Facts: Quirico Lopez (petitioner) was hired by respondent Alturas Group of Companies in 1997 as truck driver. Ten years later or sometime in November 2007, he was dismissed for alleged theft. Petitioner allegedly admitted to the security guard that he was taking out the scrap iron consisting of lift springs out of which he would make axes. Petitioner, in compliance with the Show Cause Notice issued by respondent company's Human Resource Department Manager, denied the allegations by a handwritten explanation written in the Visayan dialect.

Respondent company terminated his employment by Notice of Termination effective December 14, 2007 on the grounds of loss of trust and confidence, and of violation of company rules and regulations. In issuing the Notice, respondent company also took into account the result of an investigation showing that petitioner had been smuggling out its cartons which he had sold, in conspiracy with one Maritess Alaba, for his own benefit to thus prompt it to file a criminal case for Qualified Theft 3against him before the Regional Trial Court (RTC) of Bohol. It had in fact earlier filed another criminal case for Qualified Theft against petitioner arising from the theft of the scrap iron. Petitioner thereupon filed a complaint against respondent company for illegal dismissal and underpayment of wages. He claimed that the smuggling charge against him was fabricated to justify his illegal dismissal. He further alleged that he should have been afforded, or at least advised of the right to counsel.



Issue: W/N petitioner should be afforded counsel

Ruling: NO, the right to counsel is neither indispensable nor mandatory.

Procedural due process has been defined as giving an opportunity to be heard before judgment is rendered. In termination cases, the employer may provide an employee with ample opportunity to be heard and defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure.

Parenthetically, the Court finds that it was error for the NLRC to opine that petitioner should have been afforded counsel or advised of the right to counsel. The right to counsel and the assistance of one in investigations involving termination cases is neither indispensable nor mandatory, except when the employee himself requests for one or that he manifests that he wants a formal hearing on the charges against him. In petitioner's case, there is no showing that he requested for a formal hearing to be conducted or that he be assisted by counsel. Verily, since he was furnished a second notice informing him of his dismissal and the grounds therefor, the twin-notice requirement had been complied with to call for a deletion of the appellate court's award of nominal damages to petitioner.

Ferrer vs NLRC

Doctrine: The need for a company investigation is founded on the consistent ruling of this Court that the twin requirements of notice and hearing which are essential elements of due process must be met in employment termination cases. The employee concerned must be notified of the employer's intent to dismiss him and of the reason or reasons for the proposed dismissal. The hearing affords the employee an opportunity to answer the charge or charges

against him and to defend himself therefrom before dismissal is effected.

Exception: Hearing not necessary if there is admission by employee

China Banking Corp. v. Borromeo

Facts: The respondent, without authority from the Executive Committee or Board of Directors, approved several DAUD/BP accommodations amounting to ₱2,441,375 in favor of Joel Maniwan, with Edmundo Ramos as surety. Such checks, which are not sufficiently funded by cash, are generally not honored by banks. Under the petitioner Bank's standard operating procedures, DAUD/BP accommodations may be granted only by a bank officer upon express authority from its Executive Committee or Board of Directors.

After a series of letter-inquiries, the respondent notified Chiong of his intention to resign from the petitioner Bank and apologized "for all the trouble I have caused because of the Maniwan case." The respondent, however, vehemently denied benefiting therefrom. In his Letter dated April 30, 1997, the respondent formally tendered his irrevocable resignation effective May 31, 1997.

Issue: Whether or not the respondent's right to due process was violated by the bank since no administrative investigation was conducted prior to the withholding of his separation benefits?

Ruling: NO. Contrary to his protestations, the respondent was given the opportunity to be heard and considering his admissions, it became unnecessary to hold any formal investigation. More particularly, it became unnecessary for the petitioner Bank to conduct an investigation on whether the respondent had committed an "[I]nfraction of Bank procedures in handling any Bank transaction or work assignment which results in a loss or probable loss" because the respondent already admitted the same. All that was needed was to inform him of the findings of the management and this was done by way of the Memorandum dated May 23, 1997 addressed to the respondent. His claim of denial of due process must therefore fail.

Hearing is not necessary if the employee admitted his fault. It would be useless. That is one instance where the hearing can be dispensed with.

2. Report to DOLE: end of project employment



Please remember that in the case of project employment, there is a reportorial requirement that DOLE has to be informed of the end of a project employee's employment.

3. Notice not necessary for end of Contractual employment

Is notice required if the term of the contractual employee is about to end?

No. The term in the contract is sufficient notice. The Supreme Court held that for contractual employees, there is no need to give notice. Why? First of all, it's not a just or authorized cause so it won't apply. The Supreme Court said that notice isn't necessary because by signing a employment contract, the employee is presumed to have read all the terms and conditions including the period of the contract. Because they have notice, it's already redundant.

4. Effect of resignation or retirement while disciplinary proceedings are pending

What happens if an employee resigns or retires while the administrative case against them is pending?

The Supreme Court has held that the administrative proceedings or the disciplinary proceedings can still go on even if the employee resigned or retired. Why? Because the termination proceedings is just so much for the benefit of the employer as it is the employee. So the employer has to figure out what happened. It's somehow giving the employer a sense of closure to determine what really happened with regard to the charges against the employee most especially when the employee stole something, etc. and the employer has a vested interest in determining whether it was true or not.

Vilchez v. Free Port Service Corp.

Facts: Segifredo Vilchez was respondent FSC's Physical Security Department Manager. As Manager, petitioner was in-charge of overseeing the successful operation/management of the Physical Security Department as well as maintaining effective measures in providing better security services.

Vilchez advised the respondent FSC management of the need to secure PNP SOSIA licenses for its 159 physical security officers and volunteered to take full responsibility for procuring the said licenses and other requirements.

He required the amount of P127,200.00 for the payment of licenses, NBI clearances, psychiatric tests

and drug tests for the 159 security officers. All the security personnel concerned were deducted, on the same month, the sum amounting to P800.00 each.

Disbursement Voucher No. 04308 was made payable to Col. Angelito Gerangco, who collected and encashed the same.

The COA issued a Notice of Suspension of the P127,200.00 transaction after finding that Gerangco was not a designated disbursing officer and, therefore, should not be given a cash advance.

Petitioner insisted that Col. Gerangco's non-compliance was his own misfeasance, which he could not be held liable for.

Issue: Whether or not a public official's cessation from service renders moot an administrative case that was filed prior to the official's resignation?

Ruling: NO. Recently, we emphasized that in a case that a public official's cessation from service does not render moot an administrative case that was filed prior to the official's resignation.

Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic.

The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.

Thus, from the strictly legal point of view and as we have held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive.

E. ILLEGAL DISMISSAL

Existence of EER necessary for an illegal dismissal complaint

Bishop Shinji Amari of Amiko Baptist Church v. Villaflor

Facts: Ricardo Villaflor, Jr. (respondent) was informed of his removal as a missionary of the Abiko Baptist Church, cancellation of his American Baptist Association (ABA) recommendation as a national missionary, and exclusion of his membership in the Abiko Baptist Church in Japan.

Respondent believed that he was dismissed from his



employment without the benefit of due process and valid cause; thus, he filed a complaint before the NLRC.

On the other hand, BSAABC said that after investigation, it was discovered that respondent's refusal to leave San Carlos City was because he had built his personal house on the land owned by BSAABC without the latter's consent.

The members of the BSAABC unanimously voted to remove him as missionary and cancel his ABA recommendation.

Issue: Whether or not the respondent was illegally dismissed despite the fact that the dispute involves an ecclesiastical affair as the respondent was a member of the Abiko Baptist Church?

Ruling: NO. The respondent was not illegally dismissed. Respondent's claim of illegal dismissal is dependent on the existence of the employer-employee relationship. Unfortunately, respondent failed to prove his own affirmative allegation. Respondent's removal as a missionary of Abiko Baptist Church is an ecclesiastical affair.

Before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. The lower tribunals used the "four-fold test" in determining the existence of an employer-employee relationship, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct.

First, the LA and the CA anchored their findings of employer-employee relationship on the Appointment Paper presented by respondent. This evidence, however, refers to his appointment as an instructor, as well as his duties and responsibilities as such; but, to emphasize, respondent was removed as a missionary of Abiko Baptist Church, not as an instructor of MBIS. There is no evidence or allegation to show that respondent's status as a missionary is the same or dependent on his appointment as an instructor of MBIS. True, the removal as a missionary may have affected respondent's status as instructor of MBIS, but the Court is not convinced that there was an illegal dismissal. It is more appropriate to say that being an instructor of MBIS was part of respondent's mission work as a missionary/minister of BSAABC.

Second, We do not find in the records concrete evidence of the alleged monthly compensation of respondent amounting to \$550. Respondent is not even consistent in claiming the exact amount of his supposed salary as he claims he was receiving \$650. Although petitioners do not deny that respondent was receiving "love gifts" in the amount of \$550, they aver that these came from ABA and Abiko Baptist Church in Japan. The designation of "salaried missionary" is not determinative of the existence of an employer-employee relationship. "Salary" is a general term defined as remuneration for services given, but the term does not establish a certain kind of relationship.

As to the third element, We find that dismissal is inherent in religious congregations as they have the power to discipline their members.

Lastly, as to the power of control, the CA ruled that the duties enumerated in the Appointment Paper, together with BSAABC's power to order respondent to areas of mission work, as well as

the Mission Policy Agreement, all indicated the exercise of control.

Illegal dismissal case will not prosper if there was no dismissal; employee filed complaint instead of responding to notice to explain

Basay v. Hacienda Consolacion

Facts: Respondents hired petitioners Romeo Basay (Basay) and Julian Literal (Literal), as tractor operators, and petitioner Julian Abueva (Abueva), as laborer, in the hacienda devoted for sugar cane plantation.

Petitioners filed a complaint for illegal dismissal with monetary claims against respondents. They alleged that sometime in July 2001, respondents verbally informed them to stop working. Thereafter, they were not given work assignments despite their status as regular employees. They alleged that their termination was done in violation of their right to substantive and procedural due process.

Issue: Whether or not petitioners were illegally dismissed?

Ruling: NO. We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

How do you charge illegal dismissal?

For one thing, you cannot file for illegal dismissal if you're not an employee - if there's no employer-employee relationship. Illegal dismissal is only limited to employees - not contractors, not corporate officers.

For illegal dismissal cases, there has to be an actual dismissal. Meaning, there has to be an actual dismissal, a notice of dismissal or termination, or constructive dismissal. There has to be some actual form of dismissal. Either the employee was told that they were dismissed or the employer made the working environment so difficult that the employee was compelled to resign, which is effectively a constructive dismissal.

Don't forget constructive dismissal. The employee, because of the circumstances brought about by the employer, had no choice but to resign (e.g. the



environment became toxic, difficult, etc.).

There has to be a dismissal. If the employee was not dismissed, either actually or constructively, there can be no illegal dismissal case. There was an interesting case where the employee was sent a notice to explain and instead of answering the said notice, the employee filed an illegal dismissal case. The employer hasn't even conducted a hearing yet. The Supreme Court held that there can be no illegal dismissal case because the said employee wasn't even dismissed in the first place. So those are two important pre-requisites for an illegal dismissal: there has to be an employer-employee relationship and there has to be dismissal (either actually or constructively).

1. Dismissal without grounds

2. Dismissal without compliance with due process

There are two sub-categories of illegal dismissal. There's illegal dismissal without grounds. Meaning there was no substantial due process; there was no just and authorized cause. And there is illegal dismissal because of non-compliance with due process. Meaning, there are grounds, there are just and authorized causes but the employer just didn't follow the notice and hearing requirement.

On one side, you have no grounds at all. The employee didn't do anything wrong or there was no reason to dismiss the employee; no just cause or authorized causes. On the other hand, you have scenarios where there are just and authorized causes, but the employer did not follow the procedural due process aspect of it. These sub-categories of illegal dismissal are important because it will determine the reliefs given to the employee. What is the employee entitled to if they were dismissed without just and authorized cause? What is the employee entitled to if there is just and authorized cause but the employer failed to comply with the procedural due process? Reliefs given are different.

Example: Employee stole P200,000.00 and he was fired on the spot: no notice, no hearing. And then, the employee is now claiming for illegal dismissal. Would it be appropriate if the labor arbiter says. "Ok, you are illegally dismissed. You can now go back to work"? Isn't it awkward to have such an employee back to work? She stole P200,000. Even though the employer violated the procedural due process, wouldn't it be awkward, at most potentially making the working environment hostile, in the presence of such an erring employee? What taints the dismissal's legality is what determines the relief given to the employee.

3. Constructive dismissal

Constructive dismissal is not an actual or explicit dismissal of an employee but the employer makes the working environment so offensive and so difficult for the employee that the latter had no choice but to resign from work. An example is demotion. Demotion is where the employee is reassigned or moved to a position which is lower than his or her current position (i.e. manager re-assigned as rank-and-file employee), or the reduction of the employee's benefits, and such is done without due process. Sometimes, demotion can be valid if it is a form of a penalty and there was due process (notice, hearing, notice). After the due process, if the employee is discovered to be guilty, then the management can validly demote such employee for reasons that such employee is not a good fit for the position. However, if the demotion is done without due process, and the employee's benefits were reduced, the employee may argue that there is constructive dismissal because the employer is essentially forcing such employee to quit; or, forcing such employee to resign.

What is another form of constructive dismissal?

Another form of constructive dismissal is if the company forces the employee to resign. There are common stories that an employer forces an employee to submit a resignation letter.

Hypothetical scenario: A is forced to resign. A submitted a resignation letter. Now, A asks you if A can claim that there is constructive dismissal.

Atty: Theoretically, yes. But A has to adduce evidence that he is being forced to resign. On its face, a resignation letter is made voluntarily: like providing a phrase that one wanted to look for another opportunity, etc. And in such a letter, if there is no indication or other evidence that would prove he is forced to execute it, then the constructive dismissal claim might not prosper. If the communication is verbal, there is no chance of showing to the Court that the employer did indeed force one to resign. In such a scenario, it is hard to prove that there is constructive dismissal absent any evidence to support such a claim. That's the danger of being an employee. You have very little evidence to begin with. There is an imbalance of evidence since the employer is the one who holds most of the evidence.

Practical Advise: If the employer says something to you, try to get it down in writing. If you have an inquiry or concern, email or text your employer and do not allow them to take things verbally. If you email or text message your employer, you are forcing them to respond in a medium that you can use as evidence later. In the situation as mentioned earlier, if you are



being forced to resign, email the company: "I just received information that I am advised to resign." If the company's representative will respond, "Yes, we are asking you to resign . . ." From there, screenshot the email and use it as your evidence against them for constructive dismissal. It can now be clearly shown that you are really being forced to resign. As much as possible, for you guys who have work, try to get everything in writing as much as possible. People may find you snobbish but it is for your own protection. The presumption is, absent any evidence to prove that you are being forced to resign, your resignation is voluntary.

What are the other forms of dismissal?

Another story: One filed for constructive dismissal since her office was transferred near the bathroom area. One felt that she was being discriminated against. Since she cannot anymore take the inconvenience she suffered, she was forced to resign. [Atty. is not sure about the resolution of such a case, but he thinks, personally, that such a reason is not strong enough to bear it constructive dismissal. At best, you can demand hazard pay because you were made to suffer the inconvenience of the smelly working environment.]

Would preventing you from going to work be considered as constructive dismissal?

Yes. If you go to work, but the security guard, following a management order, does not let you enter the work premises, there would be a constructive dismissal since you are dismissed without being informed of it.

Can a preventive suspension be considered as constructive dismissal?

Yes, and that is if it is an invalid preventive suspension (preventive suspension that has no grounds), or preventive suspension that has been extended but you are unpaid. These are forms of constructive dismissal since you are not allowed to go to work, and they did not follow the proper grounds or procedures for preventive suspension. That's why you always have to be very careful when you are imposing a preventive suspension.

Is imposing a heavier workload a form of constructive dismissal?

Yes. If you are imposing a workload to a certain employee that is already burdensome as compared to the workload of the other employees of the same level or position, such employee would possibly feel discriminated against, that he or she is being overworked so that he or she would just eventually resign. One may also feel that the workload is so immense that he or she cannot take it any longer.

There are a lot of strategies on the part of some toxic employers to get employees to quit because if the employee quits or cuts off its relationship with you, you don't have to pay separation pay.

Is constructive dismissal a form of illegal dismissal?

Yes. Constructive dismissal is a form of illegal dismissal.

Constructive dismissal

Peckson v. Robinsons Supermarket

Doctrine: As we have already noted, the respondents had the burden of proof that the transfer of the petitioner was not tantamount to constructive dismissal, which as defined in Blue Dairy Corporation v. NLRC, 314 SCRA 401 (1999), is a quitting because continued employment is rendered impossible, unreasonable or unlikely, or an offer involving a demotion in rank and diminution of pay: The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

Jarcia Machine Shop and Auto Supply, Inc. v. NLRC

Doctrine: In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. In the case at bar, Tolentino's demotion was rightly declared by the Labor Arbitrator and public respondent as an unlawful constructive dismissal, petitioner having failed to show substantial proof that Tolentino's demotion was for a valid and just cause.

St. Paul College, Pasig v. Mancol

Doctrine: It is clear that petitioners employed means whereby the respondents were intentionally placed in situations that resulted in their being coerced into severing their ties with the same petitioners, thus, resulting in constructive dismissal. An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego with his or her continued employment.

Italkarat 18, Inc. v. Gerasmio



Facts: The company had been informing its employees of its proposed retrenchment program because it was suffering from serious business losses. Juraldine Gerasmio alleged that he was advised by the company to retire early since the Company would still eventually retrench or terminate him from his employment, in which case, he might not even receive anything. He then allegedly executed and signed a resignation letter and quitclaim in order to get a considerable amount from the company. Instead of claiming the promised amount of money, he only received a small amount which led him to demand for the difference. The company did not respond, hence, a Juraldine filed a complaint for illegal dismissal. But it must be taken into consideration that, based on the evidence on record, Juraldine had already intended to resign in 2008, even earlier than October. The evidence presented by the Company would show that Juraldine in fact requested for multiple leaves on various occasions, usually for processing of his papers for work abroad. The Company contended that retrenching its employees during the last quarter of 2008 or earlier would not have made any difference in view of the fact that Juraldine was already in the process of applying for a job overseas or at the very least, intending to go abroad.

Issue: Whether or not there was a constructive dismissal.

Ruling: No. In illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, if disputed, must be duly proven by the complainant. It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence. Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple – if there is no dismissal, there can be no question as to its legality or illegality.

If the fact of dismissal is disputed, it is the complainant who should substantiate his claim for dismissal and the one burdened with the responsibility of proving that he was dismissed from employment, whether actually or constructively. Unless the fact of dismissal is proven, the validity or legality thereof cannot even be an issue. In the present case, however, even a cursory perusal of the evidence on record would show that Juraldine failed to prove the fact of dismissal. The fact of the matter is that it was Juraldine himself who resigned from his work, as shown by the resignation letter he submitted and the quitclaim that he acknowledged, and thus, he was never dismissed by the Company.

Panasonic Manufacturing Philippines Corporation v. Peckson

Doctrine: Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensitivity, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of

constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.

On the other hand, "resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."

The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he, in fact, intended to terminate his employment. In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.

Ledesma & Co. v. NLRC

Facts: Orlando Ordon is was employed as a security guard by petitioner company at its Hacienda Teresa under the management of petitioner Arturo Ledesma. The said hacienda is covered by the Comprehensive Agrarian Reform Program(CARP). When the DAR team visited the hacienda and conducted a meeting, they explained to the workers their options under the said law: namely, actual land distribution or stock distribution. Orlando campaigned actively for actual and distribution plan while the company campaigned for the stock distribution plan. One day, Orlando was already prevented to report to work. He was then told by Ledesma that he did not want him to work in the hacienda anymore as private respondent's loyalty was with the workers and not with the petitioner company. In the illegal dismissal case filed by Orlando, the Labor Arbiter ruled that he was not dismissed but was merely given a new assignment and that his act of refusing to report for work in his new assignment constituted abandonment.

Issue: Whether or not the transfer of private respondent from the position of a security guard to the position of a laborer was a demotion, hence, constitutes a constructive dismissal.

Ruling: Yes. There is a constructive dismissal when the reassignment of an employee involves a demotion in rank or a diminution in pay. In the case at bench, the demotion of private respondent is tantamount to a constructive dismissal. One does not need to stretch his imagination to distinguish the work of a security guard and that of a common agricultural laborer in a sugar plantation. Likewise, there was a diminution of salary, for a security guard is paid on a monthly basis while a laborer in the sugar plantation is paid either on a daily or piece work basis. Laborers do not work year round but only when needed and on off-season months, they are not required to work at all. Hence, the demotion constitutes a constructive dismissal.



Reyes v. NLRC

Facts: Veronica Reyes was a school teacher in the respondent Kong Hua School. She went on maternity leave and when she got back, she had suffered nervous breakdown causing her to file applications for indefinite leave of absence. In the last application she filed, the school did not anymore approve such leave. When her husband went to the school to get her two months vacation leave pay, he was made to sign a resignation letter in behalf of his wife for health reasons with a promise that the school will re-hire his wife. When Veronica had fully regained her health, she applied for reinstatement but the school already refused to re-hire her.

Issue: Whether or not Reyes' resignation was voluntary, hence, there is no constructive dismissal.

Ruling: No. Reye's resignation was involuntary, hence, there was constructive dismissal.

Under Art. 284 of the Labor Code, an employer may dismiss an employee if the latter has illness which will make her continued employment prejudicial to her, as well as to the health of her co-employees. In the case at hand, The school must have realized that it could not dismiss the petitioner for health reasons under Art. 284 of the Labor Code because apparently her illness was not "prejudicial . . . as well . . . to the health of her co-employees" nor the kind that would have legally prohibited her continued employment, and, even if her service was terminable on account of illness, the school would have been required to pay her "separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year." Hence, it inveigled her to "resign" so it could avoid paying her separation pay for her 10-year service to the school.

Furthermore, the letter is not binding on the petitioner for there is no proof that she authorized her husband to write it for her and to waive her right to be re-hired as promised by the school or to abandon her right to separation pay if she would not be reinstated. The school's refusal in bad faith to re-employ her despite its promise to do so, amounted to illegal dismissal.

4. Invalid Preventive Suspension: Constructive dismissal

Hyatt Taxi Services, Inc. v. Catinoy

Doctrine: In the case at bar, the constructive dismissal had already set in when respondent's suspension went beyond the maximum period allowed by law. Hence, the Court held that from the time petitioner failed to recall respondent to work after the expiration of the suspension period, taken together with petitioner's precondition that respondent withdraw the complaints against the acting president of the union and against petitioner itself, respondent's security of tenure was already undermined by petitioner. Petitioner's actions undoubtedly constitute constructive dismissal.

Genesis Transport Services, Inc. v. Unyon ng

Malayang Manggagawa ng Genesis Transport

Doctrine: Section 8. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.

xxx xxx xxx

Section 9. Period of Suspension. — No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such a case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

What the Rules require is that the employer act on the suspended worker's status of employment within the 30-day period by concluding the investigation either by absolving him of the charges, or meeting the corresponding penalty if liable, or ultimately dismissing him. If the suspension exceeds the 30-day period without any corresponding action on the part of the employer, the employer must reinstate the employee or extend the period of suspension, provided the employee's wages and benefits are paid in the interim.

5. Burden of proof

Dizon v. NLRC

Doctrine: It is firmly settled that in an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee. Equipoise is not enough; the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. The burden of proof in effect moved back to and once again rested on the employer, asserting the existence of a just cause for dismissal. The failure of the employer to discharge the onus probandi resting on it, must be taken in conjunction with its conceded failure to conduct an investigation before serving the employee a notice of termination.

IX. PROCEDURAL DUE PROCESS AND TERMINATION OF SERVICE (PROCEDURAL)

A. PROCEDURAL DUE PROCESS VS. SUBSTANTIAL DUE PROCESS

SUBSTANTIAL DUE PROCESS	PROCEDURAL DUE PROCESS
employee was dismissed due to a just or authorized cause	employee was dismissed in accordance with the procedures laid down in the LC
Dismissal is invalid if this is not observed	Does not invalidate dismissal
Entitles employee to reinstatement without loss of seniority rights, full backwages inclusive of allowances, other benefits or their monetary equivalent	Obligates employer to erring to pay nominal damages
Causes provided under LC	<p>Two Written Notices</p> <ul style="list-style-type: none"> • 1st: apprises the employee of the particular acts or omissions for which his dismissal is sought • 2nd: informs employee of the decision to dismiss <p>Hearing: complied as long as there is opportunity to be heard, not necessary that actual hearing was conducted</p>
Burden of proving that substantial and procedural due process was observed lies with employer	

Procedural due process

Agustin v. Alphaland Corporation

Doctrine: Procedural due process means that the employee must be accorded due process required under Article 292(b) of the Labor Code, the elements of which are the twin-notice rule and the employee's opportunity to be heard and to defend himself. In the case of Agustin's dismissal, neither of these elements was satisfied.

Procedural Due process, essentially:

- 1) **Notice**
- 2) **Hearing**

This is giving the employee the opportunity to be heard.

B. QUANTUM OF EVIDENCE

Quantum of evidence, burden of proof in dismissal cases

Heavylift Manila v. Court of Appeals

Facts: Heavylift informed Galay through a letter of her low performance rating and negative feedback from her team members regarding her work attitude. In the same letter, she was relieved of her other functions except the development of the new Access program.

In its Position Paper, Heavylift argued that: (1) Galay had an attitude problem and did not get along with her co-employees; (2) Her attitude resulted in the decrease of the company's efficiency and productivity; (3) Two notices were given (letter and notice were given

Issues: WON Heavylift sufficiently proved that Galay was validly terminated

Ruling: No. For termination to be valid, substantial and procedural due process must be met (see above notes) and the burden to prove observance of such (using substantial evidence) rests on the employer.

In this case, Heavylift failed to discharge the burden of proving its observance of substantial and procedural due process. SC found that mere mention of negative feedback from team members and letter are not proof of Galay's attitude problem. The letter did not inform her of the specific acts complained of and their corresponding penalty. She was never given an opportunity to explain herself.

Quantum of evidence: Substantial evidence

Enough evidence that would convince a reasonable person to believe in a particular conclusion.

In illegal dismissal cases, the burden of proof rests on the **employer**:

- 1) The ER has to prove that there was just or authorized causes in letting the employee go;
- 2) The ER has to prove that there was due process

In labor cases, it is enough for the employee to state that he was illegally dismissed. The **mere allegation already shifts the burden of proof to the employer**.

Precision Electronics Corporation v. NLRC

Doctrine: The employer bears the burden to prove his

allegation of economic or business reverses with **clear and satisfactory evidence** it being in the nature of an affirmative defense. Otherwise, if the employer fails to prove it, it necessarily means that the dismissal of an employee was not justified

C. PROCEDURE FOR TERMINATION

AUTHORIZED CAUSES

Authorized causes of termination refer to:

- (a) Installation of labor-saving devices
- (b) Redundancy
- (c) Retrenchment or downsizing
- (d) Closure or cessation of operation; and
- (e) Disease

1. Two notices

- No hearing required

For **Just** and **Authorized Causes**: The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected:

- (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and
- (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.

Failure to comply with the requirements taints the dismissal with illegality. This procedure is mandatory, in the absence of which any judgment reached by management is void and nonexistent.

For the **authorized causes**

- (a) one to the employee to be separated; and
- (b) another to the Department of Labor and Employment.

Each such notice must be served **thirty days before the employee's separation takes effect**.

Illustration: If you are planning to let the employee go on July 1; you have to give the employee the notice on July 1

Notice requirement to DOLE: reportorial requirement

Individual notice required; collective notice insufficient

Shoppers Gain Supermart v. NLRC

Facts: Due to the non-renewal of the lease contract of SGS, it was constrained to terminate its contracts with the labor only agency contractors and apply for business retirement. SGS paid separation benefits to its regular employees but not to the private respondents

Issues: WON procedural due process was observed in the termination of the private respondents

Ruling: No. Procedural due process requires the serving of written notice upon each worker to be terminated and upon DOLE at least 1 month prior to the date of termination. The rights of an employee to be informed beforehand of his proposed dismissal (or suspension) as well as of the reasons therefor, are rights personal to the employee.

In this case, the mere posting of the notice to terminate in the employees' bulletin board is not sufficient compliance.

Hence, it is not enough that you post a notice on the company bulletin board stating "the following employees are going to be retrenched.."

Each employee must personally receive a written notice, informing them that they are to be retrenched.

Two-notice rule applies to Disease

Deoferio v. Intel Technology

Facts: Intel employed Deoferio and assigned him to the US but he was repatriated after 2 years and was confined for depression with psychosis.

After several consultations, a psychiatric report was issued stating that Deoferio's symptoms are not curable within 6 months and will negatively affect his work. As a result, Intel issued Deoferio a notice of termination.

Intel argued that Deoferio's dismissal was valid and that Twin-notice requirement on dismissals does not apply to terminations due to disease.

Issues: WON twin-notice rule applies to dismissals due to disease

Ruling: Yes. IRR expressly states that the employee should be afforded procedural due process in ALL cases of dismissals. The twin-notice rule in dismissals due to disease has also been consistently held by the Supreme Court.

While Disease is in a separate paragraph in the LC, for purposes of fairness the notice rule has to be applied to disease.

Voluntary arbitration is sufficient compliance with

the 1-month notice

Revidad v. NLRC, G.R. No. 111105, 27 June 1995

Facts: The company president directed the lay-off of 705 of the employees due to financial losses. Hence AG & P United Rank and File Association (URFA/union) staged a strike. In a conciliation conference over the labor dispute held before the NCMB, the parties agreed to submit to the legality of the lay-offs to voluntary arbitration. Since petitioners were not recalled by management, they filed a complaint for illegal dismissal and ULP Petitioners contend that assuming arguendo that indeed there was only one lay-off, their temporary lay-off supposedly due to retrenchment is illegal because no written notice of termination was submitted with the Department of Labor and Employment one month before the date of the temporary lay-off.

Issue: W/N hearing and investigation by the employer, where the reason for termination is retrenchment due to financial reverses and not to an act attributable to the employee, is required.

Ruling: No. The proceedings before the voluntary arbitrator, where both parties were given the opportunity to be heard and present evidence in their favor, constitute substantial compliance with the requirement of the law. The purpose of this notice requirement is to enable the proper authorities to ascertain whether the closure of the business is being done in good faith and is not just a pretext for evading compliance with the just obligations of the employer to the affected employees. In fact, the voluntary arbitration proceedings more than satisfied the intent of the law considering that the parties were accorded the benefit of a hearing, in addition to the right to present their respective position papers and documentary evidence.

Hearing and investigation by the employer, where the reason for termination is retrenchment due to financial reverses and not to an act attributable to the employee, is not even required because it is considered a surplusage under existing jurisprudence. Considering that the Office of the Voluntary Arbitrator is under the jurisdiction of the Department of Labor and Employment, it would be superfluous to still require the service of notice with the latter when proceedings have already been initiated with the former precisely to carry out the very purpose for which said notice is intended.

Notice not necessary when there is consent or voluntary application for retrenchment

International Hardware, Inc. v. NLRC

Facts: Private respondent Bonifacio Pedroso was employed by petitioner International Hardware first, as a truck helper, and later as a delivery truck driver until December 1984 when the number of working days of private respondent was reduced to just two days a week due to the financial losses suffered by the

business of petitioner. Private respondent filed a complaint for illegal dismissal and the payment of separation pay in the Department of Labor and Employment (DOLE).

Issue: Whether or not notice is necessary when there is consent or voluntary application for retrenchment

Ruling: To effect termination of any employee, it is required that the employer must serve a written notice on the workers and the DOLE at least one (1) month before the intended date thereof. The purpose of such previous notice to DOLE must be to enable it to ascertain the verity of the cause for termination of employment.

In this case, the private respondent had not been terminated or retrenched by the petitioner but that due to the financial crisis the number of working days of private respondent was reduced to just two days a week. Petitioner could not have been expected to notify DOLE of the retrenchment of private respondent under the circumstances for there was no intention to do so on the part of petitioner. By the same token, if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-serving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment.

No notice to employee required: If the EE volunteers to be retrenched as notice becomes redundant

Notice to DOLE still required even if the EE volunteered to be retrenched

2. Payment of separation pay in the case of authorized causes

Automation or Redundancy	Closure or Retrenchment
Employee receives 1 month salary for every year of service	Employee receives ½ month salary for every year of service

Exception: If the financial loss is so severe on the part of the employer, may be exempted from paying separation pay

Exception – closure due to huge business losses

North Davao Mining Corporation v. NLRC, G.R. No.

112546, 13 March 1996

Doctrine: Where the closure was due to business losses the Labor Code does not impose any obligation upon the employer to pay separation benefits, for obvious reasons. Art. 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to losses.

Basic salary that serves as basis for separation pay should include regular allowances transportation and emergency living allowances

Planters Products, Inc. v. NLRC, G.R. No. 78524, 20 January 1989

Doctrine: PPI erred in not integrating the allowances with the basic salary in the computation of the separation pay. The salary base properly used in computing the separation pay should include not just the basic salary but also the regular allowances that an employee has been receiving. The allowances of the remaining PPI employees were made part of their basic pay. This increased the computation bases for their terminal benefits.

Basic salary that serves as basis for separation pay should include regular allowances transportation and emergency living allowances

Santos v. NLRC, G.R. No. 76721, 21 September 1989

Facts: Lydia Santos was Security Bank's former Branch Manager. In the illegal dismissal case filed by Santos against Security Bank, the Labor Arbiter found petitioner's dismissal to be illegal and ordered the private respondent Bank to reinstate her with backwages and other accrued benefits. The NLRC limited the benefits recoverable by Santos to (1) her separation pay, in lieu of reinstatement and backwages; and (2) gratuities which accrued in her favor during the period from her illegal dismissal.

Issue: Whether or not Santos is entitled to an award for backwages, in addition to: (1) her separation pay; and (2) gratuities accruing before the Labor Arbiter's order for reinstatement was modified.

Ruling: Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. Separation pay is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.

In the computation of backwages and separation pay, the amount must be taken not only of the basic salary of the petitioner but also of her transportation and emergency living allowance.

The salary referred to in separation pay is the basic salary of the employee.

Basic salary (the pay received by the ee every month)

- **Includes:** allowances regularly received by ee
Allowances are usually listed as separate items from your basic pay. However, if you receive them regularly enough, that in effect, they are essentially part of your monthly remuneration, they should be included when computing the separation pay.

Example: 1 month salary/every year of service

Monthly salary:	20,000.00
Monthly allowance:	800.00

The P800 should be added tot he computation of separation pay. Hence, the basic pay for purposes of computation is P28,000.

Computation should not include commissions

Soriano v. NLRC, G.R. No. 75510. October 27, 1987

Facts: Rufina Soriano was Kingly Commodities Traders and Multi-Resources, Inc.'s VP-Marketing. But she was charged with allowing or failing to supervise and monitor certain activities of investment counselors in her department. Because of the strained relations between petitioner and the Corporation, reinstatement of petitioner was not feasible. The Labor Arbiter required the respondent corporation to pay a separation fee to the petitioner. However, Soriano sought for the inclusion of the commissions in the base figure for purposes of computing the separation pay.

Issue: Whether commissions are properly not included in the salary base used in computing the separation pay.

Ruling: The salary base properly used in computing the separation pay and the backwages due to petitioner should include not just the basic salary but also the regular allowances that petitioner had been receiving. In the petitioner's case, the base figure properly includes her: (a) basic salary of P3,000.00 a month; and (b) living allowance of P2,400 a month. **The commissions also claimed by petitioner ("override commission" plus "net deposit incentive") are not properly includable in such base figure since such commissions must be earned by actual market transactions attributable to petitioner. Neither should "travels equivalent" and "commission in trading personal clients" be included in such base figure.**

Commission - some sort of additional pay, like an extra bonus for every sale made

GR: Commission should not be included in the basic pay because there is no consistent value to it. It is not included as part of the computation of separation pay unless the employee could prove that the commission has been regularly received him/her. If not regularly received, it should not form part of the computation of separation pay, especially if the commission is based on the work that you did not do. As long as the commissions are unpredictable and not given to the employee with any sense of regularity, it should not be part of the base salary in so far as the computation of separation pay is concerned.

Example: Pyramiding scheme wherein you are given a commission for each number of people that you have recruited. One could argue that the amount received should not be included as part of your base pay since the amount is unpredictable.

TN: If you receive the commissions regularly, it could form part of your base pay for purposes of computing the separation pay.

Labor Code only provides for computation of minimum separation pay

Jiao v. NLRC, G.R. No. 182331, 18 April 2012

Facts: The petitioners were regular employees of Philbank. Thereafter, Philbank merged with Global Business Bank, Inc. As a result of the merger, complainants' respective positions became redundant. A Special Separation Program was implemented and the petitioners were granted a separation package equivalent to one and a half month's pay for every year of service based on their current salary. According to the petitioners, they are entitled to separation pay at a rate of one month salary for every year of service under the Labor Code and gratuity pay at a rate of one month salary for every year of service whether under the Old Plan or the New Gratuity Plan. Since what they received as separation pay was equivalent to only 150% or one and one-half of their monthly salaries for every year of service, the respondents are still liable to pay them the deficiency equivalent to one-half of their monthly salary for every year of service.

Issue: Whether the petitioners can claim the benefits thereunder in addition to or on top of what is required under the Article 283 of the Labor Code.

Ruling: Article 283 of the Labor Code 30 provides only the required minimum amount of separation pay, which employees dismissed for any of the authorized causes are entitled to receive. Employers, therefore, have the right to create plans, providing for separation pay in an amount over and above what is imposed by Article 283. There is nothing therein that prohibits employers and employees from contracting on the terms of employment, or from entering into agreements on

employee benefits, so long as they do not violate the Labor Code or any other law, and are not contrary to morals, good customs, public order, or public policy. For as long as the minimum requirements of the Labor Code are met, it is within the management prerogatives of employers to come up with separation packages that will be given in lieu of what is provided under the Labor Code.

If the petitioners were allowed to receive separation pay from both the Labor Code, on the one hand, and the New Gratuity Plan and the SSP, on the other, they would receive double compensation for the same cause (i.e., separation from the service due to redundancy) even if such is contrary to the provisions of the New Gratuity Plan.

D. PROCEDURE FOR TERMINATION

JUST CAUSES

Article 297. [282] Termination by Employer.

An employer may terminate an employment for any of the following causes:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- Gross and habitual neglect by the employee of his duties;
- Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- Other causes analogous to the foregoing.

1. Twin notice rule and Hearing

- 5-days to respond; ample opportunity to be heard

Twin notice and hearing rule → Important case that outlined the procedure governing the twin notices and hearing rule is the case of *Unilever Philippines, Inc. v. Rivera*.

First notice requirement:

- The company issues a notice and this notice is also called a **show cause notice**. In this notice, you are listing down the charges of the employee and the factual background, the list of the charges against the employee. A lot of companies have internal manual or internal

disciplinary procedures – these internal procedures should also be listed down in the show cause notice. For example, in insubordination of the superior's orders, if it is applicable to the facts, you should also include this as a ground and this is important because you cannot hold an employee guilty of a ground that you did not mention in the notice. If for example you are charging the employee for loss of trust and confidence, but the notice never contained a charge for breach of loss of trust and confidence so the employee can claim that he was illegally dismissed because of this. Every charge has to be mentioned in the notice because otherwise, you cannot hold the employee guilty for that and you cannot terminate the employee based on that ground if it wasn't in the notice.

- Another thing you should mention in the notice - **that you would give them an opportunity to explain in writing**. Meaning, you are asking them to respond to the notice within 5 days from the receipt of the notice. The 5 days is very important because the SC has held that the minimum opportunity for them to explain is 5 days because this is already a sufficient time for the EE to go over the charges, to go over the records, ask witnesses, and draft their own response within this period. The company can give a longer period but the SC said that the minimum is only 5 days.
- If the company plans to conduct a **hearing**, they should also inform the EE that they would conduct a hearing and they can present their own evidence, their witnesses, and they bring their own counsel. You are giving the employee an opportunity to be heard by allowing them to present their evidence, present their witnesses and even be represented.

TN: The show cause notice must contain the factual background on why you are charging the employee of the alleged acts, the charges themselves either those found in the Labor Code or in the company's manual, and all the applicable charges have to be mentioned in the notice because otherwise, you cannot charge the employee based on those grounds. It has to contain an instruction that the employee has to respond within 5 days or longer depending on the company in writing. In the hearing, the employees are given the opportunity to present evidence, present witnesses on their behalf and they can represent themselves or bring a representative of their choice. The representative does not necessarily mean a lawyer – it can be a family member, a co-employee and whoever they want to represent them.

For termination of employment based on just causes as defined in Article 97 of the Code:

- (a) A **written notice** served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
- (b) A **hearing** or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
- (c) A **written notice of termination** served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

First Notice

Going back to the first notice requirement, similar to notice in the case of authorized causes, it has to be individual. Each employee must be sent a notice. If for example you are charging a group of employees, each must be notified. A notice of suspension by itself is not notice. For example, you are charging an employee for preventive suspension thinking that he stole something, that is not enough because remember all those things you need to list in a notice must be there. The notice of preventive suspension can also be a notice to explain, you can merge 2 things together, as long as the things you need to mention in the first notice are there. But if it is a standard notice of preventive suspension informing the employee that he is preventively suspended, that is not enough. The initial notice and hearing does not need to be an adversarial face-to-face hearing. It's enough that there's an ample opportunity to be heard. Usually companies save the face-to-face hearing for serious grounds. But if it's not serious enough, the parties can just exchange letters and notices and that would be sufficient because there was an opportunity to be heard.

Second Notice

The second notice is simply a notice informing the employee of the decision of the employer. Example: "after review, the evidence is not sufficient so we are dismissing this case against you". It merely informs the decision of the employer. It can be as benign as a warning or as heavy as suspension this notice applies to any sort of disciplinary action. Basically the employee is afforded the due process but it is more pronounced in termination because it is the question in labor cases.

Hearing: Opportunity to be Heard

Under the law, a hearing is not necessarily adversarial hearing. Hearing in this sense is less adversarial and usually there is only a table where there is a less strict conversation. The important thing is that the employee is given the opportunity to be heard. The Supreme Court held that opportunity to be heard is sufficient in some cases where there is no face-to-face hearing as long as both parties are allowed to submit position papers and respond to each other. The fact that they interacted through their papers is enough.

In hearing, It is not necessary that it is adversarial, as long as the employee has the chance to explain himself. The parties may only send letters and that would be sufficient compliance for the hearing requirement.

What happens during the hearing?

There is no strict protocol as long as there is an opportunity to air his side and an opp to counter the allegation of the complainant or company.

What about if there is a union sec clause?

Even if it was violated, the employer should still follow the hearing notice, because union sec clause is not automatic. The employee must be given due process by following this procedure, and this must be followed before the termination of the employee, because it would defeat the purpose of due process.

By the way, if the company has internal policies (e.g., the company manual provides that the immediate supervisor of the employee must be present during the administrative hearing), the employer is bound by those policies. Because essentially, the manual or the policy - even if its an internal arrangement only - its a contract between the employer and the employee so the employer is bound by it. If the protocol says that there has to be an initial fact-finding investigation before the notice is sent out, the employer is bound to follow that. If it says that the parties have to file a position paper with this kind of format, the employer is bound by that. The employer cannot back out from it and is estopped since they were the ones who implemented it in the first place. So they have to strictly follow their own protocols.

However, the Supreme Court has held in certain cases that as long as there was an opportunity to be heard and an approximation of due process was followed, meaning the notice-hearing-notice, the internal policies of the employer can be dispensed with. But again, its essentially still a contract so the employer cannot hope that maybe the Labor Arbiter, NLRC, or even the Supreme Court will side with them for not following their own rules and regulations. In fact, one could argue that they are already estopped and they might even be in bad faith for backing out of their own commitments to the employee.

As a general rule, internal policies have to be followed. However, for the sake of justice and equity, one could argue that as long as the notice-hearing-notice requirement was followed, then perhaps it can be argued that there was enough compliance with due process on the part of the employee. It would ultimately depend whose side you are defending.

RIGHT TO REPRESENTATION

Representation does not necessarily mean you must be represented by a lawyer, but it is implied that it means having a lawyer. Representative can also be a family member, a co-employee, or whoever they want to represent them.

It is not necessary that there is a lawyer, a lawyer is not an indispensable requirement. The only requirement is that the employee is given the option to be represented. It is not even necessary that it should be a lawyer, there was a case where the employee complained that he was not allowed a lawyer, where in fact it is clear in the notice that he has the choice, he just did not act on his option.

Twin notice and hearing, 5-day requirement

Unilever Philippines, Inc. v. Rivera, G.R. No. 201701, 03 June 2013

Facts: Rivera filed a complaint for Illegal Dismissal and other monetary claims against Unilever. The NLRC held that although she was legally dismissed from the service for a just cause, Unilever was guilty of violating the twin notice requirement in labor cases. Thus, Unilever was ordered to pay her P30,000.00 as nominal damages, retirement benefits and separation pay. Unilever questions the grant of nominal damages in favor of Rivera for its alleged non-observance of the requirements of procedural due process. It insists that she was given ample opportunity to explain her side, interpose an intelligent defense and adduce evidence on her behalf.

Issue: Whether Unilever observed the requirements of procedural due process. NO.

Ruling: The following should be considered in terminating the services of employees:

1. The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar

days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

2. After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.
3. After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

In this case, Unilever was not direct and specific in its first notice to Rivera. The words it used were couched in general terms and were in no way informative of the charges against her that may result in her dismissal from employment. Evidently, there was a violation of her right to statutory due process warranting the payment of indemnity in the form of nominal damages.

Puncia v. Toyota Shaw/Pasig, Inc

Doctrine: In this case, at first glance it seemed like Toyota afforded Puncia procedural due process. However, a closer look at the records reveals that in the Notice to Explain, Puncia was being made to explain why no disciplinary action should be imposed upon him for repeatedly failing to reach his monthly sales quota, which act, as already adverted to earlier, constitutes gross inefficiency. On the other hand, a reading of the Notice of Termination shows that Puncia was dismissed not for the ground stated in the Notice to Explain, but for gross insubordination on account of his non-

appearance in the scheduled October 17, 2011 hearing without justifiable reason. In other words, while Toyota afforded Puncia the opportunity to refute the charge of gross inefficiency against him, the latter was completely deprived of the same when he was dismissed for gross insubordination — a completely different ground from what was stated in the Notice to Explain. As such, Puncia's right to procedural due process was violated

In order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice.

After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

Perez v. PT and T

Facts: Petitioners were placed on preventive suspension for 30 days for their alleged involvement in the anomaly of jacking up the value of the freight costs for goods shipped and that the duplicates of the shipping documents allegedly showed traces of tampering, alteration and superimposition. Their suspension was extended for 15 days twice.

Then in a Memorandum, petitioners were dismissed from the service for having falsified company documents. Petitioners filed a complaint for illegal suspension and illegal dismissal alleging that they were dismissed on November 8, 1993, the date they received the above-mentioned memorandum.

Petitioners contend that there was no just cause for their dismissal, that they were not accorded due process and that they were illegally suspended for 30 days.

Issue: W/N petitioners were accorded due process?

Ruling: NO. Petitioners were neither apprised of the charges against them nor given a chance to defend themselves. They were simply and arbitrarily separated from work and served notices of termination in total disregard of their rights to due process and security of tenure. The labor arbiter and the CA correctly found that respondents failed to comply with the two-notice requirement for terminating employees.

To meet the requirements of due process in the dismissal of an employee, an employer must furnish the worker with two written notices:

1. a written notice specifying the grounds for termination and giving to said employee a reasonable opportunity to explain his side and
2. another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

1. "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.
2. a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.
3. the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations..

De Vera v. NLRC

Facts: Pending investigation, petitioner, who was an assistant cashier at the Taft Avenue Branch of BPI, received Notice of Preventive Suspension due to his alleged involvement in a forged transaction. Petitioner then received a Notice of Termination terminating his services on the ground of fraud or willful breach of trust and setting forth therein the transgressions he had allegedly committed.

Issue: W/N petitioner's termination was valid?

Ruling: NO. Definitely, the Notice of Preventive Suspension can not be considered adequate notice since the objectives of the petitioner's preventive suspension, as stated in the notice, were merely to ascertain the extent of the loss to the bank, and to pinpoint responsibility of the parties involved, and not to apprise the petitioner of the causes of his desired dismissal. Likewise, the subsequent interview is not the "ample opportunity to be heard" contemplated by law. Ample opportunity to be heard is especially accorded to the employee sought to be dismissed after he is informed of the charges against him in order to give him an opportunity to refute the accusations levelled against him, and it certainly does not consist of an inquiry conducted merely for the purpose of filing a criminal case against another person.

Furthermore, this Court has repeatedly held that the

employer is mandated to furnish the employee sought to be dismissed two notices, the written charge, and the notice of dismissal, if, after hearing, dismissal is indeed warranted. No written charge was ever furnished the petitioner in this case.

The respondents then claim that the alleged defects in due process were cured when the petitioner presented his case and arguments before the NLRC. This is untenable. The case before the NLRC is the petitioner's complaint for illegal dismissal. At that time, he had already been terminated. What the Labor Code sets forth is the procedure prior to dismissal. "Fire the employee, and let him explain later" is not in accord with the due process under the law.

Century Textile Mills, Inc. v. NLRC

Facts: Eduardo Calangi was a machine operator of the petitioner company. However he was placed under preventive suspension by the petitioner company since he was accused of being a mastermind of a criminal plot against his supervisors. Eventually, he was terminated. It was alleged that Calangi instructed Torrena to put toxic substance in the drinking water of Calangi's supervisors.

Issue: Whether or not Calangi had been dismissed without just cause from his employment by Century?

Ruling: The twin requirements of notice and hearing constitute essential elements of due process in cases of employee dismissal: the requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal; upon the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected. Neither of these two requirements can be dispensed with without running afoul of the due process requirement of the 1987 Constitution.

The record of this case is bereft of any indication that a hearing or other gathering was in fact held where private respondent Calangi was given a reasonable opportunity to confront his accuser(s) and to defend against the charges made by the latter. Petitioner Corporation's "prior consultation" with the labor union with which private respondent Calangi was affiliated, was legally insufficient. So far as the record shows, neither petitioner nor the labor union actually advised Calangi of the matters at issue. The Memorandum of petitioner's Personnel Manager certainly offered no helpful particulars. It is important to stress that the rights of an employee whose services are sought to be terminated to be informed beforehand of his proposed dismissal (or suspension) as well as of the reasons therefor, and to be afforded an adequate opportunity to

defend himself from the charges levelled against him, are rights personal to the employee. Those rights were not satisfied by petitioner Corporation's obtaining the consent of or consulting with the labor union; such consultation or consent was not a substitute for actual observance of those rights of private respondent Calangi. The employee can waive those rights, if he so chooses, but the union cannot waive them for him. That the private respondent simply 'kept silent' all the while, is not adequate to show an effective waiver of his rights. Notice and opportunity to be heard must be accorded by an employer even though the employee does not affirmatively demand them.

Ruffy v. NLRC

Facts: Petitioner was employed in the Materials and Supply Section, Supply and Warehousing Department of the respondent Central Azucarera Don Pedro. It was gathered by the respondent that the bearings were sold to factoria de Nasugbu for P8,250 by Anastacio Maulleon, Jr., an employee of the respondent whose employment was terminated in connection with this case.

During the investigation, the complainant was asked whether Alfredo Role, also an employee of respondent, was the same person who received said bearings. In reply, complainant answered that he could not remember and denied having received said bearings. Later on, the complainant was dismissed from the service for breach of trust, gross negligence and flagrant inefficiency with forfeiture of all rights and privileges.

Issue: W/N petitioner's dismissal was valid

Ruling: NO. The law lays down the procedure prior to the dismissal of an employee. It need not be observed to the letter, but at least, it must be done in the natural sequence of notice, hearing and judgment.

In the case at bar, there is no doubt that at the very outset, that is, prior to investigation, the petitioner was informed that his services had been terminated. He was made to air his side subsequently, it is true, yet the stubborn fact remains that notwithstanding such an opportunity, if an opportunity it was, he had been dismissed from the firm. LibLex

The procedure under Batas Blg. 130 and the rules implementing it are conditions sine qua non, before dismissal may be validly effected. It does not matter that the petitioner's termination, given on December 19, 1984, was effective on January 1, 1985, which, so the respondent Commission insists, gave him enough chance to present his side. This is not the "ample opportunity" referred to by the labor relations law of 1981. By "ample opportunity" is meant every kind of assistance that management must accord to the

employee to enable him to prepare adequately for his defense. Under the rules indeed, the worker may be provided with a representative. In this case, although the interregnum between the date or the notice of dismissal and the date of its effectivity ostensibly provided the petitioner time within which to defend himself, there really was nothing to defend, because the fact is, he had been fired. We can not countenance such a situation.

We reiterate that the process set forth by the law need not be obeyed according to its letter, but rather, according to its spirit, as a due process measure. "Fire the employee, and let him explain later" is not in accord with that expedient.

Lopez v. Alturas Group

Facts: Quirico Lopez (petitioner) was hired by respondent Alturas Group of Companies in 1997 as truck driver. Ten years later or sometime in November 2007, he was dismissed for alleged theft. Petitioner allegedly admitted to the security guard that he was taking out the scrap iron consisting of lift springs out of which he would make axes. Petitioner, in compliance with the Show Cause Notice issued by respondent company's Human Resource Department Manager, denied the allegations by a handwritten explanation written in the Visayan dialect.

Respondent company terminated his employment by Notice of Termination effective December 14, 2007 on the grounds of loss of trust and confidence, and of violation of company rules and regulations. In issuing the Notice, respondent company also took into account the result of an investigation showing that petitioner had been smuggling out its cartons which he had sold, in conspiracy with one Maritess Alaba, for his own benefit to thus prompt it to file a criminal case for Qualified Theft 3against him before the Regional Trial Court (RTC) of Bohol. It had in fact earlier filed another criminal case for Qualified Theft against petitioner arising from the theft of the scrap iron. Petitioner thereupon filed a complaint against respondent company for illegal dismissal and underpayment of wages. He claimed that the smuggling charge against him was fabricated to justify his illegal dismissal. He further alleged that he should have been afforded, or at least advised of the right to counsel.

Issue: W/N petitioner should be afforded counsel

Ruling: NO, the right to counsel is neither indispensable nor mandatory.

Procedural due process has been defined as giving an opportunity to be heard before judgment is rendered. In termination cases, the employer may provide an employee with ample opportunity to be heard and

defend himself with the assistance of a representative or counsel in ways other than a formal hearing. The employee can be fully afforded a chance to respond to the charges against him, adduce his evidence or rebut the evidence against him through a wide array of methods, verbal or written.

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure.

Parenthetically, the Court finds that it was error for the NLRC to opine that petitioner should have been afforded counsel or advised of the right to counsel. The right to counsel and the assistance of one in investigations involving termination cases is neither indispensable nor mandatory, except when the employee himself requests for one or that he manifests that he wants a formal hearing on the charges against him. In petitioner's case, there is no showing that he requested for a formal hearing to be conducted or that he be assisted by counsel. Verily, since he was furnished a second notice informing him of his dismissal and the grounds therefor, the twin-notice requirement had been complied with to call for a deletion of the appellate court's award of nominal damages to petitioner.

Ferrer vs NLRC

Doctrine: The need for a company investigation is founded on the consistent ruling of this Court that the twin requirements of notice and hearing which are essential elements of due process must be met in employment termination cases. The employee concerned must be notified of the employer's intent to dismiss him and of the reason or reasons for the proposed dismissal. The hearing affords the employee an opportunity to answer the charge or charges against him and to defend himself therefrom before dismissal is effected.

Exception: Hearing not necessary if there is admission by employee

China Banking Corp. v. Borromeo

Facts: The respondent, without authority from the Executive Committee or Board of Directors, approved several DAUD/BP accommodations amounting to ₱2,441,375 in favor of Joel Maniwan, with Edmundo Ramos as surety. Such checks, which are not sufficiently funded by cash, are generally not honored by banks. Under the petitioner Bank's standard operating procedures, DAUD/BP accommodations may be granted only by a bank officer upon express authority from its Executive Committee or Board of Directors.

After a series of letter-inquiries, the respondent notified Chiong of his intention to resign from the petitioner Bank and apologized "for all the trouble I have caused because of the Maniwan case." The respondent, however, vehemently denied benefiting therefrom. In his Letter dated April 30, 1997, the respondent formally tendered his irrevocable resignation effective May 31, 1997.

Issue: Whether or not the respondent's right to due process was violated by the bank since no administrative investigation was conducted prior to the withholding of his separation benefits?

Ruling: NO. Contrary to his protestations, the respondent was given the opportunity to be heard and considering his admissions, it became unnecessary to hold any formal investigation. More particularly, it became unnecessary for the petitioner Bank to conduct an investigation on whether the respondent had committed an "[I]nfraction of Bank procedures in handling any Bank transaction or work assignment which results in a loss or probable loss" because the respondent already admitted the same. All that was needed was to inform him of the findings of the management and this was done by way of the Memorandum dated May 23, 1997 addressed to the respondent. His claim of denial of due process must therefore fail.

Hearing is not necessary if the employee admitted his fault. It would be useless. That is one instance where the hearing can be dispensed with.

2. Report to DOLE: end of project employment

In the case of project employment, there is a reportorial requirement that DOLE has to be informed of the end of a project employee's employment.

3. Notice not necessary for end of Contractual employment

Is notice required if the term of the contractual employee is about to end?

No. The term in the contract is sufficient notice. The Supreme Court held that for contractual employees, there is no need to give notice. Why? First of all, it's not a just or authorized cause so it won't apply. The Supreme Court said that notice isn't necessary because by signing a employment contract, the employee is presumed to have read all the terms and conditions including the period of the contract. Because they have notice, it's already redundant.

4. Effect of resignation or retirement while disciplinary proceedings are pending

What happens if an employee resigns or retires while the administrative case against them is pending?

The Supreme Court has held that the administrative proceedings or the disciplinary proceedings can still go on even if the employee resigned or retired. Why? Because the termination proceedings is just so much for the benefit of the employer as it is the employee. So the employer has to figure out what happened. It's somehow giving the employer a sense of closure to determine what really happened with regard to the charges against the employee most especially when the employee stole something, etc. and the employer has a vested interest in determining whether it was true or not.

Vilchez v. Free Port Service Corp.

Facts: Segifredo Vilchez was respondent FSC's Physical Security Department Manager. As Manager, petitioner was in-charge of overseeing the successful operation/management of the Physical Security Department as well as maintaining effective measures in providing better security services.

Vilchez advised the respondent FSC management of the need to secure PNP SOSIA licenses for its 159 physical security officers and volunteered to take full responsibility for procuring the said licenses and other requirements.

He required the amount of P127,200.00 for the payment of licenses, NBI clearances, psychiatric tests and drug tests for the 159 security officers. All the security personnel concerned were deducted, on the same month, the sum amounting to P800.00 each.

Disbursement Voucher No. 04308 was made payable to Col. Angelito Gerangco, who collected and encashed the same.

The COA issued a Notice of Suspension of the

P127,200.00 transaction after finding that Gerangco was not a designated disbursing officer and, therefore, should not be given a cash advance

Petitioner insisted that Col. Gerangco's non-compliance was his own misfeasance, which he could not be held liable for.

Issue: Whether or not a public official's cessation from service renders moot an administrative case that was filed prior to the official's resignation?

Ruling: NO. Recently, we emphasized that in a case that a public official's cessation from service does not render moot an administrative case that was filed prior to the official's resignation.

Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic.

The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.

Thus, from the strictly legal point of view and as we have held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the acts of the respondent, save only where death intervenes and the action does not survive.

E. ILLEGAL DISMISSAL

Existence of EER necessary for an illegal dismissal complaint

Bishop Shinji Amari of Amiko Baptist Church v. Villaflor

Facts: Ricardo Villaflor, Jr. (respondent) was informed of his removal as a missionary of the Abiko Baptist Church, cancellation of his American Baptist Association (ABA) recommendation as a national missionary, and exclusion of his membership in the Abiko Baptist Church in Japan.

Respondent believed that he was dismissed from his employment without the benefit of due process and valid cause; thus, he filed a complaint before the NLRC.

On the other hand, BSAABC said that after investigation, it was discovered that respondent's refusal to leave San Carlos City was because he had built his personal house on the land owned by BSAABC without the latter's consent.

The members of the BSAABC unanimously voted to remove

him as missionary and cancel his ABA recommendation.

Issue: Whether or not the respondent was illegally dismissed despite the fact that the dispute involves an ecclesiastical affair as the respondent was a member of the Abiko Baptist Church?

Ruling: NO. The respondent was not illegally dismissed. Respondent's claim of illegal dismissal is dependent on the existence of the employer-employee relationship. Unfortunately, respondent failed to prove his own affirmative allegation. Respondent's removal as a missionary of Abiko Baptist Church is an ecclesiastical affair.

Before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. The lower tribunals used the "four-fold test" in determining the existence of an employer-employee relationship, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct.

First, the LA and the CA anchored their findings of employer-employee relationship on the Appointment Paper presented by respondent. This evidence, however, refers to his appointment as an instructor, as well as his duties and responsibilities as such; but, to emphasize, **respondent was removed as a missionary of Abiko Baptist Church, not as an instructor of MBIS**. There is no evidence or allegation to show that respondent's status as a missionary is the same or dependent on his appointment as an instructor of MBIS. True, the removal as a missionary may have affected respondent's status as instructor of MBIS, but the **Court is not convinced that there was an illegal dismissal**. It is more appropriate to say that being an instructor of MBIS was part of respondent's mission work as a missionary/minister of BSAABC.

Second, **We do not find in the records concrete evidence of the alleged monthly compensation of respondent amounting to \$550**. Respondent is not even consistent in claiming the exact amount of his supposed salary as he claims he was receiving \$650. Although petitioners do not deny that respondent was receiving "love gifts" in the amount of \$550, they aver that these came from ABA and Abiko Baptist Church in Japan. The designation of "salaried missionary" is not determinative of the existence of an employer-employee relationship. "Salary" is a general term defined as remuneration for services given, but the **term does not establish a certain kind of relationship**.

As to the third element, **We find that dismissal is inherent in religious congregations as they have the power to discipline their members**.

Lastly, as to the power of control, the CA ruled that the duties enumerated in the Appointment Paper, together with BSAABC's power to order respondent to areas of mission work, as well as the Mission Policy Agreement, all indicated the exercise of control.

Illegal dismissal case will not prosper if there was no dismissal; employee filed complaint instead of responding to notice to explain

Basay v. Hacienda Consolacion

Facts: Respondents hired petitioners Romeo Basay (Basay) and Julian Literal (Literal), as tractor operators, and petitioner Julian Abueva (Abueva), as laborer, in the hacienda devoted for sugar cane plantation.

Petitioners filed a complaint for illegal dismissal with monetary claims against respondents. They alleged that sometime in July 2001, respondents verbally informed them to stop working. Thereafter, they were not given work assignments despite their status as regular employees. They alleged that their termination was done in violation of their right to substantive and procedural due process.

Issue: Whether or not petitioners were illegally dismissed?

Ruling: NO. We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

How do you charge illegal dismissal?

For one thing, you cannot file for illegal dismissal if you're not an employee - if there's no employer-employee relationship. Illegal dismissal is only limited to employees - not contractors, not corporate officers.

For illegal dismissal cases, there has to be an actual dismissal. Meaning, there has to be an actual dismissal, a notice of dismissal or termination, or constructive dismissal. There has to be some actual form of dismissal. Either the employee was told that they were dismissed or the employer made the working environment so difficult that the employee was compelled to resign, which is effectively a constructive dismissal.

Don't forget constructive dismissal. The employee, because of the circumstances brought about by the employer, had no choice but to resign (e.g. the environment became toxic, difficult, etc.).

There has to be a dismissal. If the employee was not dismissed, either actually or constructively, there can be no illegal dismissal case. There was an interesting case where the employee was sent a notice to explain and instead of answering the said notice, the employee

filed an illegal dismissal case. The employer hasn't even conducted a hearing yet. The Supreme Court held that there can be no illegal dismissal case because the said employee wasn't even dismissed in the first place. So those are **two important pre-requisites for an illegal dismissal: there has to be an employer-employee relationship and there has to be dismissal (either actually or constructively)**.

1. Dismissal without grounds

2. Dismissal without compliance with due process

There are **two sub-categories of illegal dismissal**. There's **illegal dismissal without grounds**. Meaning there was no substantial due process; there was no just and authorized cause. And there is **illegal dismissal because of non-compliance with due process**. Meaning, there are grounds, there are just and authorized causes but the employer just didn't follow the notice and hearing requirement.

On one side, you have no grounds at all. The employee didn't do anything wrong or there was no reason to dismiss the employee; no just cause or authorized causes. On the other hand, you have scenarios where there are just and authorized causes, but the employer did not follow the procedural due process aspect of it. These sub-categories of illegal dismissal are important because it will determine the reliefs given to the employee. What is the employee entitled to if they were dismissed without just and authorized cause? What is the employee entitled to if there is just and authorized cause but the employer failed to comply with the procedural due process? Reliefs given are different.

Example: Employee stole P200,000.00 and he was fired on the spot: no notice, no hearing. And then, the employee is now claiming for illegal dismissal. Would it be appropriate if the labor arbiter says. "Ok, you are illegally dismissed. You can now go back to work"? Isn't it awkward to have such an employee back to work? She stole P200,000. Even though the employer violated the procedural due process, wouldn't it be awkward, at most potentially making the working environment hostile, in the presence of such an erring employee? What taints the dismissal's legality is what determines the relief given to the employee.

3. Constructive dismissal

Constructive dismissal is not an actual or explicit dismissal of an employee but the employer makes the

working environment so offensive and so difficult for the employee that the latter had no choice but to resign from work. An example is demotion. Demotion is where the employee is reassigned or moved to a position which is lower than his or her current position (i.e. manager re-assigned as rank-and-file employee), or the reduction of the employee's benefits, and such is done without due process. Sometimes, demotion can be valid if it is a form of a penalty and there was due process (notice, hearing, notice). After the due process, if the employee is discovered to be guilty, then the management can validly demote such employee for reasons that such employee is not a good fit for the position. However, if the demotion is done without due process, and the employee's benefits were reduced, the employee may argue that there is constructive dismissal because the employer is essentially forcing such employee to quit; or, forcing such employee to resign.

What is another form of constructive dismissal?

Another form of constructive dismissal is if the company forces the employee to resign. There are common stories that an employer forces an employee to submit a resignation letter.

Hypothetical scenario: A is forced to resign. A submitted a resignation letter. Now, A asks you if A can claim that there is constructive dismissal.

Atty: Theoretically, yes. But A has to adduce evidence that he is being forced to resign. On its face, a resignation letter is made voluntarily: like providing a phrase that one wanted to look for another opportunity, etc. And in such a letter, if there is no indication or other evidence that would prove he is forced to execute it, then the constructive dismissal claim might not prosper. If the communication is verbal, there is no chance of showing to the Court that the employer did indeed force one to resign. In such a scenario, it is hard to prove that there is constructive dismissal absent any evidence to support such a claim. That's the danger of being an employee. You have very little evidence to begin with. There is an imbalance of evidence since the employer is the one who holds most of the evidence.

Practical Advise: If the employer says something to you, try to get it down in writing. If you have an inquiry or concern, email or text your employer and do not allow them to take things verbally. If you email or text message your employer, you are forcing them to respond in a medium that you can use as evidence later. In the situation as mentioned earlier, if you are being forced to resign, email the company: "I just received information that I am advised to resign." If the company's representative will respond, "Yes, we are asking you to resign . . ." From there, screenshot the email and use it as your evidence against them for constructive dismissal. It can now be clearly shown that you are really being forced to resign. As much as

possible, for you guys who have work, try to get everything in writing as much as possible. People may find you snobbish but it is for your own protection. The presumption is, absent any evidence to prove that you are being forced to resign, your resignation is voluntary.

What are the other forms of dismissal?

Another story: One filed for constructive dismissal since her office was transferred near the bathroom area. One felt that she was being discriminated against. Since she cannot anymore take the inconvenience she suffered, she was forced to resign. [Atty. is not sure about the resolution of such a case, but he thinks, personally, that such a reason is not strong enough to bear it constructive dismissal. At best, you can demand hazard pay because you were made to suffer the inconvenience of the smelly working environment.]

Would preventing you from going to work be considered as constructive dismissal?

Yes. If you go to work, but the security guard, following a management order, does not let you enter the work premises, there would be a constructive dismissal since you are dismissed without being informed of it.

Can a preventive suspension be considered as constructive dismissal?

Yes, and that is if it is an invalid preventive suspension (preventive suspension that has no grounds), or preventive suspension that has been extended but you are unpaid. These are forms of constructive dismissal since you are not allowed to go to work, and they did not follow the proper grounds or procedures for preventive suspension. That's why you always have to be very careful when you are imposing a preventive suspension.

Is imposing a heavier workload a form of constructive dismissal? Yes. If you are imposing a workload to a certain employee that is already burdensome as compared to the workload of the other employees of the same level or position, such employee would possibly feel discriminated against, that he or she is being overworked so that he or she would just eventually resign. One may also feel that the workload is so immense that he or she cannot take it any longer.

There are a lot of strategies on the part of some toxic employers to get employees to quit because if the employee quits or cuts off its relationship with you, you don't have to pay separation pay.

Is constructive dismissal a form of illegal dismissal? Yes. Constructive dismissal is a form of illegal dismissal.

Doctrine: As we have already noted, the respondents had the burden of proof that the transfer of the petitioner was not tantamount to constructive dismissal, which as defined in Blue Dairy Corporation v. NLRC, 314 SCRA 401 (1999), is a quitting because continued employment is rendered impossible, unreasonable or unlikely, or an offer involving a demotion in rank and diminution of pay: The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

Jarcia Machine Shop and Auto Supply, Inc. v. NLRC

Doctrine: In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. In the case at bar, Tolentino's demotion was rightly declared by the Labor Arbiter and public respondent as an unlawful constructive dismissal, petitioner having failed to show substantial proof that Tolentino's demotion was for a valid and just cause.

St. Paul College, Pasig v. Mancol

Doctrine: It is clear that petitioners employed means whereby the respondents were intentionally placed in situations that resulted in their being coerced into severing their ties with the same petitioners, thus, resulting in constructive dismissal. An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego with his or her continued employment.

Italkarat 18, Inc. v. Gerasmio

Facts: The company had been informing its employees of its proposed retrenchment program because it was suffering from serious business losses. Juraldine Gerasmio alleged

Constructive dismissal

Peckson v. Robinsons Supermarket

that he was advised by the company to retire early since the Company would still eventually retrench or terminate him from his employment, in which case, he might not even receive anything. He then allegedly executed and signed a resignation letter and quitclaim in order to get a considerable amount from the company. Instead of claiming the promised amount of money, he only received a small amount which led him to demand for the difference. The company did not respond, hence, a Juraldine filed a complaint for illegal dismissal. But it must be taken into consideration that, based on the evidence on record, Juraldine had already intended to resign in 2008, even earlier than October. The evidence presented by the Company would show that Juraldine in fact requested for multiple leaves on various occasions, usually for processing of his papers for work abroad. The Company contended that retrenching its employees during the last quarter of 2008 or earlier would not have made any difference in view of the fact that Juraldine was already in the process of applying for a job overseas or at the very least, intending to go abroad.

Issue: Whether or not there was a constructive dismissal.

Ruling: No. In illegal dismissal cases, the burden of proof is on the employer in proving the validity of dismissal. However, the fact of dismissal, if disputed, must be duly proven by the complainant. It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence. Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple — if there is no dismissal, there can be no question as to its legality or illegality.

If the fact of dismissal is disputed, it is the complainant who should substantiate his claim for dismissal and the one burdened with the responsibility of proving that he was dismissed from employment, whether actually or constructively. Unless the fact of dismissal is proven, the validity or legality thereof cannot even be an issue. In the present case, however, even a cursory perusal of the evidence on record would show that Juraldine failed to prove the fact of dismissal. The fact of the matter is that it was Juraldine himself who resigned from his work, as shown by the resignation letter he submitted and the quitclaim that he acknowledged, and thus, he was never dismissed by the Company.

Panasonic Manufacturing Philippines Corporation v. Peckson

Doctrine: Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the

employee's position would have felt compelled to give up his employment/position under the circumstances.

On the other hand, "resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."

The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he, in fact, intended to terminate his employment. In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.

Demotion

Ledesma & Co. v. NLRC

Facts: Orlando Ordon is was employed as a security guard by petitioner company at its Hacienda Teresa under the management of petitioner Arturo Ledesma. The said hacienda is covered by the Comprehensive Agrarian Reform Program(CARP). When the DAR team visited the hacienda and conducted a meeting, they explained to the workers their options under the said law: namely, actual land distribution or stock distribution. Orlando campaigned actively for actual and distribution plan while the company campaigned for the stock distribution plan. One day, Orlando was already prevented to report to work. He was then told by Ledesma that he did not want him to work in the hacienda anymore as private respondent's loyalty was with the workers and not with the petitioner company. In the illegal dismissal case filed by Orlando, the Labor Arbiter ruled that he was not dismissed but was merely given a new assignment and that his act of refusing to report for work in his new assignment constituted abandonment.

Issue: Whether or not the transfer of private respondent from the position of a security guard to the position of a laborer was a demotion, hence, constitutes a constructive dismissal.

Ruling: Yes. There is a constructive dismissal when the reassignment of an employee involves a demotion in rank or a diminution in pay. In the case at bench, the demotion of private respondent is tantamount to a constructive dismissal. One does not need to stretch his imagination to distinguish the work of a security guard and that of a common agricultural laborer in a sugar plantation. Likewise, there was a diminution of salary, for a security guard is paid on a monthly basis while a laborer in the sugar plantation is paid either on a daily or piece work basis. Laborers do not work year round but only when needed and on off-season months, they are not required to work at all. Hence, the demotion constitutes a constructive dismissal.

Forced Resignation

Reyes v. NLRC

Facts: Veronica Reyes was a school teacher in the respondent Kong Hua School. She went on maternity leave and when she got back, she had suffered nervous breakdown causing her to file applications for indefinite leave of absence. In the last application she filed, the school did not anymore approve such leave. When her husband went to the school to get her two months vacation leave pay, he was made to sign a resignation letter in behalf of his wife for health reasons with a promise that the school will re-hire his wife. When Veronica had fully regained her health, she applied for reinstatement but the school already refused to re-hire her.

Issue: Whether or not Reyes' resignation was voluntary, hence, there is no constructive dismissal.

Ruling: No. Reye's resignation was involuntary, hence, there was constructive dismissal.

Under Art. 284 of the Labor Code, an employer may dismiss an employee if the latter has illness which will make her continued employment prejudicial to her, as well as to the health of her co-employees. In the case at hand, The school must have realized that it could not dismiss the petitioner for health reasons under Art. 284 of the Labor Code because apparently her illness was not "prejudicial . . . as well . . . to the health of her co-employees" nor the kind that would have legally prohibited her continued employment, and, even if her service was terminable on account of illness, the school would have been required to pay her "separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year." Hence, it inveigled her to "resign" so it could avoid paying her separation pay for her 10-year service to the school.

Furthermore, the letter is not binding on the petitioner for there is no proof that she authorized her husband to write it for her and to waive her right to be re-hired as promised by the school or to abandon her right to separation pay if she would not be reinstated. The school's refusal in bad faith to re-employ her despite its promise to do so, amounted to illegal dismissal.

4. Invalid Preventive Suspension: Constructive dismissal

Preventive Suspension exceeding 30 days, without pay

Hyatt Taxi Services, Inc. v. Catinoy

Doctrine: In the case at bar, the constructive dismissal had already set in when respondent's suspension went beyond the maximum period allowed by law. Hence, the Court held that from the time petitioner failed to recall respondent to work after the expiration of the suspension period, taken together with petitioner's precondition that respondent withdraw the complaints against the acting president of the union and against petitioner itself, respondent's security of tenure was already undermined by petitioner. Petitioner's actions undoubtedly constitute constructive dismissal.

Genesis Transport Services, Inc. v. Unyon ng

Malayang Manggagawa ng Genesis Transport

Doctrine: Section 8. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or his co-workers.

xxx xxx xxx

Section 9. Period of Suspension. — No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such a case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

What the Rules require is that the employer act on the suspended worker's status of employment within the 30-day period by concluding the investigation either by absolving him of the charges, or meeting the corresponding penalty if liable, or ultimately dismissing him. If the suspension exceeds the 30-day period without any corresponding action on the part of the employer, the employer must reinstate the employee or extend the period of suspension, provided the employee's wages and benefits are paid in the interim.

5. Burden of proof

Burden of proof rests on employer

Dizon v. NLRC

Doctrine: It is firmly settled that in an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee. Equipoise is not enough; the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. The burden of proof in effect moved back to and once again rested on the employer, asserting the existence of a just cause for dismissal. The failure of the employer to discharge the onus probandi resting on it, must be taken in conjunction with its conceded failure to conduct an investigation before serving the employee a notice of termination.

F. RELIEFS AND REMEDIES UNDER THE LABOR CODE

1. Reinstatement

Article 294. Security of Tenure

In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary

equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Last meeting, we started talking about procedure, we talked about illegal dismissal, constructive dismissal. Basically, there are **two kinds of illegal dismissal**:

- (1) Dismissal without just or authorized cause
- (2) Dismissal with just or authorized cause but did not comply with the procedural requirements.

We also have constructive dismissal which is when the employee is forced to resign due to the working environment or the circumstances were so offensive that the employee had no choice but to leave the workplace.

It is important to note the two kinds of illegal dismissal because this will impact the remedies and reliefs you are entitled to if you file a labor case. **What are these remedies and reliefs?**

In illegal dismissal cases, there are generally **twin reliefs : Reinstatement and Backwages**. These are known as the twin reliefs. They are called twin reliefs because they often accompany each other and they are separate and distinct from one another. Usually it is not backwages OR reinstatement. It is usually backwages AND reinstatement.

REINSTATEMENT: The labor arbiter or the NLRC, CA, or SC ordered the employer to bring back the employee to the workplace. So reinstatement - put the employee back to where they were before things got complicated. The employee is put in the same position as they were before the dismissal. Same position, same salary, same conditions of work. The employee cannot be reinstated with less salary and benefits. So reinstatement is: as if the case never happens, as if the clock was rewind back. Same conditions of work, salary, everything. Also, **without loss of seniority rights**. **Why is this so important?** Because for example, when the employee retires, his/her years of service will be counted, and the employee will still be considered an employee during the time when the case is pending. Employment was never interrupted - effect of reinstatement. As if the case never happened, as if you were never dismissed in the first place. **Sometimes it's complicated because what if in the meantime, the employer hired someone new to fill in your position, so how will you be reinstated?**

The SC held that it is **enough that the employee is put in a substantially equivalent position** meaning the employee may not be in the same position that they were originally before the dismissal but still on the same level, degree of authority, salary, benefit, so not quite the same position but more or less similar. **For example, if it was a manager who was dismissed, you**

cannot reinstate the manager by putting him back into a rank and file position. Similarly, if you were a secretary when you were dismissed, you cannot be put in the position of accountant. **So, it has to be a similar position, not necessarily similar duties.** If the employee has a managerial position or supervisory, the position has also to be managerial or supervisory because if you can imagine it is not a good feeling on the part of the reinstated employee that when they come back, their rank becomes lower, it is not a good feeling because they were superior before the dismissal. So it has to be a position that is substantially equivalent. But ideally, reinstate the employee in the same position they occupied before they were dismissed.

General rule: If there is illegal dismissal, there is reinstatement.

Exceptions:

1st exception to the rule of reinstatement:

If it is no longer financially feasible for the company to hire back or bring back the employees. For example, during the interim while the employee was dismissed, the company suffered severe financial difficulties and it was proven, so the company would not be compelled to bring the employee but they would be required to pay separation pay. This is called separation pay in lieu of reinstatement. If reinstatement is not really feasible either to the original position or to a substantially equivalent position, you pay separation pay instead. "Separation" means the employer-employee relationship ends. There is no going back.

So, this is the first exception to the rule of reinstatement where it is no longer financially viable for the employee to be put back into the company. Let's say the company is financially bleeding out that they are even letting go of some of their employees, it is unfair on the part of the employer to reinstate an employee.

2nd exception to the rule of reinstatement:

If during the pendency of the labor case, the employee reaches the compulsory retirement age or whatever the retirement age in the company's retirement plan. Sometimes, the company can stipulate through the CBA a retirement age not necessarily 65 years old. If the employee reaches the retirement age while the case is pending, the employer may not be required to take back the employee but again the alternative is to pay the separation pay.

3rd exception to the rule of reinstatement:

If the case has been going on for so long. In one of the cases, it has already been 8 years so the SC held that it was no longer feasible to bring back the employee after so long because they already found another job. Probably, the employees no longer remember the SOPs, policies and rules of the company because it has already been 8 years. So, the SC held that in order to be fair, it requires the employer to pay separation pay.

Basically, all of these exceptions states that "if it is not longer feasible to bring back the employee then do not apply the rule on reinstatement"

4th exception to the rule of reinstatement:

If the employee was injured. In a case, it was a bus company and the employee injured his leg so it is unlikely that he could push the pedal of the bus. So, the SC held that because it is not physically feasible to reinstate the driver to its original position, the employer will have the separation pay instead.

5th exception to the rule of reinstatement:

The position was actually abolished because the company downsized so there is no position to reinstate the employee to. If you recall, under the Migrant Worker's Act, illegal dismissal cases of OFWs are filed in the Labor Arbiter of the Philippines but reinstatement is not feasible. Why? Because the employer is a foreigner. It is very difficult to enforce an order for reinstatement when the company is actually outside the jurisdiction of the Labor Arbiter. Instead, they will be paid reimbursement.

Basically, reinstatement is the general rule. Either reinstatement to the same position or to a substantially equivalent position. Exception is if it is financially or logically infeasible to reinstate an employee to the same position.

Actual Reinstatement vs. Payroll Reinstatement

Actual Reinstatement	Payroll Reinstatement
Actual Reinstatement means the employee fully goes back to work. They are brought back to work.	Payroll reinstatement means the employee does not go back to work but they will be paid as if they go back to work.

This is relevant later on when we talk about execution of the judgment. We will talk about payroll reinstatement more when we reach the execution of the judgment.

Twin Reliefs In Illegal Dismissal, Separate And Distinct

Peak Ventures Corporation v. Heirs of Villareal

Facts: Peak Ventures, the owner/operator of El Tigre, hired Villareal as security guard and assigned him at East Greenhills Village. Villareal was illegally dismissed.

Issue: Whether or not Villareal should be reinstated AND be given backwages.

Ruling: YES. Villareal should be reinstated and be given backwages, but he cannot be given separation pay.

1. The twin reliefs that should be given to an illegally dismissed employee are full backwages and reinstatement. Backwages restore the lost income of an employee and is computed from the time compensation was withheld up to actual reinstatement. Anent reinstatement, only when it is not viable is separation pay given.

2. Backwages must be computed at the time the employee was unjustly relieved from duty since it was from this time that his compensation was withheld from him.

Records reveal that Villareal was actually reinstated. The award of separation pay must be deleted because separation pay is only granted as an alternative to reinstatement.

Reinstated To Same Salary And Conditions Of Work

GROLIER INTERNATIONAL, INC. v. EXECUTIVE LABOR ARBITER

Doctrine: Reinstatement means restoration to a state or condition from which one had been removed or separated. One who is reinstated assumes the position he had occupied prior to his dismissal and is, as an ordinary rule, entitled only to his last salary in that position.

"Substantially Equivalent Position"

PEDROSO v. CASTRO

Facts: Nelio ASIAO was employed by MANHATTAN and likewise, became an officer of Manhattan Workers' Union. ANTONINO, PELAGIA, and ASIAO were arrested and detained by military authorities by virtue of a Presidential Commitment Order (PCO). To avoid disruption of work and business operations, MANHATTAN hired substitute workers for the arrested employees. Approximately three (3) months after arrest, PELAGIA was released and immediately reported for work but was refused admission. MANHATTAN informed her that her work assignment was already being occupied by a substitute who was hired to avoid disruption of normal business operations.

Issue: Whether or not petitioners were illegally dismissed.

Ruling: YES. Petitioners' separation from employment having been for a false or nonexistent cause is illegal. Their reinstatement to their former positions, therefore, would have been warranted. However, it is undisputed that MANHATTAN has already hired replacements. To reinstate petitioners now to their former position, therefore, would neither be fair nor just under the circumstances. MANHATTAN's remedy is to reinstate them to substantially equivalent positions pursuant to Section 4(a) of Rule I, Book VI of the Rules and Regulations

Implementing the Labor Code.

"... Reinstatement to former position. —

(a) An employee who is separated from work without just cause shall be reinstated to his former position, unless such position no longer exists at the time of his reinstatement, in which case he shall be given a substantially equivalent position in the same establishment without loss of seniority rights."

Exception – Financial Unfeasible

Mitsubishi Motors v. Chrysler Phil. Labor Union

Facts: Nelson Paras was employed by the petitioner and was dismissed. Considering that respondent Paras was not dismissed for a just or authorized cause, his dismissal from employment was illegal. Furthermore, the petitioner's failure to inform him of any charges against him deprived him of due process. The termination of his employment based on his alleged unsatisfactory performance rating was effected merely to cover up and "deodorize" the illegality of his dismissal.

Issue: Whether or not Paras is entitled to reinstatement and backwages.

Ruling: NO. It is not denied that because of the petitioner's losses, it retrenched seven hundred (700) employees. Business reverses or losses are recognized by law as an authorized cause for termination of employment. **The unfavorable financial conditions of the petitioner may not justify reinstatement.** However, it is not a sufficient ground to deny backwages to respondent Paras who was illegally dismissed. Pursuant to Article 283 of the Labor Code, he should be paid separation pay equivalent to one (1) month salary, or to at least one-half month pay for every year of service, whichever is higher, a fraction of at least six months to be considered as one (1) year.

Exception – Attained Retirement Age

Torres v. NLRC

Facts: Petitioners were among the many employees of SMC who retired from employment pursuant to private respondent's Retirement Plan. Believing that they were constructively forced to retire from employment and that their separation from employment was illegal, petitioners filed a complaint for illegal dismissal against SMC.

Issue: Whether or not petitioners should be reinstated AND be given backwages.

Ruling: NO. The retirement age of 60 years already attained by petitioners as early as 1989 for Edmundo Torres, Jr. and 1990 for Manuel Castellano had set in motion the provisions of SMC's Retirement Plan which is a valid management prerogative. Ultimately, therefore, the reinstatement of petitioners is no longer feasible. SMC should accordingly take formal steps, in accordance with its Retirement Plan, to effect petitioners' retirement.

Association of Independent Unions in the Philippines v. NLRC

Facts: Four workers were dismissed for participating in a strike. The Court found that their identities or participation in the strike were not duly identified by the testimony. Simply referring to them as "strikers", "AIU strikers" "complainants in this case" is not enough to justify their dismissal.

Issue: Whether or not they are entitled to reinstatement.

Ruling: NO. The four petitioners herein are entitled to reinstatement absent any just ground for their dismissal. Considering, however, that more than eight (8) years have passed since subject strike was staged, an award of separation pay equivalent to one (1) month pay for every year of service, in lieu of reinstatement, is deemed more practical and appropriate to all the parties concerned.

Exception – Injury Of Employee

Victory Liner v. Race,

Facts: Pablo M. Race was employed by Victory Liner, Inc. as a bus driver. Race's bus figured in an accident, wherein Race suffered a fractured leg. Race reported for work, but was informed that he was considered resigned.

Issue: Whether Race was illegally dismissed and thus entitled to the twin reliefs of reinstatement and backwages.

Ruling: NO. Since Victory Liner is a common carrier, and is obliged to exercise extra-ordinary diligence in transporting its passengers, it would be a violation of this diligence to reinstate an incapacitated driver.

An employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests.

Therefore, in lieu of reinstatement, payment to respondent of separation pay equivalent to one month pay for every year of service.

Exception – Abolition Of Position

RCPI v. NLRC

Facts: Petitioner Radio Communications of the Philippines, Inc. (RCPI) terminated the employment of private respondents on the ground of retrenchment occasioned by alleged severe economic losses. Disputing the basis of their retrenchment, private respondents filed complaints against petitioners for illegal dismissal.

Issue: Whether the employees were illegally dismissed and thus entitled to the twin reliefs of reinstatement and backwages.

Ruling: YES. Where the employee is illegally dismissed, he must be reinstated to his former position without loss of seniority rights and backwages not exceeding three (3) years. Separation pay may be awarded in favor of illegally dismissed employees if reinstatement is no longer feasible or appropriate.

The retrenchment effected by petitioners being legally infirm,

Exception – Prolonged Case

hence, ineffective, private respondents should be reinstated with payment of their backwages equivalent to their respective salaries for three (3) years, without qualification or deduction in accordance with the three-year rule. **Where reinstatement is no longer possible, such as when the establishment has closed or ceased operations at the time the workers should be reinstated no longer exists for reasons not attributable to the fault of the employer, the employees shall, in lieu of reinstatement, be entitled to severance compensation equivalent to at least one (1) month pay for every year of service.**

Exception – reinstatement not possible as employer is overseas

ATCI Overseas Corp. v. Court of Appeals

Facts: Petitioner ATCI Overseas Corporation (ATCI) and the Ministry of Public Health of Kuwait (Ministry) entered into a Memorandum of Understanding, by virtue of which the former would recruit medical professionals for the latter in order to work in Kuwait. Pursuant thereto, private respondents Marissa Alcantara and Rosanna E. Cabatbat were hired as dental hygienists by the Ministry.

Before leaving, private respondents underwent a physical and medical examination in an accredited clinic of the Philippine Overseas Employment Administration (POEA) and both were found to be physically fit. Shortly after arriving in Kuwait, they were again subjected to another physical examination and, after having worked for only two months, private respondents were terminated from their employment. Upon inquiry, private respondents were informed that they were physically unfit for their jobs.

Issue: Whether or not the private respondents should be reinstated to their former employment. NO

Ruling: In order to give substance to the constitutional right of labor to security of tenure, Article 279 provides that the illegally dismissed employee shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

As to the second remedy granted by Article 279, nowhere in the records does it appear that private respondents desire to be reinstated to their former employment. But more significantly, **any order of reinstatement issued by this Court will be difficult for private respondents to enforce against the Ministry of Public Health of Kuwait.**

Therefore, in lieu of reinstatement, private respondents are entitled to separation pay.

2. Backwages

The salaries that the employee would have received had they not been dismissed.

If dismissed in January 2022, the decision reinstatement by the Labor Arbiter was in January 2023. They would receive backwages from January 2022 to January 2023.

Backwages apply only if there was illegal dismissal. It is different from unpaid salaries. **Unpaid salaries are paid when you were still working before dismissal.** Backwages are wages you could have earned had you not been dismissed.

What if the employee found a work while the illegal dismissal case was pending, is the employee still entitled to backwages?

Yes, **backwages are not just to compensate the employee.** It is a penalty for the employer. Even if the new work pays better. Backwages are from the time of dismissal up until the actual payment of the backwages. Hence, even if the decision of the LA becomes final and executory, as long as the employer has not paid, the backwages will continue to run unless otherwise stated by the LA.

What is the basis of the payment of backwages?

It is the salary at the time of the dismissal, **including the allowances they might have received (cost of living allowance, transportation allowance)** provided they received it regularly alongside their salary.

What if, in the meantime, while the case is pending and the salary of the position increased?

It is still the same, **the salary at the time of the dismissal.** Again, backwages will continue to accrue until full payment.

Definition of backwages, arise from unjust dismissal

Advan Motor, Inc. v. Veneracion

Doctrine: The payment of backwages is generally granted on the ground of equity. **It is a form of relief that restores the income that was lost by reason of the unlawful dismissal;** the grant thereof is intended to restore the earnings that would have accrued to the dismissed employee during the period of dismissal until it is determined that the termination of employment is for a just cause. **It is not private compensation or damages** but is awarded in furtherance and effectuation of the public objective of the Labor Code. Nor is it a redress of a private right but rather in the nature of a command to the employer to make public reparation for dismissing an employee either due to the former's unlawful act or bad faith. **The award of backwages is not conditioned on the employee's ability or inability to, in the interim, earn any income.**

Backwages vs. separation pay

Torillo v. Leogardo

Doctrine: Backwages and reinstatement are two reliefs given to an illegally dismissed employee. They are separate and distinct from each other. However, in the event that

reinstatement is no longer possible, separation pay is awarded to the employee. Thus, **the award of separation pay is in lieu of reinstatement and not of backwages**. In other words, an illegally dismissed employee is entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable and (2) backwages.

The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. **Payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.**

Solis v. NLRC

Doctrine: An illegally dismissed employee, like Solis, is entitled to reinstatement. **Acceptance of separation pay does not necessarily amount to estoppel nor would it connote waiver of the right to press for reinstatement considering that the acceptance by Solis of the alleged separation pay was made due to a dire financial necessity of having to pay for his hospitalization and medical expenses.** His receipt of said pay does not relieve the company of its legal obligations. Indeed, **a dismissed employee who has accepted his separation pay is not necessarily estopped from assailing the illegality of his dismissal.** In fact, Solis filed the complaint for illegal dismissal with prayer for reinstatement a month after his separation from service -- a fact which strongly indicates that he never waived his right to reinstatement.

Nevertheless, despite the lack of the required certification and the absence of estoppel, **it cannot be ignored that Solis was afflicted with tuberculosis, a contagious disease.** His continued employment as underground miner would be harmful to his health and his co-workers. Hence, **although Solis is legally entitled to reinstatement such reinstatement must be subject not only to his physical fitness, but also to his fitness to work underground,** requirements which have to be certified by competent public health authority.

sustained. YES

Ruling: The award with respect to back wages is valid. His dismissal as President may have been legal but his dismissal as Academic Dean is not. **Having been illegally dismissed from his position as Academic Dean, Basa is entitled to reinstatement to his former position without loss of seniority rights and to payment of backwages from the time of his illegal dismissal up to his actual reinstatement.**

There is no grave abuse of discretion committed by the respondent NLRC in ruling that the reinstatement of herein respondent Basa as Academic Dean and the payment of unpaid salaries is in order.

The NLRC, however, erroneously referred to unpaid salaries as "backwages" when it excluded allowances therefrom. In order to obviate any further controversy on this matter, We would like to clarify the difference between the two terms. When the term "backwages" was used in the NLRC decision, what was actually meant was **unpaid salaries, which pertain to compensation due the employee for services actually rendered before termination.** Backwages, on the other hand, refer to his supposed earnings had he not been illegally dismissed. Unpaid salaries refer to those earned prior to dismissal whereas backwages refer to those earnings lost after illegal dismissal. Thus, reinstatement would always bring with it payment of backwages but not necessarily payment of unpaid salaries. Payment of unpaid salaries is only ordered if there are still salaries collectible from his employer by reason of services already rendered.

UNPAID SALARIES	BACKWAGES
Compensation due the employee for services actually rendered before termination	Employee's supposed earnings had he not been illegally dismissed
Earned prior to dismissal	Earnings lost after illegal dismissal
Payment of unpaid salaries is only ordered if there are still salaries collectible from his employer by reason of services already rendered.	

We also want to clarify that when there is an award of backwages this actually refers to **backwages without qualifications and deductions.** Thus, We held that:

"The term "backwages without qualification and deduction" means that **the workers are to be paid their backwages fixed as of the time of the dismissal or strike without deduction for their earnings elsewhere during their layoff and without qualification of their wages as thus fixed;** i.e., unqualified by any wage increases or other benefits that may have been received by their co-workers who are not dismissed or did not go on strike. Awards including salary differentials are not allowed. The salary base properly used should, however, **include not only the basic salary but also the emergency cost of living allowances and also transportation allowances if the workers are entitled thereto."**

Unpaid salaries vs. backwages

General Baptist Bible College v. NLRC

Facts: Basa was hired by the College as Academic Dean and was subsequently appointed as President of the College by its Board of Trustees. The Board of Directors (Trustees) of the College voted to terminate the services of Basa as President of the College effective June 15, 1987. After the effectiveness of his termination as President, Basa personally, without the assistance of counsel, filed a complaint for illegal dismissal, money claims and damages, not only for the position of President but for the position of Academic Dean as well. Thus, what was in issue before the Labor Arbiter was not only the legality of his termination as President but also the legality of his termination as Academic Dean.

Issue: Whether the NLRC's ruling of reinstatement of Basa to his former position with payment of backwages should be

Effect of dismissed employee finding work during interim

Ala Mode Garments, Inc. v. NLRC

Facts: Petitioner Ala Mode Garments, Inc is a garments manufacturer and exporter while private respondents Lucrecia Gaba and Elsa Melarpes were both employees, as sewers, until May 7, 1993, when, upon reporting for work, private respondents were disallowed from entering petitioner's premises.

On May 17, 1993, private respondents filed with the NLRC separate complaints for among others, illegal dismissal.

Petitioner claims that the NLRC gravely abused its discretion in holding it liable for backwages, holiday pay, service incentive leave pay, and attorney's fees.

Issue: Whether or not NLRC gravely abused its discretion in holding the petitioner liable for backwages. NO

Ruling:

Anent the issue of backwages, We find that the Labor Arbiter erred in limiting the award of backwages for only a period not exceeding three (3) years. Prior to the effectivity of Republic Act No. 6715, the rule was that an employee, who was illegally dismissed, was entitled to an award of backwages equivalent to three years (where his case is not terminated sooner). **Republic Act No. 6715, which amended Art. 279 of the Labor Code took effect on March 21, 1989.** It states in part:

Art. 279. Security of Tenure. — . . . An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation is withheld from him up to the time of his actual reinstatement.

Private respondents' cause of action against the petitioner arose on May 7, 1993; their complaint for illegal dismissal was filed on May 17, 1993. Since the dismissal took place after the passage of such law, and following the doctrine laid down in the case of *Caltex Refinery Employees Association (CREA) vs. National Labor Relations Commission (Third Division)*, We hold that the private respondents are entitled to reinstatement without loss of seniority rights, as well as to other privileges and their full backwages inclusive of allowances, and to their other benefits or their monetary equivalent computed from the time their compensation was withheld from them up to the time of their actual reinstatement. Moreover, no deduction shall be allowed in accordance with the doctrine enunciated in the recent case of *Bustamante vs. National Labor Relations Commission and Evergreen Farms, Inc.* wherein this Court took the opportunity to clarify how Republic Act No. 6715 is to be interpreted:

The Court deems it appropriate, however, to reconsider such earlier ruling on the computation of backwages as enunciated in said Pines City Educational Center case, by now holding that conformably with the evident legislative intent as expressed in Rep. Act No. 6715, . . . backwages to be awarded to an illegally dismissed employee, should not, as a general rule, be diminished or reduced by the earnings derived by him during the period of his illegal dismissal. The underlying reason for this ruling is that the employee, while litigating the legality ([or] illegality) of his dismissal, must still earn a living to support himself

and family, while full backwages have to be paid by the employer as part of the price or penalty he has to pay for illegally dismissing his employee. The clear legislative intent of the amendment in Rep. Act No. 6715 is to give more benefits to workers than was previously given them under the Mercury Drug rule or the "deduction of earnings elsewhere" rule. Thus, a closer adherence to the legislative policy behind Rep. Act No. 6715 points to "**full backwages**" as meaning exactly that, i.e., without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal. In other words, the provision calling for "full backwages" to illegally dismissed employees is clear, plain and free from ambiguity, and, therefore, must be applied without attempted or strained interpretation. Index animi sermo est.

Computation of backwages – base pay at time of dismissal, including regular allowances

Evangelista v. NLRC citing Paramount Vinyl Product Corporation v. NLRC

Facts: Private respondent Arturo Mendoza filed a complaint for illegal dismissal against petitioner Augusto Evangelista. Eventually, the case reached the SC through a petition for certiorari which was decided in the private respondent's favor. The decision became final upon denial of petitioner's motion for reconsideration.

Thereafter, private respondent filed a motion seeking clarification with respect to the salary scale which should be applied in computing the three years backwages awarded in his favor and cited the decision in the case of *De Jesus vs. Philippine National Construction Corporation*, wherein the award of backwages was based on the latest pay scale of the employee's position.

A resolution was issued granting private respondent's motion for clarification and modified the decretal portion of the decision to read as follows:

WHEREFORE, the petition is DISMISSED, with costs against petitioner. The computation of the three (3) years backwages awarded to private respondent shall be based at the current rate of wage levels.

Petitioner, in turn, filed the instant motion for reconsideration seeking the reversal of the Resolution. He maintains that the same should instead be computed based on the rate of the wage level in 1977 when private respondent was illegally dismissed, in accordance with the prevailing jurisprudence.

Issue: Whether or not the computation of the award of backwages must be based on the current wage levels. NO

Ruling: As explicitly declared in *Paramount Vinyl Products Corp. vs. NLRC*, the determination of the salary base for the computation of backwages requires simply an application of judicial precedents defining the term "backwages". **An unqualified award of backwages means that the employee is paid at the wage rate at the time of his dismissal.** Furthermore, the award of salary differentials is not allowed, the established rule being that upon reinstatement, **illegally dismissed employees are to be paid their backwages without deduction and qualification as to any wage increases or other benefits that may have been received by their co-workers who were not**

dismissed or did not go on strike.

Base pay does include commissions

Philippines Spring Water Resources, Inc. v. Court of Appeals

Doctrine: The determination of whether or not a commission forms part of the basic salary depends upon the circumstances or conditions for its payment. Commissions paid to or received as productivity bonuses and bonuses that closely resemble profit-sharing payments and had no clear direct or necessary relation to the amount of work actually done by each individual employee does not form part of the basic salary.

Base pay at time of dismissal- does not include salary increase during the interim

Equitable Banking Corp. v. Sadac

We said that backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal. It is not private compensation or damages but is awarded in furtherance and effectuation of the public objective of the Labor Code. Nor is it a redress of a private right but rather in the nature of a command to the employer to make public reparation for dismissing an employee either due to the former's unlawful act or bad faith

If the intent were to include salary increases as basis in the computation of backwages, the same should have been explicitly stated in the same manner that the law used clear and unambiguous terms in expressly providing for the inclusion of allowances and other benefits.]

Reckoning of backwages

Reyes v. NLRC

Article 279 of the Labor Code provides that an illegally dismissed employee shall be entitled, inter alia, to the payment of his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent **computed from the time that his compensation was withheld from him, i.e., from the time of his illegal dismissal, up to the time of his actual reinstatement.** Thus, where reinstatement is adjudged, the award of backwages and other benefits continues beyond the date of the Labor Arbitrator's Decision ordering reinstatement and extends up to the time said order of reinstatement is actually carried out

Backwages continue to accrue until compliance of reinstatement order

Triad Security and Allied Services v. Ortega

Until the employer continuously fails to actually implement the reinstatement aspect of the decision of the labor arbiter, their obligation to respondents, insofar as accrued backwages and other benefits are concerned, continues to accumulate.

Computation of backwages- period

Bani Rural Bank Inc. v. De Guzman

When separation pay is ordered in lieu of reinstatement, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.

Peak Ventures Corporation v. Heirs of Villareal

Villareal's backwages must be computed from the time of his unjustified relief from duty up to his actual reinstatement. Under Article 279 of the Labor Code, as amended by Republic Act No. 6715, an employee who is unjustly dismissed shall be entitled to

- (1) reinstatement without loss of seniority rights and other privileges; and,
- (2) full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is no longer viable, separation pay is granted

While dismissal was illegal no backwages if employer acted in good faith

Integrated Microelectronics v. Dionilla

As a general rule, an illegally dismissed employee is entitled to reinstatement (or separation pay, if reinstatement is not viable) and payment of full backwages. In certain cases, however, the Court has carved out an exception to the foregoing rule and thereby ordered the reinstatement of the employee without backwages on account of the following: (a) the fact that dismissal of the employee would be too harsh of a penalty; and (b) that the employer was in good faith in terminating the employee.

Soriano v. Atienza

No backwages or financial assistance in the form of separation pay may be granted to employees, whose dismissal was made in compliance with the union security clause in the CBA

Erring employee dismissed for just cause is not entitled to separation pay

Claudia's Kitchen, Inc. v. Tanguin

As a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer. To award separation pay in lieu of reinstatement to an employee who was never dismissed by his employer would only give imprimatur to the unacceptable act of an employee who is facing charges related to his employment, but instead of addressing the complaint against him, he opted to file an illegal dismissal case against his employer.

3. Separation Pay in lieu of reinstatement

If reinstatement is not possible then separation pay will be paid.

Examples: the ee found another job, or it's no longer feasible for the employee to continue working because of an injury, retirement or financial difficulty of the company

However the most common ground invoked to apply separation pay in lieu of reinstatement is the **Strained Relations doctrine** (See *Dimabayao case*)

The stained relations doctrine may **only apply if the ee is occupying a position of trust and confidence** (such as managerial, fiduciary rank n file)

In any illegal dismissal case, there will always be there strained relations between ee and er. In effect, this doctrine may only apply in cases where the ee is occupying a position of trust and confidence. Otherwise, there will be no use for reinstatement.

TN: Separation pay is meant to be a substitute for reinstatement, it is not meant to be a substitute for backwages. Backwages and reinstatement are twin reliefs, and they are distinct from each other.

This means that separation pay in lieu of reinstatement only substitutes reinstatement, it does not substitute backwages.

Separation pay is not a substitute for backwages, but only for reinstatement. It does not substitute backwages, so in effect, **an employee can receive both the separation pay AND backwages.**

Q: How do you compute separation pay in lieu of reinstatement?

A: 1 month for every year of service.

prior permission first obtained from his checker, he went to the comfort room. But private respondent Cheng Suy Eh was unhappy seeing petitioner away from his work station and immediately demanded from him a written explanation allegedly for abandoning his work.

The following day Marcela Lok, respondent company's Personnel Manager, handed petitioner a letter asking him to explain in writing why he left his work station on two separate days.

Petitioner was not able to explain in writing hence was suspended. Next incident, petitioner requested a fellow worker to replace him in his work station so he could go to the comfort room to relieve himself. Again private respondent Cheng Suy Eh noticed petitioner's brief absence and so, upon his return, his manager berated him again and required him to submit once more a written explanation for allegedly abandoning his work. Petitioner complied.

Nonetheless, petitioner was a notice of termination.

Issue: WON Dimabayao's act of leaving his work station to answer the call of nature without obtaining permission from the checker constitute willful disobedience for him to be legally dismissed.

Ruling: No. Petitioner's act of leaving his work place to relieve himself can hardly be characterized as abandonment, much less a willful or intentional disobedience of company rules since he was merely answering the call of nature over which he had no control. The violation of petitioner, if at all it was, could not be that serious as to warrant his dismissal from the service (**no serious misconduct**).

STRAINED RELATIONS DOCTRINE does not apply
The strained relationship does not exists that could bar the reinstatement of the employee.

In the instant case, however, **the relationship between petitioner, an ordinary employee, and management was clearly on an impersonal level.** Petitioner did not occupy such a sensitive position as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement. But, interestingly, petitioner himself was praying for his reinstatement.

Dimabayao v. National Labor Relations Commission

Facts: Private respondent Island Biscuit, Inc., is engaged in the manufacture of biscuits with private respondent Cheng Suy Eh as its General Manager. It employed petitioner (DIMABAYAO) with the specific task of operating the roller, cutting biscuits, sorting out rejects, mashing flour and feeding the flour mass into its thinning machine.

While petitioner was assigned to sort out rejects, with

Advan Motor, Inc. v. Veneracion

Doctrine: The Court of Appeals correctly held that every labor dispute almost always results in "strained relations," and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated. Strained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression

"alone" so as to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.

Separation pay in lieu of reinstatement, strained relations

Golden Ace Builders v. Talde

Facts: Talde, carpenter of Golden Age, filed an illegal dismissal case and was reinstated by the LA. He then manifested to the LA that animosity existed between him and owner-manager Azul, leading the NLRC to compute his separation pay. Such pay was vacated by the NLRC on petitioners' MR that Talde never challenged the LA decision of reinstatement. CA allowed separation pay because of strained relations.

Issue: Whether or not Talde was entitled to separation pay in lieu of actual reinstatement on account of strained relations between him and the company

Ruling: SC affirmed CA's decision with modification that separation pay and backwages be computed from June 30, 2005, the date of his actual separation when reinstatement was rendered impossible.

An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs are separate and distinct. When reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

Under the **doctrine of strained relations**, the **payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable**. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

Strained relations must be demonstrated as a fact and must be supported by substantial evidence showing that the relationship between the employer and the

employee is indeed strained as a necessary consequence of the judicial controversy. In this case, the Labor Arbiter found that actual **animosity existed between the owner-manager Azul and Talde as a result of the filing of the illegal dismissal case**. Such finding, especially when affirmed by the appellate court as in the case at bar, is binding upon the Supreme Court, consistent with the prevailing rules that the Supreme Court will not try facts anew and that findings of facts of quasi-judicial bodies are accorded great respect, even finality.

Thus, Talde was entitled to backwages and separation pay as his reinstatement had been rendered impossible due to strained relations. His backwages must be computed from the time he was unjustly dismissed until his actual reinstatement, or from February 1999 until 30 June 2005 when his reinstatement was rendered impossible without fault on his part.

Backwages vs. separation pay, distinct remedies

Backwages	Separation Pay
Payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal	oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job

Velasco v. National Labor Relations Commission

Under Article 279 of the Labor Code, an employee unjustly dismissed from work is entitled to **reinstatement and backwages**, among others. However, it has long been recognized that if **reinstatement is no longer possible or practicable**, the employer may be made instead to pay **separation pay to the employee in lieu of reinstatement**.

The Court made this point clear in *Santos v. NLRC*.

The normal consequences of a finding that an employee has been illegally dismissed are, firstly, that the employee becomes entitled to reinstatement to his former position without loss of seniority rights and, secondly, the payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement. The statutory intent on this matter is clearly discernible. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies—reinstatement and payment of backwages—make the dismissed employee whole who can then look forward to continued employment. Thus do these two remedies give meaning and substance to the constitutional right of labor to security of tenure. **The two forms of relief are distinct and separate, one from the other. Though the grant of reinstatement commonly carries with it an award of**

backwages, the inappropriateness or non-availability of one does not carry with it the inappropriateness or non-availability of the other. Separation pay was awarded in favor of petitioner Lydia Santos because the NLRC found that her reinstatement was no longer feasible or appropriate. As the term suggests, separation pay is the amount that an employee receives at the time of his severance from the service and, as correctly noted by the Solicitor General in his Comment, is designed to provide the employee with "the wherewithal during the period that he is looking for another employment." In the instant case, the grant of separation pay was a substitute for immediate and continued re-employment with the private respondent Bank. The grant of separation pay did not redress the injury that is intended to be relieved by the second remedy of backwages, that is, the loss of earnings that would have accrued to the dismissed employee during the period between dismissal and reinstatement. Put a little differently, payment of backwages is a form of relief that restores the income that was lost by reason of unlawful dismissal; separation pay, in contrast, is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job. It was grievous error amounting to grave abuse of discretion on the part of the NLRC to have considered an award of separation pay as equivalent to the aggregate relief constituted by reinstatement plus payment of backwages under Article 280 of the Labor Code. The grant of separation pay was a proper substitute only for reinstatement; it could not be an adequate substitute both for reinstatement and for backwages. In effect, the NLRC in its assailed decision failed to give to petitioner the full relief to which she was entitled under the statute.

There have been instances where the Supreme Court granted separation pay not in lieu of reinstatement but as a means of social justice. This usually happens in cases where the employee has no other means of income or has a family to feed. The employee invokes their financial status, their family, condition, or health.

A lot of times, the SC granted separation pay even though they are not entitled to it if we strictly apply the law. As long as it is not a serious misconduct, separation pay, as a measure of social justice, may be applied at the discretion of the court. If it is a serious misconduct, you are in effect rewarding the employees for their misconduct.

EXCEPTION: Serious misconduct is an exception to separation as a measure of social justice.

Herma Shipping and Transport

Facts: Respondent was employed as Able Seaman by petitioner. HSTC, the employer, found significant losses of the oil and petroleum products transported by the vessel M/Tkr Angat during its past 12 voyages. So petitioner conducted an investigation and sent a Notice to Explain to five crew members including respondent Cordero. The employer alleged that: they violated the Code of Discipline. there was serious misconduct, there was willful breach of trust and confidence.

The crew members were placed on preventive suspension. Finding Cordero's explanation insufficient, he was dismissed from employment through a Notice of Termination so the former filed a complaint for dismissal and payment of 13th month pay, separation pay, damages and attorney's fees against employer and its chief executive officer.

Ruling: The Court ruled that the termination of employment of Cordero was for just cause and so he is not entitled to the separation pay. His dismissal actually was not his first offense. He had infractions in 2003 and 2013. The penalty of dismissal cannot be considered as "too harsh" under the circumstances.

On when an employee is entitled to separation pay Manila Water Company vs Del Rosario

GR: if dismissed for just cause, the employee is not entitled to the separation pay under Article 282 of the Labor Code.

EXPT: the Court has granted separation pay to a legally dismissed employee as an act of social justice or on equitable grounds, BUT:

- Should not be for serious misconduct
- Did not reflect on the moral character of the employee.
- This ruling was reiterated in the case of PLDT vs NLRC. Where the reason for the valid dismissal is

4. Separation Pay as a measure of social justice

GR: If dismissed for just cause, the employee is not entitled to the separation pay under Article 282 of the Labor Code.

EXPT: the Court has granted separation pay to a legally dismissed employee as an act of social justice or on equitable grounds

for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

5. Damages

Art. 2217, NCC. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission.

Art. 2220, NCC. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Another relief that an employee is entitled to, is damages. Damages are additional compensation to the employee for the misconduct of the employer. The bases for damages are Articles 2217 and 2220 of the Civil Code.

Q: Why can the Labor Tribunal award damages if the basis for such award is found in the Civil Code?

A: This is a measure of practicality because it is a hassle for an employee to file a labor case before the LA and file a separate case for damages before the regular courts. **The effect is that this will result in forum shopping because the circumstances and causes of action are the same.** Since the basis for the awarding of damages is the existence of employer-employee relationship, an employee cannot file a case for damages before the regular courts because only the Labor Tribunals (Labor Arbiter and the NLRC) have the authority to settle disputes involving employer-employee relationships. Hence, damages arising from the Civil Code may be awarded by the Labor tribunals not only as a measure of practicality but also to prevent forum shopping.

Kinds of damages that an employee can claim:

- Nominal damages
- Exemplary damages
- Moral damages

Note: There is no actual damages in labor cases

because the actual damages are already the employee's backwages. But you can claim nominal, exemplary, and moral damages.

Nominal Damages

Libcap Marketing Corp. v. Baquial

Facts: Respondent was terminated from employment for dishonesty, embezzlement, inefficiency, and for commission of acts inconsistent with Libcap's work standards. With regard to the award of nominal damages in the amount of P100,000.00, petitioners argue that the award is erroneous, and respondent is not entitled to the same. Petitioners claim that respondent is not entitled to financial assistance given that she is guilty of theft or embezzlement.

Issue: W/N respondent is entitled to nominal damages.
-YES

Ruling: The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee. Financial assistance is granted as a measure of equity or social justice and is in the nature or takes the place of severance compensation.

On the other hand, nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right.

Suario v. Bank of the Philippines Islands

Doctrine: Moral damages would be recoverable, for example, where the dismissal of the employee was not only effected without authorized cause and/or due process — for which relief is granted by the Labor Code — but was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy — for which the obtainable relief is determined by the Civil Code (not the Labor Code). Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, that the act of dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, etc., resulted therefrom. In this case, the Court did not find any bad faith or fraud on the part of the bank officials who denied the petitioner's request for a six months' leave of absence without pay. There is no evidence to show that they meant to deceive the petitioner. The fact that the petitioner's request for six months' leave of absence was denied does not ipso

facto entitle him to damages.

6. Attorney's Fees

Art. 2208, NCC. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

1. When exemplary damages are awarded;
2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
3. In criminal cases of malicious prosecution against the plaintiff;
4. In case of a clearly unfounded civil action or proceeding against the plaintiff;
5. Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
6. In actions for legal support;
7. In actions for the recovery of wages of household helpers, laborers and skilled workers;
8. In actions for indemnity under workmen's compensation and employer's liability laws;
9. In a separate civil action to recover civil liability arising from a crime;
10. When at least double judicial costs are awarded;
11. In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

There is also an additional form of damages under Article 2208 of the NCC, the Attorney's fees. The SC has held that there are two definitions of attorney's fees:

1. The first is the ordinary or literal definition, which means the fees paid to a lawyer for the legal services rendered;
2. Second, in labor cases, attorney's fees are meant in its extraordinary sense. This means that it is a form of additional recompense or damages paid to the employee as compensation for the fact that they were compelled to litigate in the first place.

damages, attorney's fees and interest. As to attorney's fees, the CA did not agree with the NLRC's finding that bad faith on the part of respondents was present to justify the award of attorney's fees. It held that there is nothing from the facts and proceedings to suggest that respondents acted with dishonesty, moral obliquity or conscious wrongdoing in terminating petitioner's services. Petitioner argued that the presence of bad faith is not necessary to justify such an award. He maintains that the grant of attorney's fees in labor cases constitutes an exception to the general requirement that bad faith or malice on the part of the adverse party must first be proved.

Issue: Whether or not the presence of bad faith is necessary to justify the award of attorney's fees in labor cases. -- NO

Ruling: There are two commonly accepted concepts of attorney's fees — the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.

Article 111 of the Labor Code contemplates the extraordinary concept of attorney's fees and that Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, **there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.**

Mejila v. Wrigley Philippines, Inc.

Doctrine: Article 111 of the Labor Code is an example of the extraordinary concept of attorney's fees. The provision allows the recovery of attorney's fees in cases of unlawful withholding of wages equivalent to the amount of wages to be recovered. Unlike in Article 2208 of the Civil Code, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. But there must still be an express finding of facts and law to prove the merit of the award. However in this case, the CA erred in awarding the attorney's fees based on Article 111 of the Labor Code. The provision only applies when there is unlawful

Nature and Basis of Attorney's Fees in Labor Cases

Tangga-an v. Philippine Transmarine Carriers, Inc.

Facts: Tangga-an filed a Complaint for illegal dismissal with prayer for payment of salaries for the unexpired portion of his contract, leave pay, exemplary and moral

withholding of wages. This scenario is non-existent in the present case because WPI did not withhold Mejila's wages. On the contrary, WPI has offered to pay Mejila's salaries, separation pay and other payments. It was Mejila who refused to accept the payment out of the mistaken view that it is conditioned upon the execution of a quitclaim.

7. Remedy if employer refuses to implement judgment: Execution

MAI Philippines, Inc. v. NLRC

Doctrine: NLRC was clearly wrong, and gravely abused its discretion, in ignoring or failing to comprehend the self-evident fact that the matter before it was nothing more than the failure or claimed inability of an employer to comply with a final and executory judgment for the reinstatement of an employee. In this situation, the plain and obvious remedy was simply the compulsion of the employer by writ of execution to effect the mandated reinstatement and pay the amounts decreed in the judgment, and disregard or overrule the employer's claim of inability to reinstate the employee or, in the event that there be valid and insuperable cause for such inability to reinstate, take account of this factor in the process of directing and effectuating the award of relief to the employee consistently with the judgment.

Quijano v. G.A. Bartolabac

Doctrine: Both respondents labor arbiter and commissioner do not have any latitude to depart from the Court's ruling. The Decision in G.R. No. 126561 is final and executory and may no longer be amended. It is incumbent upon respondents to order the execution of the judgment and implement the same to the letter. Respondents have no discretion on this matter, much less any authority to change the order of the Court. The acts of respondent cannot be regarded as acceptable discretionary performance of their functions as labor arbiter and commissioner of the NLRC, respectively, for they do not have any discretion in executing a final decision. The implementation of the final and executory decision is mandatory.

8. Reinstatement pending appeal of judgment

Going back to reinstatement, there is a rule under Article 229 of the Labor Code which states that if the Labor Arbiter orders reinstatement, and then the parties appeal, the reinstatement order is immediately executory. Hence, the employee will be immediately reinstated even if there is a pending appeal. This is a

form of social justice for the employee so that he will not be left hanging to give the employee some sort of income while pending appeal. However, the employer has the option to opt for payroll reinstatement only. Meaning, the employee will be paid even though he did not go back to work.

If for example the NLRC, which is an appellate court, ordered the reinstatement it is not immediately executory. A motion for execution is needed. It is only with the first level court (T/N: Labor Arbiter -> NLRC -> CA). It does not apply to the reinstatement ordered by the NLRC or CA.

A prerequisite for the immediate execution is that the LA ordered the reinstatement. If the LA ordered separation pay in lieu of reinstatement, there should be no pending appeal because the order was not for reinstatement.

Article 229, paragraph 3.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

Sec. 18, Rule V, NLRC Rules of Procedure

Section 18. PERIOD TO DECIDE CASE.

The Labor Arbiter shall render his/her decision within thirty (30) calendar days, without extension, after the submission of the case by the parties for decision, even in the absence of stenographic notes: Provided, however, that cases involving overseas Filipino workers shall be decided within ninety (90) calendar days after the filing of the complaint.

Sec. 9, Rule XI, NLRC Rules of Procedure

Section 9. MANNER OF EXECUTION OF MONETARY JUDGMENT.

(a) Upon the issuance of a writ of execution by the Labor Arbiter or the Commission, the Sheriff shall immediately furnish the losing party with a copy thereof by registered mail or by courier authorized by the Commission and enforce the judgment award, as far as practicable, in the following order:

1. Cash bond [SEP]
2. Bank deposits
3. Surety Bond [SEP]

4. Should the cash bond or surety bond be insufficient, the Sheriff shall execute the monetary judgment by [SEP]levying on the personal property, and if insufficient, the real property of the losing party not exempt from execution, sufficient to cover the judgment award, which may be disposed of for value at a public auction to the highest bidder. [SEP]
5. If the losing party has no properties or his/her properties are insufficient and the bonding company refuses to comply with the writ of execution, the sheriff shall proceed to levy on the personal property, and if insufficient, the real property of the bonding company, without prejudice to contempt proceedings against its president, officers or authorized representatives. Moreover, the bonding company shall be barred from transacting business with the Commission.

(b) If the bonding company refuses to pay or the bank holding the cash deposit of the losing party refuses to release the garnished amount despite the order or pertinent processes issued by the Labor Arbiter or the Commission, the president or the responsible officers or authorized representatives of the said bonding company or the bank who resisted or caused the non-compliance shall be either cited for contempt, or held liable for resistance and disobedience to a person in authority or the agents of such person as provided under the pertinent provision of the Revised Penal Code. This rule shall likewise apply to any person or party who unlawfully resists or refuses to comply with the break open order issued by the Labor Arbiter or the Commission.

For this purpose, the Labor Arbiter or the Commission may issue an order directing the sheriff to request the assistance of law enforcement agencies to ensure compliance with the writ of execution, orders or processes.

A bonding company cited for contempt, or for an offense defined and punishable under the pertinent provision of the Revised Penal Code shall be barred from transacting business with the Commission.

(c) Proceeds of execution shall be deposited with the Cashier of the concerned Division or Regional Arbitration Branch, or with an authorized depositary bank. Where payment is made in the form of a check, the same shall be payable to the Commission.

(d) For monetary judgment on cases involving overseas Filipino workers, the manner of execution shall be in accordance with Republic Act No. 10022.

(e) In case of voluntary tender of payment by the losing party and –

1. in the presence of the prevailing party, it shall be effected before the Labor Arbiter or the Commission, as the case may be; [SEP]
2. In the absence of the prevailing party, it shall be effected by immediately depositing the same, in cash or in check, with the Cashier of the NLRC or authorized depositary bank and shall be released only upon order of the Commission or Labor Arbiter who issued the writ. [SEP]

Payment in the form of check shall be in the name of the Commission.

Payroll Reinstatement is Permissible

Roquero v. Philippine Airlines, Inc.

Facts: Petitioner was a ground equipment mechanic of PAL, tasked to repair and maintain airplanes. He was dismissed from employment when caught red-handed possessing shabu, in violation of the PAL Code of Discipline. He alleged, however, that the act was instigated by PAL. The Labor Arbiter ruled both petitioner and PAL blameworthy and thus, dismissed petitioner, but awarded him separation pay and attorney's fees. When appealed to the NLRC, the petitioner was ordered reinstated to his former position, but PAL refused, as it had filed a petition for review before the Court. When referred to the Court of Appeals, it reiterated the dismissal of petitioner but without separation pay and attorney's fees.

Issue: Whether the employee's reinstatement can be halted by a petition filed in higher courts without any restraining order or preliminary injunction having been ordered in the meantime.

Ruling: An order of reinstatement by the Labor Arbiter is immediately executory even pending appeal. The unjustified refusal of the employer to reinstate a dismissed employee entitles him to payment of his salaries effective from the time the employer failed to reinstate him despite the issuance of a writ of execution. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement. In this case, no restraining order was granted. Thus, **it was mandatory on PAL to actually reinstate Roquero or reinstate him in the payroll.** Having failed to do so, PAL must pay Roquero the salary he is entitled to, as if he was reinstated, from the time of the decision of the NLRC until the finality of the decision of this Court. Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary

he received for he is entitled to such, more so if he actually rendered services during the period.

No obligation to reimburse wages paid even if reinstatement is reversed

Garcia v Philippine Airlines, Inc.

Facts: PAL filed an administrative charge against the petitioners after they were allegedly caught in the act of sniffing shabu. PAL dismissed petitioners for transgressing the PAL Code of Discipline. The Labor Arbiter resolved the illegal dismissal case filed by petitioner in their favor, thus ordering PAL to immediately comply with the reinstatement aspect of the decision. NLRC dismissed petitioners' complaint for lack of merit. The Labor Arbiter issued a Writ of Execution respecting the reinstatement aspect and issued a Notice of Garnishment. Respondent thereupon moved to quash the Writ and to lift the Notice while petitioners moved to release the garnished amount. NLRC affirmed the validity of the Writ and the Notice issued by the Labor Arbiter but suspended and referred the action to the Rehabilitation Receiver for appropriate action.

Issue: whether petitioners may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that respondent has exited from rehabilitation proceedings.

Ruling: Even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period. In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

Requirement: LA must have ordered reinstatement

Filflex Industrial and MFG. Corp. v. NLRC

Facts: Complainant is a sewer who started working with respondent in November 1975. She was dismissed for abandonment. She claimed that while it is true that she was absent from November 30, 1990 up to December 11, 1990, her dismissal on ground of abandonment is not in consonance with law considering that her absences was [sic] attributable to chronic asthmatic [sic] bronchitis which she contacted since early 1990 yet. Complainant argued that she did not abandon her job and that is evidenced by her

immediate filing of instant complaint on February 8, 1991. NLRC then ruled that the dismissal of private respondent was justified. It held, however, that Article 223 of the Labor Code required the reinstatement of private respondent during the pendency of her appeal.

Issue: W/N complainant should be reinstated

Ruling: NO. Reinstatement during appeal is warranted only when the labor arbiter (LA) himself rules that the dismissed employee should be reinstated. In the present case, neither the dispositive portion nor the text of the labor arbiter's decision ordered the reinstatement of private respondent. Further, the back wages granted to private respondent were specifically limited to the period prior to the filing of the appeal with Respondent NLRC. In fact, the LA's decision ordered her separation from service for the parties' "mutual advantage and most importantly to the physical and health welfare of the complainant." Hence, it is an error and an abuse of discretion for the NLRC to hold that the award of limited back wages, by implication, included an order for private respondent's reinstatement.

An order for reinstatement must be specifically declared and cannot be presumed; like back wages, it is a separate and distinct relief given to an illegally dismissed employee. There being no specific order for reinstatement and the order being for complainant's separation, there can be no basis for the award of salaries/back wages during the pendency of appeal.

Reinstatement order of LA is self-executory

Pioneer Texturizing Corp. v. NLRC

Doctrine: The decision of the Labor Arbiter reinstating a dismissed or separated employee insofar as the reinstatement aspect is concerned, shall be immediately executory, even pending appeal. The employer shall reinstate the employee concerned either by: (a) actually admitting him back to work under the same terms and conditions prevailing prior to his dismissal or separation; or (b) at the option of the employer, merely reinstating him in the payroll. Immediate reinstatement is mandated and is not stayed by the fact that the employer has appealed, or has posted a cash or surety bond pending appeal."

Reinstatement order of NLRC is NOT self-executory

Panuncillo v. CAP Phil., Inc

Doctrine:

Article 224 of the Labor Code which provides:

ART. 224. Execution of decisions, orders or awards. – (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or regional director, the Commission, the Labor Arbiter or med-arbiter, or voluntary arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsels of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject

such responsible officer to appropriate administrative sanctions.

Unlike the order for reinstatement of a Labor Arbiter which is self-executory, that of the NLRC is not. There is still a need for the issuance of a writ of execution

G. DISMISSAL WITH CAUSE, BUT PROCEDURALLY DEFECTIVE

If there is ground for dismissal but it is procedurally defective, what would be the remedy? Is it reinstatement?

A: The SC held that if there is a just or authorized cause, there is a legitimate reason to let the employee go. So reinstatement is not a viable option because there are grounds already for as long as there is a legitimate reason to let the employee go. The fact remains that the employer committed a **procedural lapse**. So the Supreme Court has held that if there is a just or authorized cause but there are procedural lapses, the employee should be compensated in the form of damages. Reinstatement is not an option because there was a reason to let the employee go.

For example, in one of the cases, supposedly they were going to retrench the employee but for some reason they weren't able to follow the 30-day notice rule. The Supreme Court held that the employee shouldn't be reinstated because the company is financially struggling in the first place. That's the reason why they wanted to let the employee go in the first place. So what's the point of reinstating the employee? Or a hyper scenario would be what if the employee stole 1 million pesos and then they dismissed the employee because of serious misconduct and fraud, but they didn't follow the twin notice and hearing rule. Won't it be weird if they would reinstate the employee after stealing 1 million pesos? It seems that we would again go back to the doctrine of strained relations, etc. So the Supreme Court held that if it is substantially valid but procedurally infirm, then the solution is damages. This is actually held in a long line of cases like the Agabon and Jaka Food cases. The most recent is the Veterans Federation case that emphasized this. **The solution to this is not reinstatement but damages which the standard is currently at P50,000. Keep in mind that if there is just or authorized cause, reinstatement is not a proper remedy and relief for the employee.** That's why earlier we emphasized the difference between illegal dismissal because of no cause at all and illegal dismissal with cause but no compliance with the procedural due process.

Agabon v. NLRC

Facts: Riviera Home Improvements, Inc. (RHI Inc.) is engaged in the business of selling and installing ornamental and construction materials. It employed Virgilio and Jenny

Agabon as gypsum board and cornice installers on January 2, 1992 until February 23, 1999 when they were dismissed for abandonment of work.

Private respondent, however, did not follow the notice requirements and instead argued that sending notices to the last known addresses would have been useless because they did not reside there anymore.

Issue: Whether or not petitioner is entitled to nominal damages?

Ruling: YES. From the Labor Code, four possible situations may be derived: (1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed.

In the first situation, the dismissal is undoubtedly valid and the employer will not suffer any liability.

In the second and third situations where the dismissals are illegal, Article 279 mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held liable for non-compliance with the procedural requirements of due process.

The present case squarely falls under the fourth situation. The dismissal should be upheld because it was established that the petitioners abandoned their jobs to work for another company. Private respondent, however, did not follow the notice requirements and instead argued that sending notices to the last known addresses would have been useless because they did not reside there anymore. Unfortunately for the private respondent, this is not a valid excuse because the law mandates the twin notice requirements to the employee's last known address. Thus, it should be held liable for non-compliance with the procedural requirements of due process

As enunciated by this Court in Viernes v. National Labor Relations Commissions, an employer is liable to pay indemnity in the form of nominal damages to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process.

The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At

the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.

Jaka Food Processing Corporation v. Pacot

Facts: Respondents Darwin Pacot, Robert Parohinog, David Bisnar, Marlon Domingo, Rhoel Lescano and Jonathan Cagabcab were earlier hired by petitioner JAKA Foods Processing Corporation (JAKA, for short) until the latter terminated their employment on August 29, 1997 because the corporation was "in dire financial straits". It is not disputed, however, that the termination was effected without JAKA complying with the requirement under Article 283 of the Labor Code regarding the service of a written notice upon the employees and the Department of Labor and Employment at least one (1) month before the intended date of termination.

Respondents filed a complaint for illegal dismissal and contended that they are entitled to full backwages and separation pay.

Issue: Whether or not respondents are entitled to full backwages and separation for due to the fact that petitioners failed to comply with due process

Ruling: NO

The records before us reveal that, indeed, JAKA was suffering from serious business losses at the time it terminated respondents' employment.

It is, therefore, established that there was ground for respondents' dismissal, i.e., retrenchment, which is one of the authorized causes enumerated under Article 283 of the Labor Code. Likewise, it is established that JAKA failed to comply with the notice requirement under the same Article. Considering the factual circumstances in the instant case and the above ratiocination, we, therefore, deem it proper to fix the indemnity at P50,000.00.

We likewise find the Court of Appeals to have been in error when it ordered JAKA to pay respondents separation pay equivalent to one (1) month salary for every year of service. This is because in Reahs Corporation vs. NLRC,¹¹ we made the following declaration:

*"The rule, therefore, is that in all cases of business closure or cessation of operation or undertaking of the employer, the affected employee is entitled to separation pay. This is consistent with the state policy of treating labor as a primary social economic force, affording full protection to its rights as well as its welfare. **The exception is when the closure of business or cessation of operations is due to serious business losses or financial reverses; duly proved, in which case, the right of affected employees to separation pay is lost for obvious reasons.**"*

Industrial Timber Corp. v. Ababan

Doctrine: In the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity

of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a bona fide attempt to comply with the notice requirements as opposed to giving no notice at all.

In the case at bar, there was valid authorized cause considering the closure or cessation of ITC's business which was done in good faith and due to circumstances beyond ITC's control. Moreover, ITC had ceased to generate any income since its closure on August 17, 1990. Several months prior to the closure, ITC experienced diminished income due to high production costs, erratic supply of raw materials, depressed prices, and poor market conditions for its wood products. It appears that ITC had given its employees all benefits in accord with the CBA upon their termination.

Thus, considering the circumstances obtained in the case at bar, we deem it wise and just to reduce the amount of nominal damages to be awarded for each employee to P10,000.00 each instead of P50,000.00 each.

Deoferio v. Intel Technology Phil

Doctrine: With respect to Article 284 of the Labor Code, terminations due to disease do not entail any wrongdoing on the part of the employee. It also does not purely involve the employer's willful and voluntary exercise of management prerogative – a function associated with the employer's inherent right to control and effectively manage its enterprise. Rather, terminations due to disease are occasioned by matters generally beyond the worker and the employer's control.

In fixing the amount of nominal damages whose determination is addressed to our sound discretion, the Court should take into account several factors surrounding the case, such as: (1) the employer's financial, medical, and/or moral assistance to the sick employee; (2) the flexibility and leeway that the employer allowed the sick employee in performing his duties while attending to his medical needs; (3) the employer's grant of other termination benefits in favor of the employee; and (4) whether there was a bona fide attempt on the part of the employer to comply with the twin-notice requirement as opposed to giving no notice at all.

We award Deoferio the sum of P30,000.00 as nominal damages for violation of his statutory right to procedural due process. In so ruling, we take into account Intel's faithful compliance with Article 284 of the Labor Code and Section 8, Rule 1, Book 6 of the IRR. We also note that Deoferio's separation pay equivalent to one-half month salary for every year of service⁴⁵ was validly offset by his matured car loan. Under Article 1278 of the Civil Code, in relation to Article 1706 of the Civil Code⁴⁶ and Article 113(c) of the Labor Code,⁴⁷ compensation shall take place when two persons are creditors and debtors of each other in their own right. We likewise consider the fact that Intel exhibited real concern to Deoferio when it financed his medical expenses for more than four years. Furthermore, prior to his termination, Intel liberally allowed Deoferio to take lengthy leave of absences to allow him to attend to his medical needs.

Veterans Federation of the Philippines v. Montenejo

Facts: In 1967, the VFP – a national federation of associations of Filipino war veterans created in 1960 by virtue of RA 2640 – through Proclamation No. 192 was able to obtain control and possession of a vast parcel of land located in Taguig, which it eventually developed into an industrial complex which is now known as the VFP Industrial Area (VFPIA). It entered into an agreement with VMDC. Under the said agreement, VMDC was to assume exclusive management and operation of the VFPIA in exchange for forty percent (40%) of the lease rentals generated from the area.

In managing and operating the VFPIA, VMDC hired its own personnel and employees. Among those hired by VMDC were respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal

Montenejo, et al. filed before the LA a complaint for illegal dismissal, money claims and damages, contending that their dismissals had been effected without cause and observance of due process.

VMDC argued that the dismissals were valid as they were due to an authorized cause – the cessation or closure of its business which was a necessary consequence of the termination of the management agreement

Issue: Whether or not respondents are entitled to money awards for the failure of petitioner to submit notice of closure

Ruling: NO. The awards for full backwages and separation pay in lieu of reinstatement cannot be sustained as these awards are reserved by law, and jurisprudence, for employees who were illegally dismissed. In this case, the respondents are validly dismissed due to closure of business, despite their contention that the petitioner company did not suffer financial loss. It must still be noted financial loss is not a prerequisite for cessation of business, as it falls under management prerogative to close ones business. However, they are entitled to separation pay.

Further, the failure of VMDC to file a notice of closure with the DOLE does not render the dismissals of Montenejo, et al., which were based on an authorized cause, illegal. Following Agabon and Jaka, such failure only entitles Montenejo, et al. to recover nominal damages from VMDC in the amount of P50,000 each, on top of the separation pay they already received.

H. LIABILITY OF OFFICERS

If there is an illegal dismissal case and there damages, separation pay, and backwages, who is liable? Is it the company only or can you hold the officers of the company liable?

As a general rule, the officers are not liable. This is because a company has a separate juridical personality from its officers, employees, and managers. That's why you see cases wherein the plaintiff impleads the company and not the manager or the employees because they have separate personalities.

The exception is when there is fraud or there is a need to pierce the veil of corporate fiction. Meaning, the company is being used as a dummy or as a vessel to perpetuate fraud or injustice against the employees. Most of the time, the veil of corporate fiction cannot be pierced because it's very hard to prove that the officers were directly involved in perpetuating the injustices against the employees.

1. General Rule: no liability; Doctrine of Separate Juridical Personality

Asionics Phil v. NLRC

Doctrine: It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.

Nothing on record is shown to indicate that Frank Yih has acted in bad faith or with malice in carrying out the retrenchment program of the company. His having been held by the NLRC to be solidarily and personally liable with API is thus legally unjustified.

2. Exception: fraud cases; piercing the veil of corporate fiction

Sarona v. NLRC

Doctrine: The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

For the piercing doctrine to apply, it is of no consequence if Sceptre is a sole proprietorship. As ruled in Prince Transport, Inc., et al. v. Garcia, et al., 639 SCRA 312 (2011), it is the act of hiding behind the separate and distinct personalities of juridical entities to perpetuate fraud, commit illegal acts, evade one's obligations that the equitable piercing doctrine was formulated to address and prevent: A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of

Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.

Guillermo v. Uson

Doctrine: A corporation is still an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. It is not in every instance of inability to collect from a corporation that the veil of corporate fiction is pierced, and the responsible officials are made liable. Personal liability attaches only when, as enumerated by the said Section 31 of the Corporation Code, there is a wilful and knowing assent to patently unlawful acts of the corporation, there is gross negligence or bad faith in directing the affairs of the corporation, or there is a conflict of interest resulting in damages to the corporation. Further, in another labor case, *Pantranco Employees Association (PEA-PTGWO), et al. v. NLRC, et al.*, 581 SCRA 598 (2009), the doctrine of piercing the corporate veil is held to apply only in three (3) basic areas, namely: (1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Indeed, in *Reahs Corporation v. NLRC*, 271 SCRA 247 (1997), the conferment of liability on officers for a corporation's obligations to labor is held to be an exception to the general doctrine of separate personality of a corporation.

I. LIABILITY OF "INDIRECT EMPLOYERS"

Article 106. Contractor or Subcontractor.

Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of

contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Article 107. INDIRECT EMPLOYER.

The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

Article 108. POSTING OF BOND.

An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

Article 109. SOLIDARY LIABILITY.

The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

Sentinel Security Agency, Inc. v. NLRC

Doctrine: The Client did not, as it could not, illegally dismiss the complainants. Thus, it should not be held liable for separation pay and back wages. But even if the Client is not responsible for the illegal dismissal of the complainants, it is jointly and severally liable with the Agency for the complainants' service incentive leave pay. In *Rosewood Processing, Inc. vs. National Labor Relations Commission*, the Court explained that, notwithstanding the service contract between the client and the security agency, the two are solidarily liable for the proper wages prescribed by the Labor Code, pursuant to Articles 106, 107 and 109 thereof.

J. PRESCRIPTIVE PERIODS

Art. 1146, NCC.

The following actions must be instituted within four years:

- (1) Upon an injury to the rights of the plaintiff;
- (2) Upon a quasi-delict;

However, when the action arises from or out of any act, activity, or conduct of any public officer involving the exercise of powers or authority arising from Martial Law including the arrest, detention and/or trial of the plaintiff, the same must be brought within one (1) year. (As amended by PD No. 1755, Dec. 24, 1980.)

What are the prescriptive periods for filing a labor case?

For monetary claims, it's 3 years. For illegal dismissal cases, it's 4 years.

However, the 3 years for monetary claims accrues from the time that the monetary claims became due and demandable. For example, in unpaid salaries, you have to file a claim within 3 years from the time your salaries weren't paid. If it's backwages or separation pay, the 3-year period will start from the time that you were illegally dismissed. This is because separation pay and backwages are hinged on the operative effect of your dismissal.

Similarly, for illegal dismissal cases, the 4 years starts from the time that you were actually dismissed or constructively dismissed by the employer.

under Article 290, therefore, does not apply to complaints for illegal dismissal. Instead, "by way of supplement," Article 1146 of the Civil Code of the Philippines governs complaints for illegal dismissal.

Under Article 1146, an action based upon an injury to the rights of a plaintiff must be filed within four years.

This four-year prescriptive period applies to claims for back wages, not the three-year prescriptive period under Article 291 of the Labor Code. A claim for back wages, according to this court, may be a money claim "by reason of its practical effect." Legally, however, an award of back wages "is merely one of the reliefs which an illegally dismissed employee prays the labor arbiter and the NLRC to render in his favor as a consequence of the unlawful act committed by the employer." Though it results "in the enrichment of the individual [illegally dismissed], the award of back wages is not in redress of a private right, but, rather, is in the nature of a command upon the employer to make public reparation for his violation of the Labor Code."

We find that Arriola's claims for backwages, damages, and attorney's fees arising from his claim of illegal dismissal have not yet prescribed when he filed his complaint. As discussed, the prescriptive period for filing an illegal dismissal complaint is four years from the time the cause of action accrued. Since an award of backwages is merely consequent to a declaration of illegal dismissal, a claim for backwages likewise prescribes in four years.

The four-year prescriptive period under Article 1146 also applies to actions for damages due to illegal dismissal since such actions are based on an injury to the rights of the person dismissed.

In this case, Arriola filed his complaint three years and one day from his alleged illegal dismissal. He, therefore, filed his claims for backwages, actual, moral and exemplary damages, and attorney's fees well within the four-year prescriptive period.

Prescriptive period for a complaint of illegal dismissal

Arriola v. Pilipino Star Ngayon, Inc.

Facts: Pilipino Star employed George Arriola as a section editor and writer of its newspaper. He wrote "Tinig ng Pamilyang OFWs" until his column was removed from publication. Since then, Arriola never returned for work.

Arriola filed a complaint for illegal dismissal. He argued that he was a regular employee and contended that his rights to security of tenure and due process were violated.

Pilipino Star and Miguel Belmonte denied Arriola's allegations. They alleged that around the third week of November 1999, Arriola suddenly absented himself from work and never returned despite Belmonte's phone calls and beeper messages. After a few months, they learned that Arriola transferred to a rival newspaper publisher, Imbestigador, to write "Boses ng Pamilyang OFWs."

Issue: Whether or not the prescriptive period for illegal dismissal has already prescribed? NO

Ruling: Although illegal dismissal is a violation of the Labor Code, it is not the "offense" contemplated in Article 290. Article 290 refers to illegal acts penalized under the Labor Code, including committing any of the prohibited activities during strikes or lockouts, unfair labor practices, and illegal recruitment activities. The three-year prescriptive period

Prescriptive period for money claims

Philippine Long Distance Telephone Company v. Pingol

Facts: Roberto Pingol was hired by PLDT as a maintenance technician. Pingol was admitted at The Medical City for "paranoid personality disorder" due to financial and marital problems. He was discharged from the hospital. Thereafter, he reported for work but frequently absented himself due to his poor mental condition.

From September 16, 1999 to December 31, 1999, Pingol was absent from work without official leave. According to PLDT, notices were sent to him with a stern warning that he would be dismissed from employment if he continued to be absent without official leave.

Despite the warning, he failed to show up for work. On January 1, 2000, PLDT terminated his services on the grounds of unauthorized absences and abandonment of office.

On March 29, 2004, four years later, Pingol filed a Complaint for Constructive Dismissal and Monetary Claims against PLDT.

Issue: Whether or not respondent Pingol filed his complaint for money claims within the prescriptive period of 3 years? NO

Ruling: With regard to the prescriptive period for money claims, Article 291 of the Labor Code states:

"Article 291. Money Claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever."

Petitioner PLDT, on the other hand, contends that respondent Pingol was dismissed from the service on January 1, 2000 and such fact was even alleged in the complaint he filed before the LA.

The Labor Code has no specific provision on when a claim for illegal dismissal or a monetary claim accrues. Thus, the general law on prescription applies. Article 1150 of the Civil Code states:

"Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought."

The day the action may be brought is the day a claim starts as a legal possibility. In the present case, January 1, 2000 was the date that respondent Pingol was not allowed to perform his usual and regular job as a maintenance technician. Respondent Pingol cited the same date of dismissal in his complaint before the LA. As, thus, correctly ruled by the LA, the complaint filed had already prescribed.

K. "FLOATING STATUS"

Article 301. WHEN EMPLOYMENT NOT DEEMED TERMINATED.

The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

There is a concept under Art. 301 of the Labor Code called "Floating Status." Basically, if the employee is serving military or civic duty, or there is a genuine business need to suspend the operations of the company for a period not more than six (6) months, the employees are put under "floating status." He is not terminated but at the same time, he does not have work to do. During this period, he does not earn any salary but he is still considered an employee.

What is the importance of "floating status" provision?

If an employee is put on "floating status" for more than six (6) months, it amounts to constructive dismissal. The significance of this provision was felt at the start of the pandemic because last March 16, 2020, a lot of businesses had to close temporarily. In that situation, the employers put their employees into "floating status," suspending their work for six (6) months. But a lot of these employees, instead, filed for an illegal dismissal case against their employers.

Tips: Some of the employees may think that they lost their jobs, but in reality, they are just put to "floating status." Some employees may resort to filing an action for illegal dismissal but only to figure out that they are just put to "floating status." It is a challenge because, probably, the concept of "floating status" was not properly explained to them. That's why some misunderstanding of the concept would lead to filing illegal dismissal charges against the employer.

Seventh Fleet Security Services, Inc. v. Loque

Doctrine: The instant controversy centers on the legality of Loque's "floating status." In security services, the "floating status" or temporary "off-detail" of an employee may take place when there are no available posts to which the employee may be assigned — which may be due to the nonrenewal of contracts with existing clients of the agency, or from a client's request for replacement of guards assigned to it. While there is no specific provision in the Labor Code governing the "floating status" or temporary "off-detail" of employees, the Court, applying Article 301[286] of the Labor Code by analogy, considers this situation as a form of temporary retrenchment or layoff.

The placement of an employee on "floating status" must not exceed six months. Otherwise, the employee may be considered constructively dismissed. Furthermore, the burden of proving that there are no posts available to which the security guard can be assigned rests on the employer.

However, the mere lapse of six months in "floating status" should not automatically result to constructive dismissal. The peculiar circumstances of the employee's failure to assume another post must still be inquired upon. In this case, it is undisputed that Loque was placed on floating status beginning on the lapse of his 10-day suspension on January 7, 2014. Thus, at the time he filed the complaint for constructive dismissal and money claims on July 28, 2014, he has been on "floating status" for six months and 21 days.

Bona fide suspension of operations required

Innodata Knowledge Services, Inc. v. Inting

Facts: Applied Computer Technologies (ACT), a company based in the USA, hired Innodata Knowledge Services, Inc. (IKSI) to review various litigation documents.

For this purpose, IKSI engaged the services of respondents Inting, et al. as senior and junior reviewers with a contract duration of 5 years.

On January 7, 2010, however, respondents received a Notice of Forced Leave from IKSI informing them that they shall be placed on indefinite forced leave effective that same day due to changes in business conditions, client requirements, and specifications. Hence, respondents filed a complaint for illegal dismissal, reinstatement or payment of separation pay, backwages, and damages against IKSI.

Subsequently, IKSI sent respondents separate notices dated May 27, 2010 informing them that due to the unavailability of new work related to the product stream and uncertainties pertaining to the arrival of new workloads, their project employment contracts would have to be terminated.

Issue: Whether or not respondents, as mere project employees, were validly placed on floating status and were not illegally dismissed? NO

Ruling: Employees were illegally dismissed. There being no valid suspension of business operations, IKSI's act amounted to constructive dismissal of respondents since it could not validly put the latter on forced leave or floating status pursuant to Article 301. And even assuming, without admitting, that there was indeed suspension of operations, IKSI did not recall the employees back to work or place them on valid permanent retrenchment after the period of six (6) months, as required of them by law.

In this case, the records are bereft of any evidence of actual suspension of IKSI's business operations or even of the ACT Project alone. In fact, while IKSI cited Article 301 to support the temporary lay-off of its employees, it never alleged that it had actually suspended the subject undertaking to justify such lay-off. It merely indicated changes in business conditions and client requirements and specifications as its basis for the implemented forced leave/lay-off.

In light of the well-entrenched rule that the burden to prove the validity and legality of the termination of employment falls on the employer, IKSI should have established the bona fide suspension of its business operations or undertaking that could legitimately lead to the temporary layoff of its employees for a period not exceeding six (6) months, in accordance with Article 301.

Is there any responsibility on the part of the employer to prove the legitimacy of the business operations suspension?

Yes. What has been used in Art. 301 to describe the suspension is that it has to be a BONA FIDE SUSPENSION; meaning, the employer has to prove that there was a legitimate business need to suspend the operations. When the pandemic started, it was easy to prove that there was a bona fide business need to suspend the operations. They only encountered problems on the submission of reportorial requirements.

TN: In labor cases, the quantum of evidence is substantial evidence. So, the employer has to prove, by showing substantial evidence, that there was a legitimate business need to suspend operations for that

period (6 months).

Refusal of employee on floating status to be assigned

Exocet Security and Allied Services Corporation v. Serrano

Facts: Exocet Security is engaged in the provision of security personnel to its various clients or principals. By virtue of its contract with JG Summit, Exocet assigned Armando Serrano as "close-in" security for the Gokongweis.

On August 15, 2006, Serrano was relieved by JG Summit from his duties. For more than six months after he reported back to Exocet, Serrano was without any reassignment. Serrano filed a complaint for illegal dismissal against Exocet with the NLRC.

For its defense, Exocet denied dismissing Serrano alleging that, after August 15, 2006, Serrano no longer reported for duty assignment as VIP security for JG Summit, and that in September 2006, he was demanding for VIP Security detail to another client. However, since, at that time, Exocet did not have clients in need of VIP security assignment, Serrano was temporarily assigned to general security service.

Issue: Whether or not Serrano was constructively dismissed? NO

Ruling: Serrano was not constructively dismissed. It is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post. The present case is not a situation where Exocet did not recall Serrano to work within the six-month period as required by law and jurisprudence. Exocet did, in fact, make an offer to Serrano to go back to work. It is just that the assignment—although it does not involve a demotion in rank or diminution in salary, pay, benefits or privileges—was not the security detail desired by Serrano. The security agency, Exocet, should not then be held liable.

What if the employee was given a work assignment but refused to accept it? And the six-month period already elapsed, is the employee constructively dismissed?

No. The Court held in one case that the employer had already made a bona fide effort to put the employee back to work. But then the employee refused to accept the assignment. The security in that case insisted that he will be assigned to VIP security work, but the company, before the lapse of six months, made an offer to assign him somewhere else. The employee refused because he really wanted to be assigned to VIP security work. The SC held that his work was not suspended for more than six months; and the employer made a bona fide effort to put you back to work, to which you refused to accept. The employee incorrectly claimed that he was constructively dismissed on the ground of having no work for more than six months since he refused the work assignment offered by the

employer during the six-month period.

Reportorial and Notice Requirement and Constructive Dismissal

Airborne Maintenance and Allied Services, Inc. v. Egos

Facts: Airborne Maintenance and Allied Services, Inc. is a company engaged in providing manpower services to various clients. It hired Egos. After the expiry of the contract between Airborne and Meralco-Balintawak Branch, a new contract was entered into between Airborne and Landbees Corporation.. All of the employees of Airborne were absorbed in that new assignment except for Egos, who allegedly had heart ailment. He was already declared in good health and fit to work, but Airborne just told him that there is no work available for him. Egos now filed for constructive dismissal.

Issue: Whether or not Egos was constructively dismissed.

Ruling: Yes. As a rule, in cases involving termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process. Dismissals of employees have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process. Clearly, the failure to observe the twin requisites of notice and hearing not only makes the dismissal of an employee illegal regardless of his alleged violation, but is also violative of the employee's right to due process.

In this case, Airborne did not give Egos a work assignment. Airborne denied him employment because he had a heart ailment. Despite the declaration that he was fit to work, the respondents still did not give him any assignment. The letters/notices were mere afterthoughts since Airborne was already aware of the filing of the illegal dismissal complaint prior to the sending of the said letters/notices. It can also be observed that the submissions of the parties shows that petitioner failed to show compliance with the notice requirement to the DOLE and respondent. It is clear that not only did petitioner fail to prove it had valid grounds to place respondent on a floating status, but the NLRC and the CA both correctly found that respondent even had to ask for a new assignment from petitioner, but this was unheeded.

Here, the totality of the foregoing circumstances shows that petitioner's acts of not informing respondent and the DOLE of the suspension of its operations, failing to prove the bona fide suspension of its business or undertaking, ignoring respondent's follow-ups on a new assignment, and belated sending of letters/notices which were returned to it, were done to make it appear as if respondent had not been dismissed. These acts, however, clearly amounted to a constructive dismissal.

In what instance can it be said that there is a constructive dismissal on floating status? Or simple, what are the two (2) possible grounds for constructive dismissal on the grounds of floating status?

Constructive dismissal based on floating status can either be **due to the lapse of six (6) months or there was**

no reportorial requirement compliance on the part of the employer. It has been held that there is a reportorial requirement; meaning, notice should be given to DOLE and the employee, stating the reason for suspension for six (6) months.

Employer looking for work or project to which employee can be assigned likened to "suspension of operations"

Nippon Housing Phil. v. M. Leynes

Facts: Nippon Housing Philippines, Inc. (NHPI) ventured into building management, which provided such services as handling of the lease of condominium units, collection of dues and compliance with government regulatory requirements. NHPI hired respondent Maiah Angela Leynes as property manager. Now, Leynes had a misunderstanding with Engr. Honesto Cantuba (Cantuba), the Building Engineer assigned at the Project, regarding the extension of the latter's working hours. Leynes sent the HR a letter apprising the latter of said Building Engineer's supposed insubordination and disrespectful conduct. Since the issued reached the company's President and no action was taken against the engineer, Leynes filed for leave. When she returned to work, she was informed that another person was assigned to do her work. Later on, she was sent a letter relieving her from her position and directing her to report to NHPI's main office while she was on floating status. She then immediately filed an action for constructive dismissal.

Issue: Whether or not the Leynes, being put to floating status, is constructively dismissed.

Ruling: No. Traditionally invoked by security agencies when guards are temporarily sidelined from duty while waiting to be transferred or assigned to a new post or client, Article 286 of the Labor Code has been applied to other industries when, as a consequence of the bona fide suspension of the operation of a business or undertaking, an employer is constrained to put employees on floating status for a period not exceeding six months.

In this case, the record shows that Leynes filed the complaint for actual illegal dismissal, immediately upon being placed on floating status as a consequence of NHPI's hiring of a new Property Manager for the Project. Viewed in the light of the foregoing factual antecedents, we find that the CA reversibly erred in holding petitioners liable for constructively dismissing Leynes from her employment. The rule is settled, however, that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such a "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed. A complaint for illegal dismissal filed prior to the lapse of said six-month and/or the actual dismissal of the employee is generally considered as prematurely filed.

Hence, Leynes was not constructively dismissed.

Is the inability to find a work assignment for security guards similar or considered as bona fide suspension of business operations?

Yes. A lot of the cases usually involve security guards, security agencies. There was a department order (to check), that provides for detailed terms of conditions of floating status; but at its core, they are similar. Basically, it is hard to find assignments for security guards. Not all businesses need security guards, not all businesses can afford security guards. It is hard for the security agencies to find work assignments for the security guards. The security agencies tend to suspend their work for up to six (6) months. Instead of a bona fide suspension of operations, the ground is the agencies are unable to find a work assignment in the case of the security guards. But the SC held that this is similar to bona fide suspension of business operations, but of course this is specific to a certain employee.

L. EFFECT OF WAIVERS AND QUITCLAIMS

1. If voluntary, estopped from filing a labor case

2. Elements of valid quitclaims

Elements of valid quitclaims

Sime Darby Pilipinas v. Arguilla

Doctrine: In exceptional cases, the Court has given effect to quitclaim executed by employees if the employer is able to prove the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law. In this case, petitioners failed to prove all the foregoing requisites.

Withdrawal of voluntary quitclaim

Periquet v. NLRC

Doctrine: Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. As in this case.

Employee's need for money does not annul consent to and validity of quitclaim

Veloso v DOLE

Doctrine: "Dire necessity" is not an acceptable ground for annulling the releases, especially since it has not been shown that the employees had been forced to execute them. It has not even been proven that the considerations for the quitclaims were unconscionably low and that the petitioners had been tricked into accepting them. In *General Rubber and Footwear Corp. v. Drilon*, it was "made clear that the Court is not saying that accrued money claims can never be effectively waived by workers and employees."

While it is true that the writ of execution dated November 24, 1987, called for the collection of the amount of P46,267.92 each for the petitioners, that amount was still subject to recomputation and modification as the private respondent's motion for reconsideration was still pending before the DOLE. The fact that the petitioners accepted the lower amounts would suggest that the original award was exorbitant and they were apprehensive that it would be adjusted and reduced. In any event, no deception has been established on the part of the private respondent that would justify the annulment of the petitioners' quitclaims.

3. Invalid quitclaims

a. Involuntary

Talla v. NLRC

Doctrine: The general rule is that once an employee resigns and executes a quitclaim in favor of the employer, he is thereby estopped from filing any further money claims against the employer arising from his employment. It is only when the voluntariness of the execution of the quitclaim or release is put into issue or when it is established that there is an unwritten agreement between the employer and employee upon resignation entitling the employee to other remuneration or benefits when such a money claim of the employee may be given due course.

b. Contrary to Public Policy

Carmelcroft Corp. v. NLRC

Doctrine: Even if voluntarily executed, agreements are invalid if they are contrary to public policy. This is elementary. The protection of labor is one of the policies laid down by the Constitution not only by specific provision but also as part of social justice. The subordinate position of the individual employee vis-a-vis management renders him especially vulnerable to its blandishments and importunings, and even intimidations, that may result in his improvidently if reluctantly signing over benefits to which he is clearly entitled. Recognizing this danger, we have consistently held that quitclaims of the workers' benefits will not estop them from asserting them just the same on the ground that public policy prohibits such waivers. That the employee has signed a satisfaction receipt does not result in a waiver; the law does

not consider as valid any agreement to receive less compensation than what a worker is entitled to recover. A deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled. Release and quitclaim is inequitable and incongruous to the declared public policy of the State to afford protection to labor and to assure the rights of workers to security of tenure.

M. NOT ILLEGAL DISMISSAL

1. Probationary Employees: failure to meet standards for regularization made known to employee

Failure to qualify as a regular employee in accordance with the reasonable standards of the employer is a just cause for terminating a probationary employee specifically recognized under Article 282 (now Article 281) of the Labor Code.

2. Contractual employees: end of term

Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time.

They fall under the exception of Article 280 whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

3. Project employees: end of designated project/phase of project made known to employee

A project employee is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season

X. RETIREMENT AND RESIGNATION

A. RESIGNATION

1. 30-day notice

ART. 300. Termination by employee.

(a) An employee may terminate without just cause the employee-employer relationship by serving a written notice

on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honor and person of the employee;
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
4. Other causes analogous to any of the foregoing.

ART. 302. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

Elegir v. Philippines Airlines, Inc.

Doctrine: Art. 287 of the Labor Code is applicable only to a situation where (1) there is no CBA or other applicable employment contract providing for retirement benefits for an employee, or (2) there is a CBA or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law.

Hechanova v. Matorre

Facts: Atty. Matorre was employed by HBV Law Firm as a Senior Associate Attorney. As the managing partner of HBV Law Firm, Atty. Hechanova was the one who supervised Atty. Matorre and gave her work assignments.

Atty. Matorre started to express her feelings of being harassed by Atty. Hechanova. During a meeting between Atty. Matorre and Atty. Hechanova on August 19, 2008, Atty. Matorre told Atty. Hechanova that since she (Atty. Hechanova) was not satisfied with her work and because they were frequently arguing with each other, it would be best if she (Atty. Matorre) resigns from the firm. Atty. Matorre requested that her resignation be made effective on September 30, 2008, but thinking that the said date was too far off, Atty. Hechanova accepted the resignation, with the condition that it be made effective on September 15, 2008.

Atty. Matorre, in her own Position Paper which she submitted to the NLRC, admitted to the fact of her resignation.

Issue: Whether the act of HBV Law Firm of moving the effectiveness date of Atty. Matorre's resignation from September 30, 2008 to September 15, 2008 is an act of harassment.

Ruling: NO. The act of HBV Law Firm of moving the

effectivity date of Atty. Matorre's resignation from September 30, 2008 to September 15, 2008 is not an act of harassment. **The 30-day notice requirement for an employee's resignation is actually for the benefit of the employer who has the discretion to waive such period. Its purpose is to afford the employer enough time to hire another employee if needed and to see to it that there is proper turn-over of the tasks which the resigning employee may be handling.** As one author puts it,

x x x The rule requiring an employee to stay or complete the 30-day period prior to the effectivity of his resignation becomes discretionary on the part of management as an employee who intends to resign may be allowed a shorter period before his resignation becomes effective.

Moreover, the act of HBV Law Firm of moving the effectivity date of Atty. Matorre's resignation to an earlier date cannot be seen as a malicious decision on the part of the firm in order to deprive Atty. Matorre of an opportunity to seek new employment. This decision cannot be viewed as an act of harassment but rather merely the **exercise of the firm's management prerogative**. Surely, we cannot expect employers to maintain in their employ employees who intend to resign, just so the latter can have continuous work as they look for a new source of income.

On the 14th, it is very important that we go back to termination because that is the bulk of labor law. We will revisit all the topics but especially on termination.

Just keep in mind

1. just and authorized causes,
2. what are the reliefs,
3. in what situation are the certain reliefs applicable,
4. floating status,
5. constructive dismissal.

The beauty of labor law as with other laws is that you can always argue your case, a case can almost always go either way, that's the beauty of it.

Last meeting, it was about termination by the employer. Here, we will talk about what happens if the employee is the one who wants to terminate. Typically we millennials and Gen Z's, we are very familiar with the term resignation because unlike our predecessors, a lot of us who are working, we are not so inclined in sticking with one work. For a lot of our parents, their first job was their job until they retire but for millennials this is a very interesting topic online because they really like or they really try to find a job that really fits them, fits their professional needs, they want a certain amount of salary. A lot of the time, the younger generation resign from job to job until they find the one that fits them better. Also because the younger generation are very empowered, they feel na they don't have to stick it out with a job that they are not happy with, so that's why they resign, for example the workplace is so toxic, the employee will not hesitate to resign and look for greener pastures, so even today, there are a lot of news

in the US that they are going through this **great resignation** – where a lot of people especially younger people are resigning unmasked because they feel that the employer do not respect them, do not respect their dignity, provide them with good working conditions. That's why resignation nowadays is a very hot topic.

Under art. 300 of the LC, there are two subcategories of resignation or termination by the employee.

- 1) **Resignation without cause:** if the employee decides to resign or terminate the EER w/o cause, they have to serve a written notice one month in advance meaning one month before the intended date of termination. *For example, if you want to resign effective July 1, you would need to tender your resignation on June 1, so that's 30 day notice.*

This 30 days notice is actually very flexible. Sometimes, employers have internal policies 15 days notice, 20 days notice, some even have as low as 10 days notice.

The SC held that the 30 day notice is actually intended for the benefit of the employer not the employee. Why? What happens in the 30 days? 30 days is the opportunity for the employee to turn over all their task to their replacement or their supervisor, train their successor, endorsed everything that they need to endorse, the responsibilities, documents, or pending task that they have, if they have properties or funds that they need to liquidate, that is the time that they have to do that. But basically, it's to return everything that they have to return and establish a continuity with the next person, so ultimately it's for the benefit of the business, it is not really for the benefit of the employee. This is usually also the period where employee undergo the **clearance process**, so similar to students before they graduate, they have to go through a clearance process, employees also have to go through that clearance, usually this involves going through the different departments and there is a checklist like "did you turn over all the properties that were entrusted to you, i.e. computer, files, usb, laptop, company-issued cell phone, did you return it already, is it in good working condition?

If the employee is entrusted with funds, they will liquidate and account everything, so this is usually where the clearance process happens.

Because clearance is for the benefit of the employer, **the employer may actually opt for a shorter period for the tender of resignation**. Some employers even accept an immediate resignation, it really depends on the employer. But if the employer does not have any policy on the period for advance notice, then we stick with the one month or 30 day notice.

Let's go back to clearance, the SC held that a **clearance procedure is actually a valid**

management prerogative. Why? Because it is a period where the employee has to account for everything and turn over all their tasks and responsibilities before they move on to whatever it is they are going. In line with that, an **employer may actually withhold the employee's last salary**, whatever benefits like 13 month pay, until the employee finishes the clearance process. And **this is valid because the SC likened it to a creditor-debtor relationship that the creditor-employer and the debtor-employee**. The creditor is saying that we will not give you your salary until you return what also belongs to us, so for the mutual satisfaction of both parties.

There are a lot of labor cases, parties reach the level of the labor arbiter because the employee is demanding for their pay but a lot of the time, employees do not understand why employers are allowed to withhold their pay. These cases are usually when the employee did not return the laptop, cellphone and funds not accounted for. So the employee has actually has a liability or obligation towards the company but to their mind is that they did not do anything wrong and that is why their perception is that the employer is in the wrong for withholding their final pay but usually the labor arbiter sides with the employer and will rule that the he employer is correct and order the employee to return first the property of the employer or account for everything first. Because the SC has held that clearance procedures and withholding of these benefits on the condition that the employee accounts for everything is valid. So it is like an eye for an eye situation: you give me back what's due to us and we will give what's due to you. So that's why clearance procedures are considered valid.

What happens when the employee does not comply with the 30 day notice or whatever notice period the employer imposes?

The employer can actually withhold certain documents, what usually happens is that the certificate of employment will be withheld by the employer because they did not follow the proper notice. But usually the employer will just let go of the employee without following the proper notice. But sometimes the employer will demand damages and this is actually mentioned in article 300 that an employer who was not given notice or was not given sufficient notice is actually entitled to damages from the employee. So **how would the employee file for damages?** It would be like a counterclaim. For example, if the employee files for illegal dismissal, the employer can file back a counter-claim saying you owe us damages because you did not comply with the 30 days notice period under the law or internal policy.

How does an employee resign? Usually it is through a letter or email. But usually through a letter because of

its formality. Usually it goes something like "thank you for the years of service and the opportunity to learn - according to atty this is so plastic because usually when an employee resigns there is some kind of lingering resentment.

Resignation is deemed in effect when it is accepted by the employer. Sometimes acceptance is **explicitly** like the employer would say "ok we received your letter of resignation, thank you for giving us your years of service , please turn over everything etc." Sometimes acceptance is **implicit** such as when an employer receive the letter of resignation and said nothing.

What happens if for example, the employee wants to resign and he/she has a letter of resignation, the employee left the letter on the desk of their HR manager. After mauling it over, the employer realizes that he/she does not want to resign because he/she has no other source of income. In short, the employee realizes that he does not like the job because he needs the money. So the employee went back to the HR and found out that the HR was on leave, so he got the letter from the HR manager's desk, tore it and threw it away. **Is there a valid resignation?** No. because there was no acceptance from the employer. In this case, the employer is acting through the HR manager.

What if the employer wants to withdraw his resignation after the employer accepts the resignation? Can the employee withdraw his resignation? Strictly speaking if the resignation has already been accepted, the employee is deemed to have resigned, severing the employer-employee relationship. But in reality, it is a little more gray than that. A lot of times, the employee will say "sir I change my mind because my wife is pregnant" if the employer is chill or merciful, the employer will choose to ignore the resignation and pretend that it never happened.

What if the employee already resigned and decided to go back to their job? Can they go back to their job? There are a lot of gray areas here but let us talk about the legal ideal first and then the practical. **If the employee resigns and the advance notice period has already passed, EER has already been severed. If the employee comes back, it is as if they go back from square one, as the resigned employee is a new employee. Why?** Because when the employee resigned, the EER was already severed. There is no longer a foundation to build on. **The effect of resignation: EER is terminated and the employer has no obligation to recognize the previous employment of the resigned employee.** But in reality it is a bit more nuanced than that because sometimes if there is no bad blood between the employer and employee, and the employee reapplies, the employer will recognize the previous employment of the resigned employee. But just know in a legal sense, **the employer has actually no legal obligation to**

recognize the previous employment, performance, seniority of an employee who has already resigned because it is as if they go back to zero, because the EER has already been severed.

Under Article 300 there is also another kind of resignation, **what if the employee has a valid reason for resigning?** A lot of the times when an employee resigns, it is usually because they found better work, maybe they are going abroad, maybe they want to relax for a bit before they advance themselves professionally or maybe they just realize that they are not anymore happy with the job.

2. Must be voluntary, with the intent to resign; resignation to avoid dismissal

Concrete Aggregates v. NLRC

Doctrine: The environmental circumstances of the case show that private respondent voluntarily resigned from employment and signed the quitclaim and waiver after receiving all the benefits for her separation. While it may be true that her boss Mr. Magtibay appeared to be hostile towards her, he did not show by his acts any desire to fire her from employment. At that time, the company was suffering business losses and it had to lay off 54 of its employees. Private respondent could have been included in the retrenchment but she was not.

Moreover, private respondent was not the only employee who resigned then. There were 100 other employees who resigned as they could see that the future of the business was dim. It was only private respondent who filed a complaint against petitioner. It is thus clear that she was not eased out much less was she forced to resign. This is a case of voluntary resignation and not of a constructive dismissal.

Sicangco v. NLRC

Doctrine: There is nothing illegal with the practice of allowing an employee to resign instead of being separated for just cause, so as not to smear his employment record.

Philippines Today, Inc. v. NLRC

Facts: Petitioner Philippines Today, Inc. (PTI) is the owner of the Philippine Star, a daily newspaper of national and international circulation, while the individual petitioners are officers and members of the board of directors of PTI

Respondent Alegre filed a request for a thirty-day leave of absence citing the advice of his personal physician for him to undergo further medical consultations abroad. 4 days later he wrote a **"Memorandum for File" addressed to the petitioner.** Such a letter contained his grievance at petitioner for economic injustice and professional sabotage.

Petitioner then replied by saying they accepted his resignation letter. Alegre replied by saying that there was no such letter nor did he imply such resignation. Alegre accused petitioners of illegal dismissal as can be perceived allegedly

from the discrimination against him in promotions, benefits and the ploy to oust him by considering his memorandum as a resignation

Issue: Whether a "Memorandum for File" which did not mention the words "resign" and/or "resignation" nonetheless juridically constitute voluntary resignation.

Ruling: YES. The memorandum of Alegre constitutes voluntary resignation because: Seeking relief for injustice at work is incompatible with the offensive nature of his letter it was clear that his intention was to resign AND Several peculiar actions noted by the SC, like assuming another job and clearing his desk before leaving.

Just like there are just causes for terminating an employee, there are also just causes for an employee to sever the employer-employee relationship. If there is just cause, the employee is not bound to comply with the advance notice. So, if such an employee tenders his/her resignation, it is effective immediately.

There are just causes under Article 300:

- a. Serious insult by the employer or his representative on the honor and person of the employee;
- b. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
- c. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
- d. Other causes analogous to any of the foregoing.

These are usually offenses against the person of the employee. For example, if the employee was being insulted, such employee has the right to resign for just cause.

But again, this depends on the context because sometimes there are employers and employees who are close. Example, when the employer said "hey bitch" but it was not intended as an insult but just a nickname. It really depends on the context. But if it is something that would be construed as an insult to the employee, the employee has the right to resign.

Example as to inhuman and unbearable treatment: the employer keeps bullying the employee, sexually harassing them. Essentially, it is similar to constructive dismissal that the employee has been dealt with such a toxic work environment that they have no choice but to resign.

Take note that the law states "commission" not "conviction" You do not need a conviction of the employer to resign otherwise it would take long for the employee to resign as criminal cases take too long to

finish.

Examples of commission of a crime:

- acts of lasciviousness
- Rape
- serious physical injuries

In the above cases, the employee has the right to resign and does not need to comply with the advance notice requirement. Similarly, they don't have to go through the clearance process anymore (but no decided case on this yet) because it would defeat the purpose of removing the notice requirement. I guess the remedy of the employer would be to make a demand on the employee for the return of their items.

Atty's opinion: it would be unlikely that the employee would be required to undergo the complete clearance process. It would be the employer who would have to look at what items the employee was not able to return instead of the employee accounting for everything. This is fair because it is the employer who is at fault thus should be the one inconvenienced.

A resignation has to be voluntary. The employee has to willingly do it. If the employer forced the employee to resign, that is already a form of constructive dismissal. It is not the typical kind of dismissal because there was really no firing on the part of the employer but the situation for all intents and purposes it is as if the employee was dismissed. It is a form of constructive dismissal because the employee was made to resign by the employer.

If, for example, the wife forced his husband (the employee) to resign not wanting her husband to see a woman in the workplace — this is valid resignation because what constructive dismissal contemplates is a resignation that was forced by the employer. If it was forced by anyone else, not constructive dismissal.

If the intention of the employee was to go on leave then the employer should consider the employee on leave, temporarily away from work and not as resigned. You have to consider the intention of the employee when it wrote the letter to the employer.

If, for example, the employee resigns because there is a pending disciplinary case against them, is it a valid resignation? Yes, because it was voluntary on their part. There was no coercion on the part of the employer. The employer is just doing its job by investigating the offense of the employee.

A lot of the time, employees who feel that the case is strong against them, will resign so as not to ruin their track record. This is still considered a voluntary resignation because the employer did not do anything to force them to resign. There was no toxic work environment, coercion, intimidation, or threat. It was

just the employer conducting an admin investigation as part of its prerogative to discipline its employees.

What if the resignation letter is not clear as to the intention of the employee? This is the case of *Philippines Today v. NLRC* where the employee wrote a letter but he never used the word "resign", "sever", "terminate" instead the employee wrote a very long colorful letter filled with sarcastic comments targeted against the employer.

MEMORANDUM FOR FILE.
FOR: BETTY GO-BELMONTE
Chairman & CEO, The STAR Group of Publications.
FROM: FELIX R. ALEGRE, JR.
DATE: 24 October 1988
SUBJECT: HAVING IT ALL
Truth like medicine hurts. But it cures.

The nice little chat we had last Thursday was most revealing. And certainly disconcerting.

What you had to tell me pained me, of course. But it has helped me just as much. It enabled me to see things clearly in their right perspectives. More importantly, it provided me with the answers to the questions that had long nagged me in my wakeful state.

For quite a time, I got this sinking feeling of being treated like a pariah of sorts by most of the senior executives around here. The frustration at my inability to put a finger at such a feeling somehow enhanced the angst within me. Until our chat. Now all the demons of my anxiety have been exorcised. And I am left alone to lick the wounds of my betrayal. It isn't easy, I know. But I shall pull through. Your candor and demonstrated faith in my person have been most assuaging. And for that alone, I am most grateful.

It has never occurred to me that, in my acceptance of the invitation from no less than the publisher himself, to join him at the Philippines Today, Inc., and the STAR Group of Publications, I was unwittingly signing my own death warrant as well. The insults he had later on hurled at my person, the malicious innuendoes he had spread around, casting doubts on my personal and professional integrity, had mercilessly torn at my soul, causing metaphysical death.

My credentials as a working journalist, I'd like to believe, got me this job at the STAR in the first place. And my bylines in the series of articles in the STAR From Day One of my official affiliation with the Company, should establish that fact.

I was an investigative reporter at the Manila Times when the publisher offered me to work with him at the STAR in 1986.

I was given the assignment as senior investigative reporter, then chief investigative writer, until I was given a fancy title of assistant to the publisher.

As a corporate guy assisting the publisher in his day-to-day official function — and this is where I feel very strongly about citing some specifics of the things I did in this area, to wit:

. . . (omitted are said "specifcics" of Respondent Alegre's accomplishments as assistant to the publisher deemed by this Court as not relevant to the appreciation of this memorandum in relation to the consideration of the petition.)

As can be gleaned from this recital of some of the "things done" (despite my distaste for trumpeting one's deeds, but has to be said, to set the record straight, in this instance), one can see that I obviously don different hats at any one time, doing administration and operations functions, apart from my journalistic duties. That I work as a teamplayer, and trying hard to be good (sic) it, cannot be denied.

FOR DOING ALL THESE in the best spirit of corporate team-upmanship, what did I get in RETURN?

1. A pittance, salary/compensation-wise.
2. Being conveniently bypassed in promotions, pay hikes, and other perks.
3. Hindered from active participation in corporate affairs, by shooting at my ideas that otherwise would have been workable and profitable for the Company and its people (CF. Item 2 of my memo dtd 06 September 88 which had you interested in and supportive of).
4. Personally and professionally maligned, and accused of being an NPA (non-performing asshole, pardon my French).

By and large, all that I got are the twin demons of a civilized, unconscionable society: ECONOMIC INJUSTICE and PROFESSIONAL SABOTAGE.

When push comes to a shove . . . anything or everything comes crashing down. I'M HAVING IT ALL!

Since I am on leave, I guess I won't be able to see you for a while. I wish to take this opportunity to express my profound appreciation and sincere thanks for your genuine concren (sic) and honest initiatives to do a good turn on my behalf. You have been most candid and forthright with me. I can't be any less.

Thank you for everything. God bless.

Very sincerely,

(Sgd.) FELIX R. ALEGRE, JR.

copy furnished:

Members of the Board, Phils. Today, Inc.

Dr. Ronaldo G. Asuncion

Mr. Antonio Roces

The SC held that the intent to resign was very clear/apparent in the letter. The wording of the letter was filled with incendiary words and sarcastic remarks which imply that the employee wanted to sever the employer-employee relationship. The SC further held that you do not give constructive criticism by being sarcastic or by providing offensive, sardonic words. Usually if you want to give constructive criticism, you approach the employer and talk to them in a very calm and professional manner. Reading between the lines, the SC held that the letter was a resignation letter. The language of the letter is clear that the employee wants to end the employer-employee relationship. You have to base it on the intent to resign but a lot of the time you might have to read between the lines. If you want to resign, you have to be very clear. This case reached the Supreme Court just because the employee is not clear on his intent to resign.

3. Withdrawal

Intertrod Maritime, Inc. v. NLRC

Facts: Private respondent Ernesto de la Cruz signed a shipboard employment contract with petitioner Troodos Shipping Company as principal and petitioner Intertrod Maritime, Inc., as agent to serve as Third Engineer.

While the ship (M/T "Afamis") was at Port Pylos, Greece, private respondent requested for relief, due to "personal reason." The Master of the ship approved his request but informed private respondent that repatriation expenses were for his account and that he had to give thirty (30) days notice in view of the Clause 5 of the employment contract so that a replacement for him (private respondent) could be arranged.

On 30 August 1982, while the vessel was at Port in Egypt and despite the fact that it was only four (4) days after private respondent's request for relief, the Master "signed him off" and paid him in cash all amounts due him less the amount of US\$780.00 for his repatriation expenses.

Issue: Whether or not Ernesto's termination is illegal. NO

Ruling: Resignation is the voluntary act of an employee who "finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, then he has no other choice but to disassociate himself from his employment." The employer has no control over resignations and so, the notification requirement was devised in order to ensure that no disruption of work would be involved by reason of the resignation. This practice has been recognized because "every business enterprise endeavors to increase its profits by adopting a device or means designed towards that goal."

Resignations, once accepted and being the sole act of the employee, may not be withdrawn without the consent of the employer. In the instant case, the Master had already accepted the resignation and, although the private respondent was being required to serve the thirty (30) days notice provided in the contract, his resignation was already approved. Private respondent cannot claim that his resignation ceased to be effective because he was not immediately discharged in Port Pylos, Greece, for he could no longer unilaterally withdraw such resignation. When he later signified his intention of continuing his work, it was already up to the petitioners to accept his withdrawal of his resignation. The mere fact that they did not accept such withdrawal did not constitute illegal dismissal for acceptance of the withdrawal of the resignation was their (petitioners') sole prerogative.

Once an employee resigns and his resignation is accepted, he no longer has any right to the job. If the employee later changes his mind, he must ask for approval of the withdrawal of his resignation from his employer, as if he were re-applying for the job. It will then be up to the employer to determine whether or not his service would be continued. If the employer accepts said withdrawal, the employee retains his job. If the employer does not, as in this case, the employee cannot claim illegal dismissal for the employer has the right to determine who his employees will be. To say that an employee who has resigned is illegally dismissed, is to encroach upon the right of employers to hire persons who will be of service to them.

Under the terms of the employment contract, it is the ship's Master who determines where a seaman requesting relief may be "signed off." It is, therefore, erroneous for private respondent to claim that his resignation was effective only in Greece and that because he was not immediately allowed to disembark in Greece, the resignation was to be deemed automatically withdrawn.

Going back to the withdrawal of the resignation letter. You can withdraw your resignation anytime before the employer accepts the resignation. If the employer has not yet read the resignation letter, you can simply take your resignation letter back as if nothing happened. If, for example, the employer already accepted, you would need to get the consent of the employer to cancel or withdraw the resignation. Why? By accepting the resignation, the employer has already agreed to it, it is as if there is a contract to terminate the employer-employee relationship. If you want to withdraw, you will need to convince the employer to treat your resignation as if nothing happened.

If the resignation has not yet been accepted, you can withdraw the resignation anytime. If it has already been accepted, it is either (1) the resignation will continue; or (2) the employer has to consent to the withdrawal of the resignation. If the employer does not consent, the employer is considered resigned at the end of the notice period. There are a lot of employers who would treat employees as resigned because they don't like the employee.

4. No separation pay unless there is a policy or Company practice

Practice of giving separation pay to resigning employees

Travelaire & Tours, Corp. v. NLRC

Facts: Private respondent, Nenita Medelyn, was employed as chief accountant of petitioner, Travelaire and Corporation. In a letter dated April 25, 1994, private respondent irrevocably resigned from her position in petitioner's corporation. On January 18, 1995, she filed a complaint before the National Labor Relations Commission praying for separation pay, service incentive leave pay, and 13th month pay.

Issue: Whether or not Medelyn is entitled to separation pay.
YES

Ruling:

The general rule is that an employee who voluntarily resigns from employment is not entitled to separation pay unless, however, there is a stipulation for payment of such in the employment contract or Collective Bargaining Agreement (CBA), or payment of the amount is sanctioned by established employer practice or policy.

Private respondent claims that she is entitled to separation pay inasmuch as, for the period 1991 to 1996, three former employees of the company who had resigned ahead of

private respondent and on separate dates, namely Rogelio Abendan, Anastacio Cabate, and Raul C. Loya 5 were given separation pay. It is, therefore, the contention of private respondent that payment of separation pay to resigning employees already constitutes company practice and an established policy of her employer, hence she should also be entitled to this benefit. Petitioner, on the other hand, admits giving certain sums of money to Anastacio Cabate and Raul C. Loya out of the company's generosity and which are not equivalent to separation pay.

In the case at bar, the public respondent NLRC's finding that there is a company policy/practice of paying separation pay to its resigning employees, is supported by substantial evidence. This is shown by the fact that before private respondent resigned and for the period 1991 to 1996, on separate dates, three (3) resigning employees were given separation pay, even though the payments given to two of these employees (namely Rogelio Abendan, Anastacio Cabate) were termed "ex-gratia payments". *Regardless of terminology and amount, the fact exists that upon resignation from petitioner corporation, the concerned employees were given certain sums of money occasioned by their separation from the company.* While petitioner has denied that such company policy/practice exists, it nevertheless failed to present countervailing evidence, such as presenting the records of other resigned employees who were not given separation pay.

If you resign, are you entitled to separation pay? Last meeting, we discussed that if an employee is terminated for an authorized cause, he/she is entitled to separation pay. If the employee is illegally dismissed, the employee is entitled to separation pay if reinstatement is not possible. If there is a need for social justice, the employee is also entitled to separation pay. But what about resignation or termination by the employee themselves, are they entitled to separation pay? No. There is no legal provision saying that the employee is entitled to separation pay if they resign. An exception would be if there is either (1) a company policy/company practice or (2) a CBA provision saying that if an employee resigns, the employer needs to pay a particular amount. This is usually common among BPOs i.e. severance packages.

General rule: no separation pay in case of resignation
Exception: with separation pay if there is either a company policy/practice or a CBA provision.

5. Forced Resignation: Constructive dismissal

Forced to resign to avoid payment of separation pay

Reyes v. NLRC

Doctrine: Petitioner's supposed "resignation" was involuntary, that it was in fact procured by her employer on the promise that she would be given priority for re-employment and in consideration of immediately paying her

two months vacation which she desperately needed then because she was ill.

As stated in her letter: "*I wish to get my two months vacation salary dated April-May 1982. In connection with this am (sic) tendering my resignation as advised and wished by the administration on conditions that I'll be given priority to be accepted when the time comes when I will be ready to render service to the school.*"

In the same letter, she expressed the hope that the school administration "will be true and sincere to their promise," and that it would release her vacation pay "as soon as possible because I need it very badly." **These circumstances prove beyond cavil that the petitioner was forced to resign. Her resignation was involuntary.**

The school's refusal in bad faith to re-employ her despite its promise to do so, amounted to illegal dismissal. Consequently, she is entitled to be reinstated with three years backwages.

If her reinstatement is no longer possible, private respondent shall pay her, in addition to backwages, separation pay equivalent to one month salary for every year of service from 1972 to 1982, in lieu of reinstatement.

For example, an employee was forced to resign by the company. But, all of the discussions have been verbal. When he signed his resignation letter, "thank for all the years", this was the only documentary evidence available. On its face, the resignation seemed voluntary. It was hard to prove forced resignation.

You are entitled to reinstatement, if not, separation pay and also backwages.

B. RETIREMENT

1. Nature of Retirement

Definition, end of employment

Brion v South Philippine Union Mission of the Seventh Day Adventist Church

Facts: Here, petitioner Delfin A. Brion worked until he retired in 1983. As was the practice of the SDA, petitioner was provided a monthly amount as a retirement benefit.

Sometime thereafter, petitioner got into an argument with Samuel Sanes, another pastor of the SDA. This disagreement degenerated into a rift between petitioner and the SDA, culminating in the establishment by petitioner of a rival religious group which he called the Home Church. Petitioner succeeded in enticing a number of SDA members to become part of his congregation even as he continued disparaging and criticizing the SDA. Because of his actions, petitioner was excommunicated by the SDA and, on July 3, 1993, his name was dropped from the Church Record Book. As a consequence of his disfellowship, **petitioners monthly**

retirement benefit was discontinued by the SDA.

On December 21, 1995, petitioner filed an action for mandamus with the Regional Trial Court of Cagayan de Oro City asking that the SDA restore his monthly retirement benefit

Issue:

Ruling: Retirement has been defined as a withdrawal from office, public station, business, occupation, or public duty. It is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees and/or consents to sever his employment with the former. In this connection, the modern socio-economic climate has fostered the practice of setting up pension and retirement plans for private employees, initially through their voluntary adoption by employers, and lately, established by legislation. Pension schemes, while initially humanitarian in nature, now concomitantly serve to secure loyalty and efficiency on the part of employees, and to increase continuity of service and decrease the labor turnover by giving to the employees some assurance of security as they approach and reach the age at which earning ability and earnings are materially impaired or at an end.8cräläwvirtualibräry

It must be noted, however, that the nature of the rights conferred by a retirement or pension plan depends in large measure upon the provisions of such particular plan. The Labor Code provides:

Art. 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements

xxx

From the above, it can be gleaned that employer and employee are free to stipulate on retirement benefits, as long as these do not fall below the floor limits provided by law.

Again, it has been held that pension and retirement plans create a contractual obligation in which the promise to pay benefits is made in consideration of the continued faithful service of the employee for the requisite period. In other words, **before a right to retirement benefits or pension vests in an employee, he must have met the stated conditions of eligibility with respect to the nature of employment, age, and length of service. This is a condition precedent to his acquisition of rights thereunder.**

Under the SDAs theory, however, the right to a pension never really vests in an employee, there being no fixed period for eligibility for retirement. **The SDA insists that an employee must devote his life to the work of the Seventh-day Adventist Church even after retirement to continue enjoying retirement benefits.** There is, thus, no definite length of service provided as the SDA can withdraw retirement benefits at any time after retirement, if it

determines that a retired employee is not devoting his life to the work of the church. Furthermore, the SDAs eligibility requirement as to length of service is even more stringent than that required by law. Under the Labor Code, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment may retire and shall be entitled to retirement pay. Under the law, service for five years is enough to entitle an employee who meets the requisite age to retirement benefits. However, the SDA would require its employees to serve it for all his lifetime. It must be noted that petitioner has served the SDA for thirty-four (34) years.

Likewise, the SDAs theory negates the very concept of retirement. As earlier defined, retirement means to withdraw from ones office, occupation, or duty. **To require petitioner to continue devoting his life to the work of the Seventh-day Adventist Church would mean that petitioner never really withdraws from his office or occupation, that of working for the church.** It is an oxymoron to retire an employee and yet require him to continue working for the same employer. This Court cannot, thus give its imprimatur to SDAs theory. We rule that **the conditions of eligibility for retirement must be met at the time of retirement at which juncture the right to retirement benefits or pension, if the employee is eligible, vests in him.**

In the present case, petitioner was adjudged by the SDA in 1983, to be qualified for retirement, such that when it began paying petitioner retirement benefits in said year, it must have been convinced that petitioner had devoted his life to the work of the Seventh-day Adventist Church. Having arrived at such a conclusion, it may not now reverse this finding to the detriment of petitioner.

Retirement is a withdrawal from office, public station, business, occupation and public duty. It is a result of a bilateral act of the parties, voluntary agreement between the employer and employee, whereby the latter, after reaching a certain age, agrees and consents payment to the former. (Seventh-Day Adventist Church case)

ART. 302. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

How to determine the retirement age?

If the company has a retirement plan in the CBA or existing employment contract, this will govern. "Upon reaching 50 or 55, 30 years of service" this will govern.

If it does not have a retirement plan, the plan is:
60 is the age for optional employment
65 is the age for compulsory employment

For example, if the CBA or the employment contract provides that 40 years old is the retirement age, that is what will govern. In case of absence, the 60 or 65 age will govern.

What is optional retirement?

If the employee wants to retire at 60, the employer cannot stop them. The employee can claim retirement benefit.

If the employee does not want to avail the optional retirement, they can continue working. At 65, it is only when the employer can force the employee to retire.

Extreme example, midnight of the employee, the employer can say "Happy birthday! Retire already!"

What is compulsory retirement?

The option is in the employer. However, the employer and the employee can agree that the latter can continue working.

Some employers prefer to hire new employees because the retirement benefit will just stock.

Can the employer force the employee to retire when they reach the age of compulsory retirement?

Retirement is a valid severance of an employer-employee relationship.

For example, a 65-year old employee, "lolo", the employer said, 'Lolo, thank you for your service. Thank you for being with us for 40 years. Please leave, here is your retirement fee. The employee got hurt and then filed an illegal dismissal case. There is no ground for illegal dismissal. Compulsory retirement is valid.

What if 60 years old and forced to retire?

The employee can file illegal dismissal case. It is still an optional retirement age. The choice lies with the employee.

What if there is CBA, upon reaching the age of 50 years old, are you retirable?

It is valid. There is an agreement. Even if it is below 65 provided there is CBA.

Some employers trick employees to early retirement because they do not want to pay more retirement pay.

Another requisite under the Labor Code in addition to your retirement age, the **EE should have rendered at least 5 years of service for the employer.**

Retirement ages:

- Retirement age under CBA or under employment contract
- 60 years and your 65 years—which is the default if there's no CBA
 - Under the Labor Code, it says that you need to have served at least 5 years in the company/with the employer.

It's not just the age. There's an additional requirement: You need to have rendered at least 5 years in the establishment.

Example: If you are 65 years old and you started working for the company when you were 62, would you be entitled to a retirement pay?

Essentially you worked for 3-4 years, you would not be entitled to a retirement pay. It says there na it's the age + the number of years of service. So if you only worked for less than 5 years, you'd actually not be entitled to a retirement pay.

What if you are 60 years old and you started working for the company when you turned 58 and then you went to your employer saying you want to optionally retire because you are 60 y.o and you want to get your retirement pay ?

The employer can say "You may be 60 and yeah that's the age for optional retirement, but you failed to meet the number of years of service under sa Labor Code. If you want to exercise your optional retirement, the earliest we can give you is when you turn 63 (that's when you've rendered 5 years)".

The employers are actually not obliged to pay retirement pay even if 60/65 years old ang employee if less than 5 years ang ila service.

But again, this is subject to the stipulation of the parties. If the CBA, the employment contract, or the policy provides for less than 5 years, then the ER can go ahead and pay the EE because it is favorable to the EE if less than 5 years.

ART. 302. RETIREMENT.

"Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean **fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.**

How much is the retirement pay?

"One-half (½) month salary"

1. 15 days of salary

2. 1/12 of the 13 month pay (2.5 days)
3. Cash equivalent of not more than 5 days of service incentive leaves

Total= 22.5 days (multiplier)

So for every year of service, you get one half(½) month salary for every year of service

½ month salary actually means **22.5**. Hence,

Daily salary x 22.5

Illustration: You work for 40 years. You would get your monthly salary ($22.5 \times$ daily salary $\times 40$). Since it's for every year of service, **what if you can't round up the years of service?**

For example, you work for **39 years and 7 months**. That would actually be rounded up to 40 because Article 302 says, a fraction of at least 6 months is considered a year. So if you work for at least 6 months that's already considered a year. **A fraction of 6 months is round up to 1 year.**

Can the employer pay more than 22.5? Can the employer say, "let's pay you a full month, we'll pay 30 days for every year of service"

A: Yes

The Labor Code implies that **the 22.5 under Article 302 this is the minimum**. Similar to the other benefits here, the employers are always given the discretion to give more because the construction of our Labor Laws is in favor of labor.

TN: Definitely the employer cannot give less than 22.5

Retirement is usually subject to a lot of controversy because employers want to get rid of an employees before they're retireable because the 22.5 for every year of service is quite expensive.

Example: EE is earning 20,000/month. EE's daily allowance is 700 multiplied by 22.5, that's 15,750.

EE worked for 40 years, that's P630,000. So, that's a lot of money.

Some companies, before an employee turns 60, find a way to get rid of them because they are afraid that once the employee turns 60 or whatever age under the CBA, they will exercise the right to retire. And then they will have to pay the very considerable amount sa retirement pay.

What if the EE was illegally dismissed? (ER was

looking for ways to get rid of the employee so they won't be liable for retirement pay)

A: The employee has the usual remedy: **separation pay** etc. If the employee is close to the retirement age, usually they include in their prayer, their retirement benefits. This is especially common in cases where the EE is 60 years old, because they were robbed of the option to retire. So that's why they're praying for the retirement benefits.

If the employee was dismissed (illegal dismissal), and it was discovered later on that there was legitimate reason to dismiss, by just process (misconduct, gross and habitual negligence etc), **can the employee be paid their retirement pay?**

A: Only employees who were illegally dismissed are entitled to retirement pay. If the employee did something wrong, the Supreme Court will actually not award them their retirement pay. Because it would sort of amount to reinforcing a bad action by rewarding it.

In *Sy v. Metropolitan Bank*, it was proven that there was just cause to dismiss the employee. So the Supreme Court said you're not entitled to a retirement pay because this would amount to rewarding an erring employee.

2. Optional Retirement vs. Compulsory Retirement; option given to employee, unless there is a CBA, policy, retirement plan or contract granting the option to the employer

At 65 you are entitled to retirement pay no matter how long you've been sa company.

The 5-year service requirement is only applicable sa optional retirement.

Capili v. NLRC

Doctrine: Article 287 of the Labor Code of the Philippines provides for **two types of retirement: (a) compulsory and (b) optional**. The first takes place at age 65, while the second is primarily determined by the collective bargaining agreement or other employment contract or employer's retirement plan. In the absence of any provision on optional retirement in a collective bargaining agreement, other employment contract, or employer's retirement plan, an employee may optionally retire upon reaching the age of 60 years or more, but not beyond 65 years, provided he has served at least five years in the establishment concerned. That prerogative is exclusively lodged in the employee.

Petitioner, by his acceptance of retirement benefits, is estopped from pursuing his claim of illegal dismissal arising from his forced retirement before the age of 65.

By his acceptance of retirement benefits the petitioner is deemed to have opted to retire under the third paragraph of

Article 287 of the Labor Code, as amended by R.A. No. 7641. Thereunder he could choose to retire upon reaching the age of 60 years, provided it is before reaching 65 years, which is the compulsory age of retirement.

Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines

Retirement of an employee may be done upon initiative and option of the management. And where there are cases of voluntary retirement, the same is effective only upon the approval of management. The fact that there are some supervisory employees who have not yet been retired after 25 years with the company or have reached the age of sixty merely confirms that it is the singular prerogative of management, at its option, to retire supervisors or rank-and-file members when it deems fit.

3. Retirement below age 60

Pantranco North Express v. NLRC

Art. 287 of the Labor Code as worded permits employers and employees to fix the applicable retirement age at below 60 years. Moreover, providing for early retirement does not constitute diminution of benefits. In almost all countries today, early retirement, i.e., before age 60, is considered a reward for services rendered since it enables an employee to reap the fruits of his labor — particularly retirement benefits, whether lump-sum or otherwise — at an earlier age, when said employee, in presumably better physical and mental condition, can enjoy them better and longer.

Cainta Catholic School v. Cainta Catholic School-Employees Union

Pursuant to the existing CBA, 25 the School has the option to retire an employee upon reaching the age limit of sixty (60) or after having rendered at least twenty (20) years of service to the School, the last three (3) years of which must be continuous. Retirement is a different specie of termination of employment from dismissal for just or authorized causes under Articles 282 and 283 of the Labor Code.

The CBA in the case at bar established 60 as the compulsory retirement age. However, it is not alleged that either Javier or Llagas had reached the compulsory retirement age of 60 years, but instead that they had rendered at least 20 years of service in the School, the last three (3) years continuous. Clearly, the CBA provision allows the employee to be retired by the School even before reaching the age of 60, provided that he/she had rendered 20 years of service. Would such a stipulation be valid? Jurisprudence affirms the position of the School.

Employee must have assented to retirement age

Jaculbe v. Silliman University

Facts: Petitioner began working for respondents university medical center as a nurse. Respondent informed petitioner

that she was approaching her 35th year of service with the university and was due for automatic retirement on November 18, 1993, at which time she would be 57 years old. This was pursuant to respondents retirement plan for its employees which provided that its members could be automatically retired "upon reaching the age of 65 or after 35 years of uninterrupted service to the university." Respondent required certain documents in connection with petitioner's impending retirement. Petitioner emphatically insisted that the compulsory retirement under the plan was tantamount to a dismissal and pleaded with respondent to be allowed to work until the age of 60 because this was the minimum age at which she could qualify for SSS pension. But respondent stood pat on its decision to retire her, citing "company policy."

Issue: Did respondent's retirement plan imposing automatic retirement after 35 years of service was assented by the employee

Ruling: NO. Retirement plans allowing employers to retire employees who are less than the compulsory retirement age of 65 are not per se repugnant to the constitutional guaranty of security of tenure. Article 287 of the Labor Code provides:

ART. 287. Retirement – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract. xxx

By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at below 60 years.

The records disclose that the private respondent's Retirement Plan has been in effect for more than 30 years. The said plan is deemed integrated into the employment contract between private respondent and its employees as evidenced by the latter's voluntary contribution through monthly salary deductions. Previous retirees have already enjoyed the benefits of the retirement plan, and ever since the said plan was effected, no questions or disagreement have been raised, until the same was made to apply to the petitioner. xxx

According to the assailed decision, respondent's retirement plan "had been in effect for more than 30 years." What was not pointed out, however, was that the retirement plan came into being in 1970 or 12 years after petitioner started working for respondent. In short, it was not part of the terms of employment to which petitioner agreed when she started working for respondent. Neither did it become part of those terms shortly thereafter, as the CA would have us believe.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age agrees to sever his or her employment with the former.

In this case, neither the CA nor the respondent cited any agreement, collective or otherwise, to justify the latter's imposition of the early retirement age in its retirement plan, opting instead to harp on petitioner's alleged "voluntary" contributions to the plan, which was simply untrue. The truth was that petitioner had no choice but to participate in the plan, given that the only way she could refrain from doing so was to resign or lose her job. It is axiomatic that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any

genuine acquiescence to the employer. This was clearly just such an instance.

Not only was petitioner still a good eight years away from the compulsory retirement age but she was also still fully capable of discharging her duties as shown by the fact that respondent's board of trustees seriously considered rehiring her after the effectivity of her "compulsory retirement."

If a company decides to change the retirement age in their existing policy, can they do that without the consent of the employees?

A: The Supreme Court actually said that **an employee needs to consent to the retirement age**. When an employee enters into a company which has an existing CBA/company policy, they're expected to have consented to this when they signed the employment contract, assuming they were given due opportunity to familiarize with the contract.

There is a need for the EE's consent because this impacts a lot of things: the potential benefits an employee may receive, it may even impact how long they can stay with the employer, etc.

Example: if you are going to a company and you are expecting that you'll be with them until you're 60. Then the employer suddenly says we're reducing the retirement age to 40. With a change like that, the employees must consent to this retirement age or at least a majority of the employees.

If for instance, there are those who would dissent, they'd have to give in to the will of the majority or they can resign and find another employer that has a better retirement plan.

If an employee does not object, that silence is construed as assent to the retirement plan, whatever it may be.

Silence may be construed as consent to retirement plan

Obusan v. Philippine National Bank

Facts: Back in 1979, respondent Philippine National Bank (PNB) hired petitioner Amelia R. Obusan (Obusan), who eventually became the Manager of the PNB Medical Office. At that time, PNB was a government-owned or controlled corporation, whose retirement program for its employees was administered by the Government Service Insurance System (GSIS), pursuant to the Revised Government Service Insurance Act of 1977 (Presidential Decree No. 1146).

On May 27, 1996, PNB was privatized. Section 6 of the Revised Charter of the PNB. Consequent to the privatization, all PNB employees, including Obusan, were deemed retired from the government service.

Obusan continued to be an employee of PNB. Later, the PNB Board of Directors approved the PNB Regular Retirement Plan (PNB-RRP). Section 1, Article VI of which provides

"Normal Retirement. The normal retirement date of a Member shall be the day he attains sixty (60) years of age, regardless of length of service or has rendered thirty (30) years of service, regardless of age, whichever of the said conditions comes first. A Member who has reached the normal retirement date shall have to compulsorily retire and shall be entitled to receive the retirement benefits under the Plan."

PNB informed Obusan that her last day of employment would be on March 3, 2002, as she would reach the mandatory retirement age of 60 years on March 4, 2002. Obusan questioned her compulsory retirement and even threatened to take legal action against PNB for illegal dismissal and unfair labor practice in the form of union busting, Obusan being then the President of the PNB Supervisors and Officers Association.

Issue: Whether or not Obusan is bound to observe the compulsory retirement age as specified in the PNB Regular Retirement Plan.

Ruling: Affirmative. The pertinent law on this matter, Article 287 of the Labor Code, as amended by Republic Act No. 7641, which took effect on January 7, 1993, provides:

ART. 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not per se repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein. However, company retirement plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period.

In this case, Obusan's invocation of Jaculbe on account of her lack of consent to the PNB-RRP, particularly as regards the provision on compulsory retirement age, is rather misplaced. The records show that the PNB Board of Directors approved the PNB-RRP. PNB informed all of its officers and employees about it, complete with its terms and conditions and the guidelines for its implementation. Then, the PNB-RRP was registered with the BIR and, later, was recognized by the Philnabank Employees Association in the CBA it entered with PNB. With the information properly disseminated to all of PNB's officers and employees, the PNB-RRP was then opened for scrutiny. The employees had every opportunity to question the plan if, indeed, it would not be beneficial to the employees, as compared to what was mandated by Article 287 of the Labor Code. Consequently, the union of PNB's rank-and-file employees recognized it as a legally-compliant and reasonable retirement plan by the act of incorporating it in their CBA with PNB. With respect to Obusan and the PNB Supervisors and Officers Association, of which she was the President when she was compulsorily retired, there is nothing on record to show that they expressed their dissent to the PNB-RRP. This deafening silence eloquently speaks of their

lack of disagreement with its provisions. It was only at the time that she was to be compulsorily retired that Obusan questioned the PNB-RRP's provision on compulsory retirement age.

Hence, Obusan is bound to observe the compulsory retirement age as specified in the PNB Regular Retirement Plan.

4. Computation

22.5 Multiplier As "1/2 Month's Salary"

Elegir v. Philippine Airlines, Inc

Facts: The petitioner maintains that it is Article 287 of the Labor Code which should be applied in the computation of his retirement pay since the same provides for higher benefits. The CA ruled for the computation of the petitioner's retirement benefits in accordance with PAL-ALPAP Retirement Plan and the PAL Pilots Retirement Benefit Plan.

Issue: W/N Article 287 of the Labor Code should be applied in the computation of petitioner's retirement pay.

Ruling: No. Only two retirement schemes are at point in this case: (1) Article 287 of the Labor Code, and; (2) the PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan. The two retirement schemes are alternative in nature such that the retired pilot can only be entitled to that which provides for superior benefits.

The CA correctly ruled for the computation of the petitioner's retirement benefits based on the two (2) PAL retirement plans because it is under the same that he will reap the most benefits. Under the PAL-ALPAP Retirement Plan, the petitioner, who qualified for late retirement after rendering more than twenty (20) years of service as a pilot, is entitled to a lump sum payment of P125,000.00 for his twenty-five (25) years of service to PAL. On the other hand, under Article 287 of the Labor Code, the petitioner would only be receiving a retirement pay equivalent to at least one-half (1/2) of his monthly salary for every year of service, a fraction of at least six (6) months being considered as one whole year. To stress, **one-half (1/2) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave.**

Comparing the benefits under the two (2) retirement schemes, the 22.5 days' worth of salary for every year of service provided under Article 287 of the Labor Code cannot match the 240% of salary or almost two and a half worth of monthly salary per year of service provided under the PAL Pilots' Retirement Benefit Plan, which

will be further added to the P125,000.00 to which the petitioner is entitled under the PAL-ALPAP Retirement Plan. Clearly then, it is to the petitioner's advantage that PAL's retirement plans were applied in the computation of his retirement benefits.

An employer usually has a retirement plan in place that usually employs the 22.5 multiplier.

TN: 22.5 is only the minimum. The employer can give more but the employer definitely cannot give less than a 22.5 multiplier.

Sometimes there are retirement plans that do not give an age. Rather they state that after giving 30 or 40 years of service the employee is entitled to retirement and the Supreme Court actually held that this is valid because **the essence of it is still ang retirement plan** after rendering a particular number of years in service, the employee is being given a retirement benefit.

Some companies change it to severance pay but the Supreme Court said this is actually a form of retirement pay, given that it is dependent on the age of the employee, how long they've been with the company.

Average Salary and Actual Years of Service

(FSUU), Inc. v. Curaza

Doctrine: Since the teaching load summary of Curaza covers only the period from S.Y. 1990-1991 to S.Y. 2008-2009, FSUU is already estopped from denying that Curaza had rendered service for more than six (6) months during S.Y. 1979-1980 until S.Y. 1989-1990, or for a period of 11 years. In addition, his teaching load summary shows that he was able to teach for two (2) semesters or a period of more than six (6) months during which is equivalent to 11 years. Thus, Curaza's total creditable years of service for the purpose of computing his retirement pay is 22 years.

5. Retirement pay as an award in dismissal cases

Only Unjustly Dismissed Employees Are Entitled to Retirement Pay

Sy v. Metropolitan Bank & Trust Company

Facts: Petitioner Sy was validly dismissed on the ground of fraud and willful breach of trust. Records show that as bank manager, he authorized "kiting" or drawing of checks against uncollected funds in wanton violation of the bank's policies. It was sufficient basis for the bank to lose trust in him.

Issue: If his dismissal was valid, would he still be entitled to retirement benefits? – NO

Ruling: Under the Labor Code, only unjustly dismissed employees are entitled to retirement benefits and other privileges including reinstatement and backwages. Since the petitioner's dismissal was for a just cause, he is not entitled to any retirement benefit. To hold otherwise would be to reward acts of willful breach of trust by the employee. It would also open the floodgate to potential anomalous banking transactions by bank employees whose employment have been extended. Since a bank's operation is essentially imbued with public interest, it owes great fidelity to the public it deals with. In turn, it cannot be compelled to continue in its employ a person in whom it has lost trust and confidence and whose continued employment would patently be inimical to the bank's interest.

6. Retirement benefit under retirement plan vs. separation pay

Employee May Avail of Both Benefits Simultaneously

University of the East v. UE Faculty Association

Doctrine: If there is no provision contained in the collective bargaining agreement to the effect that benefits received under the Termination Pay Law shall preclude the employee from receiving other benefits from the agreement, then said employee is entitled to the benefits embodied in the agreement in addition to whatever benefits are mandated by statute. In the case at bar, there is no such provision. Separation pay arising from a forced termination of employment and benefits given as a contractual right due to many years of faithful service are not necessarily antagonistic to each other, especially where there are strong equitable considerations as in this case. The only situation contemplated in the CBA wherein an employee shall be precluded from receiving retirement benefits is when said employee is not separated from service but transferred instead from one college or department to another. There is no provision to the effect that teachers who are forcibly dismissed are not entitled to retirement benefits if the MOLE awards them separation pay.

Retirement pay and separation pay are two different things.

An employee can always pray for **both** and that is the risk of dismissing an older employee. Because they can always pray for **backwages, separation pay, and retirement pay**.

Atty.: If I were the employer, I'll just not take that risk, I'll just pay retirement benefit because not only are they entitled to that as a matter of course, but because of the fact that it is very risky if on top of retirement benefit, there are backwages, separation pay so

Separation Pay and Retirement Pay May Be Treated as Mutually Exclusive if CBA or Company Policy Expressly Provide So.

Salomon v. Associated of International Shipping Lines, Inc.

Doctrine:

As prescribed by the parties' CBA, Petitioners are entitled only to either the separation pay, if they are terminated for cause, or optional retirement benefits, if they rendered at least 15 years of continuous services. Here, petitioners were separated from the service for cause. Consequently, pursuant to the CBA, what each actually received is a separation pay. Accordingly, and considering their Releases and Quitclaims, they are no longer entitled to retirement benefits. It bears stressing that here is no provision in the parties' CBA authorizing the grant to petitioners of retirement benefits in addition to their retrenchment pay; and that there is no indication that they were forced by respondent to sign the Releases and Quitclaims.

covered under the civil service commission rules; second, there is a very small chance that the ER and the EE are residents of the same barangay because barangay conciliation proceedings apply only when both the parties are residents of the same barangay or when one of the party is a resident in the adjacent barangay; third, most of the time, an ER is not always an individual but a corporation and the Katarungang Pambarangay conciliation proceedings do not apply to corporations. Therefore, in labor cases, you can directly file it to the NLRC.

XI. JURISDICTION OF THE LABOR ARBITER

A. KATARUNGANG BARANGAY REQUIREMENT NOT APPLICABLE TO LABOR CASES

Different agencies of the labor tribunals:

1. Department of labor and
2. NLRC.

NLRC

- interrelated with DOLE but not necessarily under DOLE. It specifically refers to the regional arbitration branch (RAB). NLRC is composed of 3 commissioners.

LABOR ARBITER

- The Labor Arbiter is under the NLRC. This is where the litigation of your case starts. When you appeal the case from the Labor Arbiter, you appeal it to the commission of the NLRC.

Katarungang Pambarangay is not applicable to labor cases.

Some cases will have to go through barangay settlement procedures, so the Punong Barangay will encourage the parties to amicably settle their case. As a prerequisite to the filing of their case before the courts, the parties are required to undergo settlement proceedings in the barangay level and the barangay officer will issue a clearance to proceed. However, these barangay conciliation proceedings are not applicable to labor cases because: first; the barangay officials are not familiar with labor laws as they are

Montoya v. Escayo

Facts: The private respondents were all formerly employed as salesgirls in the petitioner's store, the "Terry's Dry Goods Store," in Bacolod City. They Filed complaints for the collection of sums of money against the petitioner for alleged unpaid overtime pay, holiday pay, 13th month pay, ECOLA, and service leave pay; for violation of the minimum wage law, illegal dismissal, and attorney's fees. Petitioner filed for the dismissal of the complaints, claiming that among others, the private respondents failed to refer the dispute to the Lupong Tagapayapa for possible settlement and to secure the certification required from the Lupon Chairman prior to the filing of the cases with the Labor Arbiter. These actions were allegedly violative of the provisions of P.D. No. 1508, which apply to the parties who are all residents of Bacolod City.

Issue: Whether the Katarungang Pambarangay requirement is applicable in labor cases?

Ruling: NO. Requiring conciliation of labor disputes before the barangay courts would defeat the very salutary purposes of the law. Instead of simplifying labor proceedings designed at expeditious settlement or referral to the proper court or office to decide it finally, the position taken by the petitioner would only duplicate the conciliation proceedings and unduly delay the disposition of the labor case. The fallacy of the petitioner's submission can readily be seen by following it to its logical conclusion. For then, if the procedure suggested is complied with, the private respondent would have to lodge first their complaint with the barangay court, and then if not settled there, they would have to go to the labor relations division at the Regional Office of Region VI of the Department of Labor and Employment, in Bacolod City, for another round of conciliation proceedings. Failing there, their long travail would continue to the Office of the Labor Arbiter, then to the NLRC, and finally to us. This suggested procedure would destroy the salutary purposes of P.D. 1508 and of The Labor Code Of The Philippines. And labor would then be given another unnecessary obstacle to hurdle. We reject the petitioner's submission. It does violence to the constitutionally mandated policy of the State to afford full protection to labor.

B. Construction and suppletory application of Rules of Court

Secs. 2-3, Rule I, 2011 NLRC Rules of Procedure

SECTION 2. CONSTRUCTION.

These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes.

SECTION 3. SUPPLETORY APPLICATION OF THE RULES OF COURT.

In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, as amended, the pertinent provisions of the Rules of Court of the Philippines, as amended, may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

Rules of Court Are Suppletory

Under the 2011 NLRC rules of procedures, it states that the rules of court are suppletory – meaning, the LA and the NLRC are not bound by the Rules of Court. Its application is merely suppletory. Consequently, the technical rules of evidence are not binding, they are advisory or recommendatory at best, but these rules are not binding on the LA.

Example: In a case where the complainant failed to include a verification in their position paper. If this was a regular court proceeding, the judge could dismiss the case because the verification is mandatory in the rules. But since in labor cases, technical rules are not binding and the rules of court are only suppletory, advisory or recommendatory, the SC held that the technical rules on verification should not have been strictly applied. The application of the rules should be relaxed in labor cases to accommodate the situation of the employees.

The rules are relaxed because another reason for that is, remember that one of the parties here is a disadvantaged worker–underprivileged employee. The rules are relaxed to accommodate the situation of these employees because usually they are underdogs. Another reason is that you'll notice in a lot of labor cases that the labor arbiter will accept even photocopies, but if this was a regular court it would be not be acceptable. Why? The technical rules are only suppletory. Remember one of the parties is the employee. Most of the time they are not given the copies of their contract. Most of the documentary evidence is held by the employer. To give them a fighting chance, photocopies are allowable.

I handled a case and the respondent company argued that the employee was a manager and he should have been able to present some evidence because he is a manager. I argued that “are you saying that the employee should have photocopied the documents without authorization?”

C. Single Entry Approach (SEnA)

Single-Entry Approach (SEnA)

When you file before the NLRC, the first step is the **Single-Entry Approach** under DO 107-10 (SEnA). The SEnA officer will try to get the parties to settle. The SEnA officer will issue a “notice to proceed” to the parties telling them that the settlement has failed and that they are forwarding the case to the sala of the Labor Arbiter.

Mandatory Conference

A Labor Arbiter is essentially a judge for labor cases. Before the LA goes into the case proper, they go through a mandatory conference. It is another step in encouraging the parties to settle, but this time, the one supervising the proceedings are the Labor Arbiter themselves.

If the mandatory conciliation does not fail, the parties will execute a compromise agreement, and this is the end of the labor case. But if the parties cannot settle the case in the mandatory conference, the actual case proper will proceed. The LA will direct the EEs to submit their position papers (the main pleadings of the case). If the position papers are not enough, the LA will call for a clarificatory hearing, meaning the parties will appear and the LA will throw clarificatory questions.

Labor cases are different from other regular court cases.

This is because labor cases are non-adversarial since judgments can be rendered based on position papers and attachments – there is no pre-trial, witnesses, cross-examination etc. – the LA can rule based on the evidence submitted to them. Also, in labor cases, most of the time, the parties do not see each other. You may go through an entire labor case without seeing the other party.

D.O. 107, s. 2010 Rules of Procedure of the Single Entry Approach

D. Who may represent litigants

ART. 228. APPEARANCE AND FEES.

- (a) Non-lawyers may appear before the Commission or any Labor Arbiter only:
 1. If they represent themselves; or
 2. If they represent their organization or members thereof.
- (b) No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining agreement shall be imposed on any individual member of the contracting union: Provided, However, that attorney's fees may be charged

against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void.

Sec. 6, Rule III, 2011 NLRC Rules of Procedure

SECTION 6. APPEARANCES.

(a) A lawyer appearing for a party is presumed to be properly authorized for that purpose. In every case, he/she shall indicate in his/her pleadings and motions his/her Attorney's Roll Number, as well as his/her PTR and IBP numbers for the current year and MCLE compliance.

(b) A non-lawyer may appear in any of the proceedings before the Labor Arbiter or Commission only under the following conditions:

(1) he/she represents himself/herself as party to the case;

(2) he/she represents a legitimate labor organization, as defined under Article 212 (now 219) and 242 (now 251) of the Labor Code, as amended, which is a party to the case: Provided that, he/she presents to the Commission or Labor Arbiter during the mandatory conference or initial hearing:

(i) a certification from the Bureau of Labor Relations (BLR) or Regional Office of the Department of Labor and Employment (DOLE) attesting that the organization he/she represents is duly registered and listed in the roster of legitimate labor organizations;

(ii) a verified certification issued by the secretary and attested to by the president of the said organization stating that he/she is authorized to represent the said organization in the said case; and

(iii) a copy of the resolution of the board of directors of the said organization granting him such authority;

(3) he/she represents a member or members of a legitimate labor organization that is existing within the employer's establishment, who are parties to the case: Provided that, he/she presents:

(i) a verified certification attesting that he/she is authorized by such member or members to represent them in the case; and

(ii) a verified certification issued by the secretary and attested to by the president of the said organization stating that the person or persons he/she is representing are members of their organization which is existing in the employer's establishment; and,

(4) he/she is a duly-accredited member of any legal aid office recognized by the Department of Justice or Integrated Bar of the Philippines: Provided that, he/she

(i) presents proof of his/her accreditation; and

(ii) represents a party to the case;

(c) Appearances of a non-lawyer in contravention of this

Section shall not be recognized in any proceedings before the Labor Arbiter or the Commission.

(d) Appearances may be made orally or in writing. In both cases, the complete name and office address of counsel or authorized representative shall be made of record and the adverse party or his counsel or authorized representative properly notified.

(e) In case of change of address, the counsel or representative shall file a notice of such change, copy furnished the adverse party and counsel or representative, if any.

(f) Any change or withdrawal of counsel or authorized representative shall be made in accordance with the Rules of Court, as amended. (8a)

(g) A corporation or establishment which is a party to the case may be represented by the owner or its president or any other authorized person provided that, he/she presents:

(i) a verified certification attesting that he/she is authorized to represent said corporation or establishment; and

(ii) a copy of the resolution of the board of directors of said corporation, or other similar resolution or instrument issued by said establishment, granting him/her such authority. (6a) (As amended by En Banc Resolution No. 11-12, Series of 2012)

Who can actually represent litigants? Can they be represented without counsel? Under the labor code there are instances that lawyers are not necessary. You are allowed to represent yourself if you are the party but there are risks. Another instance is if the party-litigant is a legitimate labor organization. The member or officer can represent them but there has to be a resolution authorizing him to represent them.

E. Venue

Sec. 1, Rule IV, 2011 NLRC Rules of Procedure

SECTION 1. VENUE.

(a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant or petitioner.

For purposes of venue, the workplace shall be understood as the place or locality where the employee is regularly assigned at the time the

cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment, or travel. In case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries and wages or work instructions from, and report the results of their assignment to their employers.

(b) Where two (2) or more Regional Arbitration Branches have jurisdiction over the workplace of the complainant or petitioner, the Branch that first acquired jurisdiction over the case shall exclude the others.

(c) When venue is not objected to before the first scheduled mandatory conference, such issue shall be deemed waived. (As amended by En Banc Resolution No. 11-12, Series of 2012)

(d) The venue of an action may be changed or transferred to a different Regional Arbitration Branch other than where the complaint was filed by written agreement of the parties or when the Commission or Labor Arbiter before whom the case is pending so orders, upon motion by the proper party in meritorious cases.

(e) Cases involving overseas Filipino workers may be filed before the Regional Arbitration Branch having jurisdiction over the place where the complainant resides or where the principal office of any of the respondents is situated, at the option of the complainant.

Where would you file a labor case?

There are many regional arbitration branches across the country. The NLRC is the same entity but it has branches across the country—Regional Arbitration Branch 7 in Region 7, RAB 8 in Region 8, etc.

Under the NLRC Rules of the Procedure, file the case with the RAB which has jurisdiction over the workplace. For example if the place of work is Cebu City you should file it in RAB 7.

These rules on venue can be ultimately relaxed because the convenience of the parties, especially the employee, prevails. There are instances where the employee was assigned to multiple areas—especially because it was a shipboard. So it would go to Manila, Cagayan, Davao, etc. and the SC held that he could file his complaint in the RAB of any of these places. So it is ultimately for the convenience of the employee. Plus, it would be unjust to demand the filing of the case in Manila when the boat was in Leyte.

Convenience of the parties, especially the employee, prevails in determining venue

Sulpicio Lines vs NLRC

Facts: Petitioner Sulpicio Lines, Inc., owner of MV Cotabato Princess, on January 15, 1992 dismissed private respondent Jaime Cagatan, a messman of the said vessel, allegedly for being absent without leave for a "prolonged" period of six (6) months. Hence, the private respondent filed a case for illegal dismissal before the National Labor Relations Commission (NLRC) through its National Capital Region Arbitration Branch in Manila

Responding to the said complaint, petitioner, on June 25, 1992, filed a Motion to Dismiss on the ground of improper venue, stating, among other things, that the case for illegal dismissal should have been lodged with the NLRC's Regional Branch No. VII (Cebu), as its main office was located in Cebu City

Issue: Whether or not Cebu is a proper venue

Ruling: YES. In the case at bench, it is not denied that while petitioner maintains its principal office in Cebu City, it retains a major booking and shipping office in Manila from which it earns considerable revenue, and from which it hires and trains a significant number of its workforce. Its virulent insistence on holding the proceedings in the NLRC's regional arbitration branch in Cebu City is obviously a ploy to inconvenience the private respondent, a mere steward who resides in Metro Manila, who would obviously not be able to afford the frequent trips to Cebu City in order to follow up his case.

Even the provisions cited by petitioner in support of its contention that venue of the illegal dismissal case lodged by private respondent is improperly laid, would not absolutely support his claim that respondent NLRC acted with grave abuse of discretion in allowing the private respondent to file his case with the NCR arbitration branch.

Section 1, Rule IV of the NLRC Rules of Procedure on Venue, provides that:

Sec. 1. Venue — (a) All cases in which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complainant/petitioner.

This provision is obviously permissive, for the said section uses the word "may," allowing a different venue when the interests of substantial justice demand a different one. In any case, as stated earlier, the Constitutional protection accorded to labor is a paramount and compelling factor, provided the venue chosen is not altogether oppressive to the employer.

Moreover, Section Rule IV of the 1990 NLRC Rules additionally provides that, "for purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose." Since the private respondent's regular place of assignment is the vessel MV Cotabato Princess which plies the Manila-Estancia-Iloilo-Zamboanga-Cotabato route, we are of the opinion that Labor Arbiter Arthur L. Amansec was correct in concluding that Manila could be considered part of the complainant's territorial workplace. Respondent NLRC, therefore, committed no grave abuse of discretion in sustaining the labor arbiter's denial of herein petitioner's Motion to Dismiss.

Dayag v. Canizares

Facts: Petitioners were hired in Manila as tower crane operators but were subsequently transferred to Cebu to work on Alfredo's project there. On January 30, 1993, William Dayag asked for permission to go to Manila to attend to family matters. He was allowed to do so but was not paid for the period January 23-30, 1993, allegedly due to his accountability for the loss of certain construction tools. Eduardo Corton had earlier left on January 16, 1993, purportedly due to harassment by Young. In February 1993, Edgardo Corton, Aloy Flores and Edwin Dayag also left Cebu for Manila, allegedly for the same reason. Thereafter, petitioners banded together and filed the complaint previously for illegal dismissal, non-payment of wages, and other benefits.

Issue: Whether or not venue was properly laid in Manila

Ruling: YES. In the case at hand, the ruling specifying the National Capital Region Arbitration Branch as the venue of the present action cannot be considered oppressive to Young. His residence in Corinthian Gardens also serves as his correspondent office. Certainly, the filing of the suit in the National Capital Region Arbitration Branch in Manila will not cause him as much inconvenience as it would the petitioners, who are now residents of Metro Manila, if the same was heard in Cebu. Hearing the case in Manila would clearly expedite proceedings and bring about the speedy resolution of the instant case.

Philtranco Service Enterprises, Inc. v. NLRC

Doctrine: The question of venue essentially pertains to the trial and relates more to the convenience of the parties rather than upon the substance and merits of the case. Provisions on venue are intended to assure convenience for the plaintiff and his witnesses and to promote the ends of justice. In fact, Section 1 (a), Rule IV of the New Rules of Procedure of the NRC, cited by Philtranco in support of its contention that venue of the illegal dismissal case filed by Nieva is improperly laid, speaks of the complainant/petitioner's workplace, evidently showing that the rule is intended for the exclusive benefit of the worker. This being the case, the worker may waive said benefit.

F. Mandatory conciliation

1. Nature

ART. 234. MANDATORY CONCILIATION AND ENDORSEMENT OF CASES.

(a) Except as provided in Title VII-A, Book V of this Code, as amended, or as may be excepted by the Secretary of Labor and Employment, all issues arising from labor and employment shall be subject to mandatory conciliation-mediation. The labor arbiter or the appropriate DOLE agency or office that has jurisdiction over the dispute shall entertain only endorsed or referred cases by the duly authorized officer. (b) Any or both parties involved in the dispute may pretermine the conciliation-mediation proceedings and request referral or endorsement to the appropriate DOLE agency or

office which has jurisdiction over the dispute, or if both parties so agree, refer the unresolved issues to voluntary arbitration.

2. Effect of Non-appearance

Sec. 10, Rule V, 2011 NLRC Rules of Procedure

SECTION 10. NON-APPEARANCE OF PARTIES. – The non-appearance of the complainant or petitioner during the two (2) settings for mandatory conciliation and mediation conference scheduled in the summons, despite due notice thereof, shall be a ground for the dismissal of the case without prejudice. Where by motion, proper justification is shown to warrant the re-opening of the case, the Labor Arbiter shall call a second hearing and continue the proceedings until the case is finally decided. Dismissal of the case for the second time due to the unjustified non-appearance of the complainant or petitioner who was duly notified thereof shall be with prejudice. (As amended by En Banc Resolution No. 06-16, Series of 2016)

In case of non-appearance by the respondent during the first scheduled conference, the second conference as scheduled in the summons shall proceed. If the respondent still fails to appear at the second conference despite being duly served with summons, he/she shall be considered to have waived his/her right to file position paper. The Labor Arbiter shall immediately terminate the mandatory conciliation and mediation conference and direct the complainant or petitioner to file a verified position paper and submit evidence in support of his/her causes of action and thereupon render his/her decision on the basis of the evidence on record.

Counterclaims of employer

Bañez v. Hon. Valdevilla

Doctrine: Art. 217(a) of the Labor Code bestows upon the Labor Arbiter original and exclusive jurisdiction over ALL claims for damages arising from employer-employee relations. This means the Labor Arbiter has jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code. This includes the claim of an employer for actual damages against its dismissed employee, where the basis for the claim is necessarily connected with the fact of termination. Hence, the claim should have been entered as a counterclaim in the illegal dismissal case and not subject of a separate action for damages.

G. Quantum of evidence in labor cases: Substantial evidence

What about the quantum of evidence needed?

So remember **substantial evidence - evidence sufficient to engender belief in a reasonable mind that the conclusion is correct**. So reasonable belief is enough to convince an ordinary reasonable person that that is the conclusion.

What about the burden of proof? Who has the job of proving something?

So remember, the quantum of evidence is different from the burden of proof. It would depend on what you're trying to prove. If for example it's an illegal dismissal case, the burden of proof would rest on the employer to prove that the dismissal was legal.

If it's about money claims, it depends on the kind of money claim. If it's something like salary or 13th month pay, something that the employee is entitled to unquestionably (meaning the employer is obliged to pay it no matter what the circumstance), then the burden of proof would rest on the employer to prove that payment was made. On the other hand, if it's something like holiday pay, overtime pay (something that is not normally incurred by the employee unless there are special circumstances), the burden of proof would rest on the employee. It's the employee who should prove it because holiday pay and overtime pay is not something that happens normally. So just remember that burden of proof would depend on what is being asked for.

Case	Who has the burden of proof
Illegal dismissal	Employer
Salary or 13th month pay (normally incurred by employee)	Employer
Holiday pay, overtime pay (NOT normally incurred by employee)	Employee

H. Nature of proceedings before the labor tribunals: non-litigious, technical rules not binding

Art. 227. Technical Rules Not Binding and Prior Resort To Amicable. In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or

before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction.

I. Jurisdiction of the Labor Arbiter

Art. 224. Jurisdiction of the Labor Arbiters and the Commission.

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

- (1) Unfair labor practice cases;
- (2) Termination disputes;
- (3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- (4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- (5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
- (6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

TN: It says here "claims involving wages, rates of pay, hours of work and other terms and conditions of employment IF accompanied with a claim for reinstatement." Why is that so important? What if there is no claim for reinstatement, does that mean that the Labor Arbiter does not have jurisdiction? So this is where we refer back to Art. 129 of the Labor Code. The provision says that if an employee does not have a claim for reinstatement and their monetary claim does not exceed P5,000, the Regional Director of DOLE has jurisdiction.

What if the monetary claim does not exceed P5,000 but there is also a claim for reinstatement?
You go to the Labor Arbiter.

What if there is no claim for reinstatement but the monetary claim exceeds P5,000?

You go to the Labor Arbiter.

So take note of the **2 requisites** for it to be under the **jurisdiction of the DOLE Regional Director**:

1. No claim for reinstatement; AND
2. Monetary claim does not exceed P5,000.

If either of those requisites are missing, go to the Labor Arbiter.

What is the rationale for this?

If there's no claim for reinstatement and less than P5,000, it would be so tedious if you go through the entire process. In the grand scheme of things, it's not an amount that would merit your time to undergo through the entire process just to get to the Labor Arbiter. So keep in mind that that is one instance where it is not covered by the Labor Arbiter.

"Claims for actual, moral, exemplary and other forms of damages ARISING FROM EMPLOYER-EMPLOYEE RELATIONS"

The damages have to arise from employer-employee relations. Why? The Labor Arbiter can only handle employer-employee relation matters. If it's something unrelated, like land or property disputes or require the application of something other than the Labor Code, it's beyond his jurisdiction.

The reason why the Labor Arbiter has jurisdiction over damages, even though damages are based on the Civil Code, is because it would be ridiculous if you would have to file another case in the regular courts just to claim damages for a case that you already finished in the labor courts. Essentially you are already splitting causes of action and forum-shopping. Plus, remember that these damages arise from employer-employee relationships. If you file a claim for damages in the regular courts, you are basically asking the judge of the regular court to apply the Labor Code. They are not authorized to apply the Labor Code because only the Labor Arbiter can. So that it would be convenient to everyone, the power to grant damages in relation to employer-employee relationship is vested with the Labor Arbiter.

"Questions involving the legality of strikes and lockouts"

Remember that these are just legality of strikes and lockouts. For example, if you are trying to file or process strikes and lockouts, you go to the NCMB. The Labor Arbiter's jurisdiction covers questions on the legality of the strike or the lockout.

Claims of person involving an amount exceeding P5,000.00, related to Art. 129, LC, the jurisdiction is vested upon the Labor Arbiter.

The Commission shall have exclusive appellate jurisdiction over all cases decided by the Labor Arbiter.

If you want to appeal the decision of the Labor Arbiter, you will not appeal to the Court of Appeals, Regional Trial Courts, or to the Supreme Court. The exclusive appellate jurisdiction is lodged with the National Labor Relations Commission (NLRC). If the decision is coming from the LA, you may only properly file an appeal with the NLRC and nowhere else.

Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

If involving a CBA, implementation or interpretation thereof, you don't file a case with the Labor Arbiter. You have to follow the grievance machinery and voluntary arbitration mechanism in the CBA. Essentially, you file with the voluntary arbitrator and not with the Labor Arbiter.

Why is this significant?

When you register a CBA, usually the BLR will ask the parties to include in the CBA a clause for voluntary arbitration. The voluntary arbitrator shall be the one to mediate to address the dispute arising from the CBA. In that way, you do not go to the Labor Arbiter but rather, you go to your voluntary arbitrator.

What happens if you want to appeal the decision of your voluntary arbitrator?

Still, you do not have to pass through the Labor Arbiter. You file an appeal to the Court of Appeal. You are bypassing the NLRC, and you just immediately go to the Court of Appeals. It would essentially be a time-saving approach.

Let us say you are a janitor in a church and you were dismissed by the church, and then you file a labor case with the labor arbiter. Can the janitor file such a case with the labor arbiter? Yes.

The church can be an employer. If all the requisites for the employer-employee relationship are met, it is covered under the jurisdiction of the labor arbiter. Just remember the requisites: 1) selection; 2) power of dismissal and discipline; 3) salary; and 4) control of the means and methods employed in the performance of the work. If all of those requisites are present, then the labor arbiter has jurisdiction. Plus, take note of this, the work of the employees are governed by secular rules. To differentiate: If the priest is excommunicated, can you file with the labor arbiter? That cannot be done because there is no employer-employee relationship. And it is governed by Canon Law and not secular law. It is not covered under the jurisdiction of the labor

arbiter. The janitor, on the other hand, the relationship is governed by the labor law that is why, even though his employer is the church, the labor arbiter would still have jurisdiction. The jurisdiction of the labor arbiter is not over the church as a religious institution, but it is over the church as an employer. It is not a form of interference on the part of the government over ecclesiastical matters. Similar to the sale of bibles, then there's a tax on that. You are imposing a tax not on the bible itself, but you are imposing a tax on the sale or transaction itself;

TN: If all of the requisites for the employer-employee relationship are present, then the labor arbiter has jurisdiction.

Sec. 1, Rule V, 2011 NLRC Rules of Procedure

SECTION 1. JURISDICTION OF LABOR ARBITERS. –

Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or nonagricultural:

- (a) Unfair labor practice cases;
- (b) Termination disputes;
- (c) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- (d) Claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations;
- (e) Cases arising from any violation of Article 264 (now 279) of the Labor Code, as amended, including questions involving the legality of strikes and lockouts;
- (f) Except claims for employees compensation not included in the next succeeding paragraph, social security, medicare, and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding Five Thousand Pesos (P5,000.00), whether or not accompanied with a claim for reinstatement;
- (g) Wage distortion disputes in unorganized establishments not voluntarily settled by the parties pursuant to Republic Act No. 6727;
- (h) Enforcement of compromise agreements when there is non-compliance by any of the parties pursuant to Article 227 (now 233) of the Labor Code, as amended;
- (i) Money claims arising out of employer-employee relationship or by virtue of any law or contract, involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damages as provided by Section 10 of RA 8042, as amended by RA 10022; and
- (j) Other cases as may be provided by law.

Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration, as may be provided in said agreements.

R.A. 8042, as amended by R.A. 10022

Section 10. SETTLEMENT OF MONEY CLAIMS. For the payment of money claims under sub-paragraph (f) of Section 2 of this Rule, the following rules shall govern:

- (1) After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, the Labor Arbiter shall, motu proprio or upon motion, and following the conduct of pre-execution conference, issue a writ of execution mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days from receipt thereof;
- (2) The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a copy of the decision or compromise agreement;
- (3) Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker's claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;
- (4) In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty-day period, as provided in the first subparagraph hereof;
- (5) If the worker's claim was not settled within the aforesaid thirty-day period, the recruitment/manning agency's performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker's claim;
- (6) The provision of compulsory worker's insurance under this section shall not affect the joint and several liability of the foreign employer and the recruitment/manning agency under Section 10 of the Act;
- (7) Lawyers for the insurance companies, unless the latter are impleaded, shall be prohibited to appear before the NLRC in money claims cases under Rule VII.

Jurisdiction over labor disputes involving employees of religious institutions

Austria v. NLRC

Facts: Petitioner is a Pastor who worked with the Seventh Day Adventist church. However, he was dismissed for his non-remittance of church collection. Reacting against the adverse decision of the SDA, petitioner filed a complaint on 14 November 1991, before the Labor Arbiter for illegal dismissal against the SDA and its officers and prayed for reinstatement with backwages and benefits, moral and exemplary damages and other labor law benefits.

Issue: WON the Labor Arbiter and the NLRC have jurisdiction to try and decide the complaint filed by Austria against the SDA?

Ruling: YES. The principle of separation of church and state finds no application here. The case at bar does not concern an ecclesiastical or purely religious affair as to bar the State

from taking cognizance of the same. An ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities with attached religious significance.

While the matter at hand relates to the church and its religious minister it does not ipso facto give the case a religious significance. What is involved here is the relationship of the church as an employer and the minister as an employee. The matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation. As such, the State, through the Labor Arbiter and the NRC, has the right to take cognizance of the case and to determine whether the SDA, as employer, rightfully exercised its management prerogative to dismiss an employee. This is in consonance with the mandate of the Constitution to afford full protection to labor. Under the Labor Code, the provision which governs the dismissal of employees, is comprehensive enough to include religious corporations, such as the SDA, in its coverage. Article 278 of the Labor Code on post-employment states that "the provisions of this Title shall apply to all establishments or undertakings, whether for profit or not." Obviously, the cited article does not make any exception in favor of a religious corporation.

Employees in international organizations when the organization is not immune from suit or has failed to prove immunity from suit

Deutsche Gesellschaft Fur Technische Zusammenarbeit v. Court of Appeals

Doctrine: The principle of state immunity from suit, whether a local state or a foreign state, is reflected in Section 9, Article XVI of the Constitution, which states that "the State may not be sued without its consent."

Certainly, the mere entering into a contract by a foreign state with a private party cannot be the ultimate test. Such an act can only be the start of the inquiry. The logical question is whether the foreign state is engaged in the activity in the regular course of business. If the foreign state is not engaged regularly in a business or trade, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act jure imperii (imperial authority), especially when it is not undertaken for gain or profit.

If the agency is incorporated, the test of its suability is found in its charter. The simple rule is that it is suable if its charter says so, and this is true regardless of the functions it is performing. Municipal corporations, for example, like provinces and cities, are agencies of the State when they are engaged in governmental functions and therefore should enjoy the sovereign immunity from suit. Nevertheless, they are subject to suit even in the performance of such functions because their charter provides that they can sue and be sued.

Basis for awarding damages

Suario v. Bank of the Philippine Islands

Doctrine: It is now well settled that money claims of workers provided by law over which the labor arbiter has original and exclusive jurisdiction are comprehensive enough to include claims for moral damages of a dismissed employee against his employer.

MORAL DAMAGES; RECOVERY WHEN POSSIBLE. — The Labor Arbiter has jurisdiction to award to the dismissed employee not only the reliefs specifically provided by labor laws, but also moral and the forms of damages governed by the Civil Code. Moral damages would be recoverable, for example, where the dismissal of the employee was not only effected without authorized cause and/or due process - for which relief is granted by the Labor Code — but was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy — for which the obtainable relief is determined by 'the Civil Code (not the Labor Code).

Damages - splitting of cause of action not allowed

Primero v. IAC

Facts: Primero was discharged from his employment as bus driver of DM Transit Corporation. Primero instituted proceedings against DM with the Labor Arbiters of the Department of Labor, for illegal dismissal. Labor Arbiter ruled in favour of Primero and ordered the employer to give separation pay. After, Primero brought suit against DM in the Court of First Instance of Rizal seeking recovery of damages caused not only by the breach of his employment contract, but also by the oppressive and inhuman, and consequently tortious, acts of his employer and its officers antecedent and subsequent to his dismissal from employment without just cause.

While this action was pending, Labor Arbiters' jurisdiction was once again revised. It restored the principle that "exclusive and original jurisdiction for damages would once again be vested in labor arbiters. In effect, Trial Court rendered dismissed the complaint on the ground of lack of jurisdiction.

Issue: Can there be splitting of cause of cause of action in a labor case?

Ruling: No, splitting of cause of action is not allowed in labor case. An employee who has been illegally dismissed, in such a manner as to cause him to suffer moral damages has a cause of action for reinstatement and recovery of back wages and damages. When he institutes proceedings before the Labor Arbiter, he should make a claim for all said reliefs. He cannot, to be sure, be permitted to prosecute his claims piecemeal. He cannot institute proceedings separately and contemporaneously in a court of justice upon the same cause of action or a part thereof. He cannot and should not be allowed to sue in two forums: one, before the Labor Arbiter for reinstatement and recovery of back wages, or for separation pay, upon the theory that his dismissal was illegal; and two, before a court of justice for recovery of moral and other damages, upon the theory that the manner of his dismissal was unduly injurious, or tortious.

Consequently, the judgment of the Labor Arbiter granting Primero separation pay operated as a bar to his subsequent action for the recovery of damages before the Court of First Instance under the doctrine of res judicata.

Jurisdiction over damages arising from illegal strikes

Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines

Doctrine: The LA and the NLRC have jurisdiction to resolve cases involving claims for damages arising from employer-employee relationship

To determine whether a claim for damages under paragraph 4 of Article 217 is properly cognizable by the labor arbiter, jurisprudence has evolved the "**reasonable connection rule**" which essentially states that the claim for damages must have reasonable causal connection with any of the claims provided for in that article.

Only if there is such a connection with the other claims can the claim for damages be considered as arising from employer-employee relations.^[18] Absent such a link, the complaint will be cognizable by the regular courts.

"Whichever is less" for reimbursement in pretermination cases under RA 8042 - UNCONSTITUTIONAL

Serrano v. Gallant Maritime Services

Doctrine: The subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage. Further, the Court further holds that the subject clause violates petitioner's right to substantive due process, for it deprives him of property, consisting of monetary benefits, without any existing valid governmental purpose.

OFW contracted but not deployed

Are OFWs under the jurisdiction of the Labor Arbiter?

Yes. If we read the Migrant Act as amended, RA 10022, it actually provides jurisdiction for the money claims of OFWs are lodged with the Labor Arbiter.

Why only for MONEY CLAIMS?

The jurisdiction of the Labor Arbiter is limited to money claims since the Labor Arbiter cannot order reinstatement. The employer is in another country which is beyond the jurisdiction of the Labor Arbiter hence an order reinstatement cannot be made possible. Labor Arbiter cannot exercise jurisdiction over a foreign entity that is outside the Philippines. In lieu of reinstatement, what has been considered by the Labor Arbiter as within its jurisdiction is the computation of how much the employees are entitled to under RA 10022 (i.e. salary for the remaining period of their employment contract, reimbursement of placement fees, etc.). Hence, OFWs can file before the Labor Arbiter but only limited to money claims. The best that the OFWs can do is to demand payment for those expressly provided under RA 10022.

Isn't the fact that they are working abroad, putting them outside the jurisdiction of the Labor Arbiter? Why can the Labor Arbiter handle cases with a foreign employer?

The SC held that your overseas work permit is not a waiver of a Filipino worker's protection under our national laws. These foreign employers are not permitted to accept OFWs into their ranks unless they deal with DOLE. They had to follow minimum standards. They had to provide for a written commitment that they would follow and implement the minimum standards of Philippine Laws or the minimum standards of the foreign laws. By doing so, they are already submitting their persons under the jurisdiction of the Labor Arbiter. So that is why, money claims can be enforced against these foreign employers, but definitely not reinstatement because the latter would now require the application of the foreign laws of such

Overseas workers' permit not a waiver of worker's national laws on labor

Philippine National Bank v. Cabansag

Facts: Respondent Cabansag arrived in Singapore as a tourist. She applied for employment, with the Singapore Branch of the Philippine National Bank. Cabansag obtained an employment pass in Singapore and also secured an Overseas Employment Certificate from POEA.

Cabansag performed well on her job, however, on April 14, 1999, Cabansag found out management wanted her resignation. Cabansag inquired why she is being sacked. At first, Tobias reasoned that it is a cost-cutting measure of the bank, Cabansag was demanded to submit her resignation; she refused. Subsequently she received a letter of termination.

The Labor Arbiter rendered judgment in favor of Cabansag stating that she was illegally dismissed and was not afforded due process.

Issues: Whether or not the arbitration branch of the NLRC in the National Capital Region has jurisdiction over the instant controversy;

Ruling: Yes. Under Article 217 of the Labor Code, labor arbiters have original and exclusive jurisdiction over claims arising from employer-employee relations, including termination disputes involving all workers, among whom are overseas Filipino workers (OFW).

Even if, Cabansag was directly hired in Singapore, she subsequently obtained an Overseas Employment Certificate from POEA. Under Philippine law, this document authorized her working status in a foreign country and entitled her to all benefits and processes under Philippine statutes. Thus, even assuming arguendo that she was considered at the start of her employment as a "direct hire" governed by and subject to the laws, common practices and customs prevailing in Singapore she subsequently became a contract worker or an OFW who was covered by Philippine labor laws and policies upon certification by the POEA.

foreign countries. [Considered to be gray area on conflict of laws]

What happens if the OFW has signed a contract with a foreign employer but was not actually deployed because the foreign employer decided to cancel the deployment of such OFW? Does the Labor Arbiter acquire jurisdiction over the case considering that the worker has not yet started working in such foreign country?

Yes, the Labor Arbiter still has jurisdiction. Under RA 10022, what has been considered as migrant workers are those who have been engaged as employees by foreign entities. The SC held that the word "engaged" applies to employees who have been contracted but for some reason or another have not been deployed to the foreign country to start work. The phrase "to be engaged" also means that there is a commitment on the part of the foreign employer to hire and give work to that employee. Even if the work has not yet commenced, the Labor Arbiter acquires jurisdiction so long as there is a commitment on the part of the employer to give work to that employee.

Santiago v. CF Sharp

Facts: On February 1998, petitioner signed a new contract of employment with Smith Bell Management, Inc. (respondent), with the duration of 9 months which was subsequently approved by the POEA.

Petitioner was to be deployed on board the "MSV Seaspread" which was scheduled to leave the port of Manila for Canada on 13 February 1998.

A week before the scheduled date of departure, Capt. Pacifico Fernandez, respondent's Vice President, sent a facsimile message to the captain of MSV Seaspread saying that he received a phone call from petitioner's wife in Masbate asking him not to send her husband to MSV Seaspread anymore because if Paul Santiago is allowed to depart, he will jump ship in Canada like his brother.

Petitioner was thus told that he would not be leaving for Canada anymore, but he was reassured that he might be considered for deployment at some future date.

Issue: Whether or not the NLRC has jurisdiction over the case? YES.

Ruling: The POEA Rules only provide sanctions which the POEA can impose on erring agencies. It does not provide for damages and money claims recoverable by aggrieved employees because it is not the POEA, but the NLRC, which has jurisdiction over such matters.

Despite the absence of an employer-employee relationship between petitioner and respondent, the Court rules that the NLRC has jurisdiction over petitioner's complaint. The jurisdiction of labor arbiters is not limited to claims arising from employer-employee relationships.

Section 10 of R.A. No. 8042 (Migrant Workers Act), provides that:

"Sec. 10. Money Claims. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. x x x"

Since the present petition involves the employment contract entered into by petitioner for overseas employment, his claims are cognizable by the labor arbiters of the NLRC.

J. Exception to Exclusive jurisdiction of LA: VOLUNTARY ARBITRATION

Art. 219 (n). "Voluntary Arbitrator" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.

Art. 224. JURISDICTION OF THE LABOR ARBITERS AND THE COMMISSION. x x x

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

ART. 273. GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION. The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the Collective Bargaining Agreement.

For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall

designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators have been selected by the parties as described above.

ART. 274. JURISDICTION OF VOLUNTARY ARBITRATORS AND PANEL OF VOLUNTARY ARBITRATORS.

The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement. The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement.

ART. 275. JURISDICTION OVER OTHER LABOR DISPUTES.

Jurisdiction over other Labor Disputes. The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

ART. 276. PROCEDURES. The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have the power to hold hearings, receive evidences and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties. All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the Voluntary Arbitrator or panel of Voluntary Arbitrators. Hearing may be adjourned for cause or upon agreement by the parties. Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration. The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

Upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

ART. 277. COST OF VOLUNTARY ARBITRATION FEE.

The parties to a Collective Bargaining Agreement shall provide therein a proportionate sharing scheme on the cost of voluntary arbitration including the Voluntary Arbitrator or panel of Voluntary Arbitrators, whether shouldered wholly by the parties or subsidized by the Special Voluntary Arbitration Fund, shall take into account the following factors:

- (a) Nature of the case;
- (b) Time consumed in hearing the case;
- (c) Professional standing of the Voluntary Arbitrator;
- (d) Capacity to pay of the parties; and
- (e) Fees provided for in the Revised Rules of Court.

Grievance machinery and voluntary arbitration apply to cases explicitly covered by stipulation of the parties

San Miguel Corp. v. NLRC

Doctrine: The Labor Arbiter has jurisdiction to hear a complaint for unfair labor practice, illegal dismissal, and damages, notwithstanding the provision for grievance and arbitration in the Collective Bargaining Agreement: (1) in the absence of express agreement between parties to conform to the submission of termination disputes and unfair labor practices to voluntary arbitration; (2) when there is no filing of a request for reconsideration by the respondent union, which is the condition sine qua non to categorize the termination dispute and the ULP complaint as a grievable dispute.

San Jose v. NLRC

Doctrine: The original and exclusive jurisdiction of the Labor Arbiter under Article 217 (c), for money claims is limited only to those arising from statutes or contracts other than a Collective Bargaining Agreement. The Voluntary Arbitrator or Panel of Voluntary Arbitrators will have original and exclusive jurisdiction over money claims arising from the interpretation or implementation of the Collective Bargaining Agreement and, those arising from the interpretation or enforcement of company personnel policies, under Article 261.

K. Not within jurisdiction of LA

1. Wage distortion

Art. 124. STANDARDS/CRITERIA FOR MINIMUM WAGE FIXING.

x x x Where the application of any prescribed wage increase by virtue of a law or wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or

recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration. x x x

2. Corporate officers

TN: Corporate officers are not employees.

Jurisdiction over matters involving corporate officers is with the Regional Trial Court.

How do you determine if he is an officer?

If they are named as the corporate officer either in the corporation code or in the by-laws of the corporation. If they are not listed as such, they can be considered an employee. According to the SC, if a corporate officer is claiming 13th month pay, backwages, even if they are claiming those things, it is still under the jurisdiction of the RTC because there is no employer-employee relationship to speak about. The jurisdiction of the labor arbiter hinges on the existence of the employer-employee relationship. If that relationship does not exist to begin with, if they are claiming for matters that seem to be labor matters, the labor arbiter still can not exercise jurisdiction over the case.

By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials.

The Board of Directors of Matling could not validly delegate the power to create a corporate office to the President, in light of Sec. 25 of the Corporation Code requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the corporate officers was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents. The office of VP for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office.

Barba v. Liceo de Cagayan University

Doctrine: Corporate officers are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code enumerates corporate officers as the president, the secretary, the treasurer and such other officers as may be provided for in the by-laws. Undoubtedly, petitioner is not a College Director and she is not a corporate officer but an employee of respondent. Applying the four-fold test concerning (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, it is clear that there exists an employer-employee relationship between petitioner and respondent.

Thus, petitioner, being an employee of respondent, her complaint for illegal/constructive dismissal against respondent was properly within the jurisdiction of the Labor Arbiter and the NLRC.

Who are corporate officers

Matling Industrial and Commercial Corp. v. Coros

Facts: Ricardo Coros was the Vice President for Finance and Administration and at the same time was a Member of the Board of Directors of Matling. After his dismissal by Matling as its VP for Finance and Administration, Coros filed a complaint for illegal suspension and illegal dismissal against Matling and some of its corporate officers in the NLRC.

The case was dismissed by the Labor Arbiter on the ground that the controversy is an intra-corporate dispute considering that the respondent is a corporate officer of the corporation, hence, it is properly cognizable by the SEC. On appeal, the NLRC ruled that respondent was not a corporate officer by virtue of his position in Matling, albeit high ranking and managerial, not being among the positions listed in Matling's Constitution and By-Laws. The CA also affirmed the decision of the NLRC.

Issue: Whether or not offices created pursuant to a By-Law enabling provision are also considered corporate offices? NO

Ruling: A position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. The only officers of a corporation were those given that character either by the Corporation Code or by the

Lozon v. NLRC

Doctrine: [MONETARY CLAIMS] Petitioner contends that the jurisdiction of the SEC excludes its cognizance over claims for vacation and sick leaves, 13th month pay, Christmas bonus, medical expenses, car expenses, and other benefits, as well as for moral and exemplary damages and attorney's fees. But the Court reiterate its ruling in Andaya v. Abadia case that, "while it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters such as those affecting the corporation, its directors, trustees, officers, shareholders, the issue of consequential damages may just as well be resolved and adjudicated by the SEC."

3. Independent contractors

TN: Similarly, independent contractors are not

employees.

Since there is no employer-employee relationship, the jurisdiction over the case shall be with the RTC and not the labor arbiter.

Who are independent contractors?

Those who provide services without being an employee. Usually they have their own businesses, they are not under the control of the employer, etc. They are not employees, thus they are not covered by the jurisdiction of the labor arbiter.

4. SSS/ECC/Medicare claims

5. Kasambahay

Sec. 37, Art. VII, R.A. 10361 "Batas Kasambahay"

SECTION 37. MECHANISM FOR SETTLEMENT OF DISPUTES. — All labor-related disputes shall be elevated to the DOLE Regional Office having jurisdiction over the workplace without prejudice to the filing of a civil or criminal action in appropriate cases. The DOLE Regional Office shall exhaust all conciliation and mediation efforts before a decision shall be rendered.

Ordinary crimes or offenses committed under the Revised Penal Code and other special penal laws by either party shall be filed with the regular courts.

6. Claims of less than P5,000, unaccompanied by a claim for reinstatement

ARTICLE 129. RECOVERY OF WAGES, SIMPLE MONEY CLAIMS AND OTHER BENEFITS. — Upon complaint of any interested party, the Regional Director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement: Provided, further, That the aggregate money claims of each employee or househelper do not exceed five thousand pesos (P5,000.00). The Regional Director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same. Any sum thus recovered on behalf of any employee or househelper pursuant to this Article shall

be held in a special deposit account, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director directly to the employee or househelper concerned. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers.

Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interest, found owing to any employee or house helper under this Code.

7. Monetary claims not related to EER

Pepsi Cola Bottling, Co. v. Martinez

Doctrine: Presidential Decree No. 1691 which took effect on May 1, 1980 presently governs jurisdiction over money claims arising from employer-employee relationship. A verbatim reproduction of the original text of Article 217 of the Labor Code, it restored to the Labor Arbiters the exclusive jurisdiction over claims, money or otherwise, arising from employer-employee relationship except those expressly excluded therefrom.

Respondent Tumala maintains that his action for delivery of the house and lot, his prize as top salesman of the company for 1979, is a civil controversy triable exclusively by the court of general jurisdiction. We do not share this view. The claim for said prize unquestionably arose from an employer-employee relationship, and, therefore, falls within the coverage of par. 5 of Presidential Decree 1691, which speaks of "all claims arising from employer-employee relations, unless expressly excluded by this Code." Indeed, Tumala would not have qualified for the contest, much less won the prize, if he was not an employee of the company at the time of the holding of the contest. Besides, to hold that Tumala's claim for the prize should be passed upon by the regular court of justice, independently and separately from his claim for back salaries, retirement benefits and damages, would be to sanction split jurisdiction and multiplicity of suits which are prejudicial to the orderly administration of justice.

San Miguel Corp. v. NLRC

Doctrine: The Court, therefore, believes and so holds that the "money claims of workers" referred to in paragraph 3 of Article 217 embraces money claims which arise out of or in connection with the employer-employee relationship, or some aspect or incident of such relationship. Put a little differently, that money claims of workers which now fall within the original and exclusive jurisdiction of Labor Arbiters are those money claims which have some reasonable causal connection with the employer-employee relationship. Applying the foregoing reading to the present case, we note that petitioner's Innovation Program is an employee incentive scheme offered and open only to employees of petitioner Corporation, more specifically to employees below the rank of manager. Without the existing employer-employee relationship between the parties here, there would have been no occasion to consider the petitioner's Innovation Program or the submission by Mr. Vega of his proposal concerning beer grande; without that relationship, private respondent Vega's suit against petitioner Corporation would never have arisen. The money claim of private respondent Vega in this case, therefore, arose out of or in connection with his employment relationship with petitioner.

Important principle: Where the claim to the principal relief sought is to be resolved not by reference to the Labor Code or other labor relations statute or a collective bargaining agreement but by the general civil law, the jurisdiction over the dispute belongs to the regular courts of justice and not to the Labor Arbiter and the NLRC. In such situations, resolution of the dispute requires expertise, not in labor management relations nor in wage structures and other terms and conditions of employment, but rather in the application of the general civil law. Clearly, such claims fall outside the area of competence or expertise ordinarily ascribed to Labor Arbiters and the NLRC and the rationale for granting jurisdiction over such claims to these agencies disappears.

L. SUBMISSION OF POSITION PAPERS, HEARING, DISPOSITION

Sec. 12 - 22, Rule V, 2011 NLRC Rules of Procedure

SECTION 12. SUBMISSION OF POSITION PAPER AND REPLY. – (a) Subject to Sections 9 and 10 of this Rule, the Labor Arbiter shall direct the parties to submit simultaneously their verified position papers with supporting documents and affidavits, if any, on a date set by him/her within ten (10) calendar days from the date of termination of the mandatory conciliation and mediation conference. (b) No amendment of the complaint or petition shall be allowed after the filing of position papers, unless with leave of the Labor Arbiter. (c) The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint, accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony, excluding those that may have been amicably settled. (d) Within ten (10) days from receipt of the position paper of the adverse party, a reply may be filed on a date agreed upon and during a schedule set before the Labor Arbiter. The reply shall not allege and/or prove facts and any cause or causes of action not referred to or included in the original or amended complaint or petition or raised in the position paper.

SECTION 13. DETERMINATION OF NECESSITY OF HEARING OR CLARIFICATORY CONFERENCE. – Immediately after the

submission by the parties of their position paper or reply, as the case may be, the Labor Arbiter shall, *motu proprio*, determine whether there is a need for a hearing or clarificatory conference. At this stage, he/she may, at his/her discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

SECTION 14. ROLE OF THE LABOR ARBITER IN HEARING AND CLARIFICATORY CONFERENCE. – (a) The Labor Arbiter shall take full control and personally conduct the hearing or clarificatory conference and may ask questions for the purpose of clarifying points of law or facts involved in the case. The Labor Arbiter may allow the presentation of testimonial evidence with right of cross-examination by the opposing party and shall limit the presentation of evidence to matters relevant to the issue before him/her and necessary for a just and speedy disposition of the case.

(b) The Labor Arbiter shall make a written summary of the proceedings, including the substance of the evidence presented, in consultation with the parties. The written summary shall be signed by the parties and shall form part of the records.

SECTION 15. NON-APPEARANCE OF PARTIES, AND POSTPONEMENT OF HEARINGS AND CLARIFICATORY CONFERENCES. – (a) The parties and their counsels appearing before the Labor Arbiter shall be prepared for continuous hearing or clarificatory conference. No postponement or continuance shall be allowed by the Labor Arbiter, except upon meritorious grounds and subject to the requirement of expeditious disposition of cases. The hearing or clarificatory conference shall be terminated within thirty (30) calendar days from the date of the initial clarificatory conference. (b) In case of non-appearance of any of the parties during the hearing or clarificatory conference despite due notice, proceedings shall be conducted ex parte. Thereafter, the case shall be deemed submitted for decision.

(c) Paragraph (a) of this Section notwithstanding, in cases involving overseas Filipino workers, the aggregate period for conducting the mandatory conciliation and mediation conference, including hearing on the merits or clarificatory conference, shall not exceed sixty (60) days, which shall be reckoned from the date of acquisition of jurisdiction by the Labor Arbiter over the person of the respondents.

SECTION 16. SUBMISSION OF THE CASE FOR DECISION. – Upon the submission by the parties of their position papers or replies, or the lapse of the period to submit the same, the case shall be deemed submitted for decision unless the Labor Arbiter calls for a hearing or clarificatory conference in accordance with Section 12 and 14(a) of this Rule, in which case, notice of hearing or clarificatory conference shall be immediately sent to the parties. Upon termination of the said hearing or conference, the case is deemed submitted for decision.

SECTION 17. INHIBITION. – A Labor Arbiter may voluntarily inhibit himself/herself from the resolution of a case and shall so state in writing the legal justifications therefor. Upon motion of a party, either on the ground of relationship within the fourth civil degree of consanguinity or affinity with the adverse party or counsel, or on question of partiality or other justifiable grounds, the Labor Arbiter may inhibit himself/herself from further hearing and deciding the case. Such motion shall be resolved within five (5) days from the filing thereof. An order denying or granting a motion for inhibition is appealable.

SECTION 18. PERIOD TO DECIDE CASE. – The Labor Arbiter shall render his/her decision within thirty (30) calendar days, without extension, after the submission of the case by the parties for decision, even in the absence of stenographic notes: Provided, however, that cases involving overseas Filipino workers shall be decided within ninety (90) calendar days after the filing of the complaint. (13a)

SECTION 19. CONTENTS OF DECISIONS. – The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: (a) facts of the case; (b) issues involved; (c) applicable laws or rules; (d) conclusions and the reasons thereof; and (e) specific remedy or relief granted. In cases involving

monetary awards, the decisions or orders of the Labor Arbiter shall contain the amount awarded.

In case the decision of the Labor Arbiter includes an order of reinstatement, it shall likewise contain: (a) a statement that the reinstatement aspect is immediately executory; and (b) a directive for the employer to submit a report of compliance within ten (10) calendar days from receipt of the said decision. (14a)

SECTION 20. DEATH OF PARTIES. – In case any of the parties dies during the pendency of the proceedings, he/she may be substituted by his/her heirs. In the event a favorable judgment is obtained by the complainants, the same shall be enforced in accordance with Section 11, Rule XI of this Rules. (As amended by En Banc Resolution No. 14-17, Series of 2017)

SECTION 21. FINALITY OF THE DECISION OR ORDER AND ISSUANCE OF CERTIFICATE OF FINALITY. –

(a) Finality of the Decision or Order of the Labor Arbiter. – If no appeal is filed with the Regional Arbitration Branch of origin within the time provided under Article 223 (now 229) of the Labor Code, as amended, and Section 1, Rule VI of these Rules, the decision or order of the Labor Arbiter shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative. (As amended by En Banc Resolution No. 11-12, Series of 2012)

(b) Certificate of Finality. – Upon expiration of the period provided in paragraph (a) of this Section, the Labor Arbiter shall issue a certificate of finality.

In the absence of return cards, certifications from the post office or courier authorized by the Commission or other proofs of service to the parties, the Labor Arbiter may issue a certificate of finality after sixty (60) calendar days from date of mailing. (n) (As amended by En Banc Resolution No. 05-14, Series of 2014)

SECTION 22. REVIVAL AND RE-OPENING OR RE-FILING OF DISMISSED CASE AND LIFTING OF WAIVER. – A party may file a motion to revive or re-open a case dismissed without prejudice, within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, the only remedy shall be to re-file the case. A party declared to have waived his/her right to file position paper may, at any time after notice thereof and before the case is submitted for decision, file a motion under oath to set aside the order of waiver upon proper showing that his/her failure to appear was due to justifiable and meritorious grounds.

M. COUNTERCLAIMS BY EMPLOYER

Bañez v. Hon. Valdevilla

Doctrine: Art. 217(a) of the Labor Code bestows upon the Labor Arbiter original and exclusive jurisdiction over ALL claims for damages arising from employer-employee relations. This means the Labor Arbiter has jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code. This includes the claim of an employer for actual damages against its dismissed employee, where the basis for the claim is necessarily connected with the fact of termination. Hence, the claim should have been entered as a counterclaim in the illegal dismissal case and not subject of a separate action for damages.

N. PROHIBITED PLEADINGS

Sec. 5, Rule V, 2011 NLRC Rules of Procedure

SECTION 5. PROHIBITED PLEADINGS AND MOTIONS. – The following pleadings and motions shall not be allowed and acted upon nor elevated to the Commission:

- (a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, improper venue, res judicata, prescription and forum shopping;
- (b) Motion for a bill of particulars;
- (c) Motion for new trial;
- (d) Petition for relief from judgment;
- (e) Motion to declare respondent in default;
- (f) Motion for reconsideration of any decision or any order of the Labor Arbiter;
- (g) Motion to Quash and/or Motion to Lift Garnishment if a Petition had been filed under Rule XII;
- (h) Appeal from any interlocutory order of the Labor Arbiter, such as but not limited to, an order: (1) denying a motion to dismiss; (2) denying a motion to inhibit; (3) denying a motion for issuance of writ of execution; or (4) denying a motion to quash writ of execution;
- (i) Appeal from the issuance of a certificate of finality of decision by the Labor Arbiter;
- (j) Appeal from orders issued by the Labor Arbiter in the course of execution proceedings; and
- (k) Such other pleadings, motions and petitions of similar nature intended to circumvent above provisions. (5a, RIII) (As amended by En Banc Resolution No. 02-15, Series of 2015)

XII. APPEALS, NATIONAL LABOR RELATIONS COMMISSION

A. POWERS OF COMMISSION

Last meeting, we talked about the cases that fall within the jurisdiction of the Labor Arbiter i.e., *Termination cases, legality of strikes and lockouts.*

Keep in mind that **legality of strikes and lockouts is not the same as filing of strike vote.** When you're processing the requirements for a strike, you go to the BLR. **BLR has jurisdiction over union matters, intra and inter union disputes,** so anything involving unions, you go to BLR for the most part. But **if the issue is already the legality of the strike, you go to the labor arbiter.**

Remember **if it is a money claim involving reinstatement, regardless of the amount, you go to the Labor Arbiter.** But for example, *if the prayer/complaint does not have any prayer for reinstatement, that is when you take the amount into consideration.* Under Article 128, if it's less than 5k, go to the Regional Director, but if it is more than 5k, go to the Labor Arbiter.

Remember, this is very important, **every case before the Labor Arbiter has to involve an employer-employee relationship.** The labor arbiter does not have jurisdiction over matters that do not involve claims related to employer-employee relationship. **So what are examples?**

CASES NOT WITHIN THE JURISDICTION OF THE LABOR ARBITER:

1. **Damages.** Ordinarily, damages requires the application of the civil code but the Labor Arbiter may

- be given jurisdiction over claims for damages if the claims arise from employer-employee relationship.
2. **Religious organization:** Another example, janitor in a church, ordinarily the government will not interfere with the activities of religious organization, however, the church is acting as an employer, then the Labor arbiter can exercise jurisdiction over the claims of the employee. Aside from EER as the starting point, you can also ask "Will this involve the application of Labor Law?", "Will I have to consult Labor law if I have to consult this issue?" *So, for example, if it was not a janitor but a priest that was excommunicated, that would not be covered by the jurisdiction of the Labor Arbiter because it would not require the application of Labor law, it would require the application of canon law.*
 3. **Independent Contractor:** What other matters that do not fall within the jurisdiction of the Labor Arbiter, one example would be contractors, remember a **contractor is essentially a service provider, there is no EER, how do you know if one is a contractor or not?** You go back to the elements of the employer-employee relationship: selection of employees, dismissal, payment of wages, control over the means and methods employed in the performance of the work. Plus, contractors are not under the control of the employer, the employer only wants the results.

NO EER EXAMPLES:

For example, someone wants a wedding dress, and you instruct the tailor that you want a line skirt, whatever beads, lace etc. the instructions you gave to the tailor are only results based. You are not controlling how they sew or how they performed the work.

Another example would be if you want to have your t-shirt printed in a printing press, you are not controlling how the shirts are printed, you just communicate the design you want, so results-based. In either of those cases, if there is a grievance between the parties, it would amount to a civil case, may be specific performance, collection of money, but it is definitely not a labor case because they are not employees.

Another example, today baking services are popular, so if you avail the service, you are just telling the baker your preferred design but you're not telling them how to measure the flour, the temperature of the oven, so you're not controlling how they perform their work, this is another instance of independent contractor relationship. You're not an employer, you are merely the client of the contractor.

Another example are freelance writers, do you remember the publishing case where the writer merely contributes an article demanded by the newspaper/magazine. So the SC held that this is not an employer-employee relationship because they are not exercising control over the employee, they were free to write whatever they wanted, there was no control over their hours of work, so the SC said that the writers were not employees but independent contractors consequently Labor Arbiter does not have jurisdiction over this matter. Independent

contractor not covered by the jurisdiction of the Labor Arbiter.

4. **Corporate officers:** They are actually covered by the jurisdiction of the regional trial courts, not the Labor tribunals, so how do you know if one is a corporate officer? Basically, recent jurisprudence states that if one is listed as an officer either in the corporation code or by-laws of the company, they are corporate officers, if not, then most likely they are employees. Previously there were a lot of cases discussing the factors you have to consider but really it boils down to whether or not you are listed as a corporate officer in the corporation code or in the by-laws. So if it's a corporate officer - go to the RTC.
5. **Claim is less than 5k w/o reinstatement:** Remember, if the claim is less than 5k w/o claim for reinstatement - go to the Regional Director.
6. **Wage distortion cases:** If there is wage order and as a result the quantitative difference between the wages of different groups of employees is diminished then the wage distortion will be handled by the NCMB (National Conciliation and Mediation Board). Recently, the minimum wage was increased to 435 in Cebu, so there might be wage distortion cases. So the remedy is to go to the NCMB for settlement, if no settlement is reached, then appeal to the NLRC. **Basis:** Any dispute arising therefrom (wage distortion) shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration. (Article 124, LC) If it's a wage distortion case, you go to the NCMB, then you appeal to the NLRC, from the NLRC, you go to the CA.

WAGE DISTORTION CASE FLOW

NCMB → NLRC → CA

Preemptively, if the jurisdiction is with the LA, you appeal it to the NLRC, then to CA, and SC.

LA → NLRC → CA → SC

7. **Cases involving the interpretation or implementation of a CBA which is under the jurisdiction of the voluntary arbitrator (VA).** Because this is mandatory, BLM requires that every CBA has a grievance procedure in it and a mechanism where they submit issues to the VA. So anything involving the interpretation or implementation of a CBA, you go through the grievance process and you file it with the VA. From a voluntary arbiter, you appeal it to the CA, you don't appeal to the NLRC, go straight to the CA and then to SC.

Wage Distortion

NCMB → NLRC → CA → SC

Anything within the jurisdiction of the Labor Arbiter

Labor Arbiter → NLRC → CA → SC

Implementation and interpretation of the CBA

Voluntary Arbitrator (following the grievance process under the CBA) → **appeal to the CA** (no need to go to NLRC) → **SC**

Take note: implementation and interpretation of the CBA is different from the filing of the CBA i.e. PCE. The former is under the jurisdiction of the voluntary arbitrator while the latter is with the BLR.

Filing of the CBA (PCE)

Bureau of Labor Relations

If parties involved: corporate officer; independent contractor

Regular Courts

Claims of less than P5,000 without claim for reinstatement

Regional Director of DOLE → appeal to the SOLE → CA

If SOLE has jurisdiction

SOLE → appeal to the CA

Monetary claims that are not related to the employer-employee relationship i.e. collection of debt

Regular Courts (not under the jurisdiction of the LA)

There were two cases in the 80s that were filed involving beverage companies, PEPSI COLA and SAN MIGUEL. Both cases are very similar involving an opportunity for the employees to earn money in a contest.

In one case, the SC held that the LA has no jurisdiction because it was a contractual obligation that does not require the application of Labor Laws. The court said that it involves civil law because it is a contract. It is not an employer-employee contract but it is a contract outside of EER. Therefore, the regular courts have jurisdiction.

The other case has a similar situation but it requires the participants to be employees. It is something about their productivity for them to be covered by the contest. The SC held that this arises from employer-employee relationship because they could not have participated in this contest if they were not employees. The SC construed it to be part of the contractual obligations under the employer-employee contract and not necessarily a contract outside of the EER.

After the mandatory conference, if the Labor Arbiter finds that the parties do not want to settle, the Labor Arbiter will order that they will file their position papers. Under the NLRC Rules of Procedure, **a hearing is discretionary or not mandatory**.

If the Labor Arbiter finds that the position papers and evidence submitted by the parties is wanting then it can call a clarificatory hearing. There is no use of the word "shall" or "should." The SC has actually held that the filing of position papers is enough compliance with due process or is sufficient opportunity to be heard. You may go through the whole procedure without having a hearing if the LA finds that the position papers are sufficient. However, if the LA, when reading the position papers and attached evidence, finds that it is unclear and the LA wants to ask more questions then, they can order for a clarificatory hearing.

During the proceedings, the respondents/company can also file a counterclaim.

A counterclaim is any claim which a defending party may have against an opposing party. [Section 6, Rule 6, Rules of Civil Procedure]

For example, the employee files a money claim against the employer. However, the employer also has a claim for damages against the employee for breach of employment contract (in immediately leaving after submitting a resignation letter). The employer can file his claim in the same case and not necessarily file a new case.

If the employee can prove that he is entitled to P45,000 and the employer also proved that he is entitled to liquidated damages of P10,000 then these two amounts will be offset. In the end, the employer will pay a lesser amount to the employee.

Art. 225. POWERS OF THE COMMISSION. - The

Commission shall have the power and authority:

- (a) To promulgate rules and regulations governing the hearing and disposition of cases before it and its regional branches, as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Code;
- (b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and others as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Code;
- (c) To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn, its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable; and
- (d) To hold any person in contempt directly or indirectly and impose appropriate penalties therefor in accordance with law.

A person guilty of misbehavior in the presence of or so near the Chairman or any member of the Commission or any Labor Arbiter as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive personalities toward others, or refusal to be sworn, or to answer as a witness or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in direct contempt by said officials and punished by fine not exceeding five hundred pesos (P500) or imprisonment not exceeding five (5) days, or both, if it be the Commission or a member thereof, or by a fine not exceeding one hundred

pesos (P100) or imprisonment not exceeding one (1) day, or both, if it be a Labor Arbiter.

The person adjudged in direct contempt by a Labor Arbitrator may appeal to the Commission and the execution of the judgment shall be suspended pending the resolution of the appeal upon the filing by such person of a bond on condition that he will abide by and perform the judgment of the Commission should the appeal be decided against him. Judgment of the Commission on direct contempt is immediately executory and unappealable. Indirect contempt shall be dealt with by the Commission or Labor Arbitrator in the manner prescribed under Rule 71 of the Revised Rules of Court; and

(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

- (1) That prohibited or unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
- (2) That substantial and irreparable injury to complainant's property will follow;
- (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- (4) That complainant has no adequate remedy at law; and
- (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed, charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice. Such a temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days. No such temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be

fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

The undertaking herein mentioned shall be understood to constitute an agreement entered into by the complainant and the surety upon which an order may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages, of which hearing, complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the Commission for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity:

Provided, further, That the reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbitrators who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission.

Art. 226. Bureau of Labor Relations. The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor, shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces, whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.

The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by agreement of the parties. (As amended by Section 14, Republic Act No. 6715, March 21, 1989)

1. Compulsory processes

2. Contempt power

Art. 225. POWERS OF THE COMMISSION. - The Commission shall have the power and authority:

- (e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the

allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

- (1) That prohibited or unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
- (2) That substantial and irreparable injury to complainant's property will follow;
- (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- (4) That complainant has no adequate remedy at law; and
- (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Rule IX, 2011 NLRC Rules of Procedure

CONTEMPT

SECTION 1. Direct Contempt. – Any person may be summarily adjudged guilty of direct contempt for any disrespectful act or misbehavior committed near, or in the presence of, the Chairman, any member of the Commission or any Labor Arbiter, as to obstruct or interrupt the proceedings before the same, such as but not limited to the following:

- a) Use of intemperate language during the proceedings before said officials;
- b) Offensive acts committed towards the said officials;
- c) Refusal to be sworn or to answer as a witness;
- d) Refusal to subscribe an affidavit or a deposition when lawfully required to do so;
- e) Refusal to sign, without any justifiable reason, the minutes of the proceedings even if present or has participated in the discussion/deliberation; and
- f) Other analogous circumstances.

A. Punishment for direct contempt. – A person cited for Direct Contempt may be penalized with either a fine, imprisonment, or both.

If the offense is committed against the Commission or any member thereof, the fine shall not exceed Five Hundred Pesos (Php500.00) and the imprisonment shall not exceed five (5) days. If the offense is committed against a Labor Arbiter, the fine shall not exceed One Hundred Pesos (Php100.00) and the imprisonment shall not exceed one (1) day.

Where fine is imposed, the Order of Contempt shall immediately be issued. If the person adjudged guilty of direct contempt refuses to pay the fine, s/he shall be subjected to

subsidiary imprisonment of one (1) day for every One Hundred Pesos (P100.00) fine.

Where imprisonment is imposed, the Chairman, the Commissioner or the Labor Arbiter, may deputize any security personnel of the NLRC to hold the guilty person or, when necessary, secure police assistance. The Commitment Order and the Order of Contempt shall be immediately issued. Thereafter, the guilty person shall be brought to the nearest police station and be detained therein for a period specified in the Order of Contempt.

In both cases, the Order of Contempt shall contain the name and address of the respondent, facts constituting the contemptuous acts and penalty imposed.

B. Remedy. – The person adjudged in direct contempt by a Labor Arbiter may appeal to the Commission by filing a Memorandum of Appeal within five (5) calendar days from date of order. The Memorandum of Appeal shall state the grounds upon which the appeal is anchored and be accompanied by proof of payment of the appeal fee of Five Hundred Pesos (P500.00). The execution of the judgment shall be suspended pending the resolution of the appeal upon the filing by such person of a bond of Five Hundred Pesos (P500.00), on the condition that he will abide by and perform the judgment of the Commission should the appeal be decided against him.

Judgment of the Commission on direct contempt is immediately executory and unappealable. (As amended by En Banc Resolution No. 14- 17, Series of 2017)

SECTION 2. Indirect Contempt. – Any person adjudged guilty of any of the following acts may be punished for indirect contempt:

- a) Misbehavior of any NLRC officer or employee in the performance of his/her official duties or in his/her official transaction;
- b) Disobedience of, or resistance to, a lawful writ, order or decision issued by the Commission or Labor Arbiter and other processes issued pursuant to said writ, order or decision;
- c) Any abuse of, or any unlawful interference with the processes or proceedings not constituting direct contempt;
- d) Any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice;
- e) Assuming to be an attorney or a representative of party without authority;
- f) Failure to obey a subpoena duly served;
- g) Use of derogatory, offensive, malicious or false statements in pleadings submitted before the Commission or its Regional Arbitration Branches where the proceedings are pending;
- h) Making any public, baseless and malicious statements tending to undermine the administration of justice against the Commission, any member thereof or any Labor Arbiter, by any party or counsel who has a case, pending or otherwise, before the officials concerned; and
- i) Other grounds analogous to the foregoing.

A. How proceedings commenced. – The Commission or any Labor Arbiter may, motu proprio or upon motion of a party, issue an Order directing the respondent to show cause why s/he should not be punished for committing acts constituting Indirect Contempt, in connection with or in relation to a pending case.

Otherwise, an action for indirect contempt may only be commenced through a verified petition.

The respondent may file her/his verified Answer/Comment within ten (10) calendar days from receipt of the Show Cause Order.

B. Period to Resolve. – The motion or petition, as the case may be, shall be resolved within a non-extendible period of fifteen (15) calendar days from receipt of the Verified Answer/Comment or upon the lapse of the period to submit the same.

C. Punishment for Indirect Contempt. – The person adjudged guilty of indirect contempt may be punished:

i. By a fine of One Thousand Pesos (P1,000.00) for every act of indirect contempt, if committed against the Commission or any member thereof; or,

ii. By a fine of Five Hundred Pesos (P500.00) for every act of indirect contempt, if committed against any Labor Arbiter.

iii. If the contempt consists of violation of an injunction or an omission to do an act which is within the power of the respondent to perform, the respondent shall, in addition, be made liable for damages as a consequence thereof. The damages shall be measured by the extent of the loss or injury sustained by the aggrieved party by reason of the acts or omissions of which the contempt is being prosecuted, and the costs of the proceedings, including payment of interest on damages.

iv. In the event that the contemptuous act constitutes a series of acts or a continued refusal/defiance to a lawful order, writ or decision, the fine shall be imposed for every contemptuous act or per day of continued refusal/defiance.

D. A writ of execution may be issued to enforce the decision imposing such fine and/or the consequent damages as punishment for indirect contempt.

E. Remedy.

i. Appeal from the Order of the Labor Arbiter. – The person adjudged guilty of indirect contempt may appeal the Order issued by the Labor Arbiter to the Commission by filing a Memorandum of Appeal within five (5) calendar days from receipt thereof. The Memorandum of Appeal shall state the grounds upon which the appeal is anchored and be accompanied by proof of payment of the appeal fee of Five Hundred Pesos (P500.00).

ii. Effect of Filing of the Appeal. – The filing of the appeal shall not suspend the execution of the Order of indirect contempt, unless a cash bond is posted in the amount equivalent to the fine.

The fine collected shall be deposited in a Trust Fund account specifically created for this purpose. (As amended by En Banc Resolution No. 14-17, Series of 2017)

Industrial and Transport Equipment, Inc. v. NLRC

DOCTRINE: Contempt is defined as a disobedience to the Court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court or injunction granted by a court or judge constitutes indirect contempt punishable under Rule 71 of the Rules of Court.

Section 2, Rule X of the New Rules of Procedure of the NLRC provides that the Commission or any labor arbiter may cite any person for indirect contempt upon grounds and in the manner prescribed under Section 3(b), Rule 71 of the 1997 Rules of Civil Procedure.

Section 3(b), Rule 71 provides:

Sec. 3. — Indirect contempt to be punished after charge and hearing . . .

a) . . .

b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court . . .

3. Power to conduct an ocular inspection

Art. 219. Ocular inspection. The Chairman, any Commissioner, Labor Arbiter or their duly authorized representatives, may, at any time during working hours, conduct an ocular inspection on any establishment, building, ship or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein, and ask any employee, laborer, or any person, as the case may be, for any information or data concerning any matter or question relative to the object of the investigation.

4. Adjudicatory powers (original)

NLRC is a broad term that includes the LA and everyone working for the Regional Arbitration Branch. But when we say "appeal to the NLRC", we are referring to the Commission itself.

The Commission is composed of three people appointed by the President. Articles 225 and 226 of the Labor Code state the powers of the Commission

as a body. The Commission, similar to the LA, can issue summons, demand appearances, and declare a party in contempt. Both the LA and the NLRC can declare a party in contempt. The NLRC also has the power to conduct ocular inspection. Most importantly, the NLRC has adjudicatory/adjudication powers.

There are two kinds of adjudication powers: (1) original and (2) appellate.

Appellate jurisdiction means the power of the NLRC to accept appeals from a lower court. This can be from the LA or the NCMB. But definitely not from the voluntary arbitrator and SOLE because the appeal is directly with the CA.

In deciding appealed cases, only a quorum needs to be present. So, 2 out of 3. It is enough that two of the three commissioners were present in deciding and both of them agreed on the decision. It is not necessary that all of them are present to issue a decision.

A quorum is a majority. 2 out of 3 is enough. 2 is present in deciding. It is not necessary that the 3 commissioners should decide.

Adjudicatory powers

One of the original jurisdictional powers of the Commission is to empower to issue injunctions and TROs.

An injunction is basically an order from the authority requiring a particular person or entity to do or not do something. A TRO is similar, but it is shorter.

When the NLRC issues an injunction, it is basically telling the recipient to stop doing something or to do something such as return to work orders. The power to issue an injunctive relief is unique only with the NLRC. The LA cannot issue writs of injunctive relief. It is beyond their jurisdiction. The LA can implement injunction but cannot issue injunction.

a. Petitions for injunction and TRO; ex parte issuance; cash bond requirement

Art. 225 (e) POWERS OF THE COMMISSION. - The Commission shall have the power and authority:

(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued

except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

- (1) That prohibited or unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
- (2) That substantial and irreparable injury to complainant's property will follow;
- (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- (4) That complainant has no adequate remedy at law; and
- (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Art. 266. Injunction Prohibited

No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code. (As amended by Batas Pambansa Bilang 227, June 1, 1982).

When the NLRC issues an injunction, it is basically telling the recipient to stop doing something or to do something such as return to work orders. The power to issue an injunctive relief is unique only with the NLRC. The LA cannot issue writs of injunctive relief. It is beyond their jurisdiction. The LA can implement injunction but cannot issue injunction.

When there is an injunctive case, usually there is a hearing. One of the parties wants injunction and will present evidence. But, there are instances that NLRC can issue injunction ex parte. Ex parte means there was no hearing and based only on the allegations of a party. An expert TRO it must be justified with extreme necessity. The complainants must show that they are at a high risk of extreme damage if TRO is not issued.

TROs, specifically, only has a life span of 20 calendar days including weekends and holidays. It is also self-limiting. The Commission does not need to issue that the TRO already ended.

Rule X, 2011 NLRC Rules of Procedure

INJUNCTION

SECTION 1. INJUNCTION IN ORDINARY LABOR DISPUTES. - A preliminary injunction or restraining order may be granted by the Commission through its Divisions pursuant to the provisions of paragraph (e) of Article 218 of the Labor Code, as amended, when it is established on the basis of the sworn allegations in the petition that the acts complained of involving or arising from any labor dispute before the Commission, which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.

A certification of non-forum shopping shall accompany the petition for injunction.

The writ of preliminary injunction or temporary restraining order shall become effective only upon posting of the required cash bond in the amount to be determined by the Commission to answer for any damage that may be suffered by the party enjoined, if it is finally determined that the petitioner is not entitled thereto.

SECTION 2. INJUNCTION IN STRIKES OR LOCKOUTS. - A temporary or permanent injunction may be granted by the Commission only after hearing the testimony of witness/es and with opportunity for cross-examination in support of the allegations of the complaint or petition made under oath, and testimony by way of opposition thereto, if offered, and only after a finding of fact by the Commission:

(a) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief to be granted, greater injury will be inflicted upon the complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

SECTION 3. TEMPORARY RESTRAINING ORDER; REQUISITES. - If the petitioner shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, or by affidavits of the petitioner's witnesses, sufficient, if sustained, to justify the Commission in issuing a temporary injunction.

SECTION 4. HEARING; NOTICE THEREOF. - Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property.

SECTION 5. RECEPTION OF EVIDENCE; DELEGATION. - The reception of evidence for the application of a writ of

injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses, and shall thereafter submit his report/recommendation to the Commission within fifteen (15) days from such delegation.

SECTION 6. OCULAR INSPECTION. - The Chairman, any Commissioner, Labor Arbiter or their duly authorized representative/s, may at any time during working hours, conduct an ocular inspection on any establishment, building, ship or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein, and ask any employee, laborer, or any person, as the case may be, for any information or data concerning any matter or question relative to the object of the petition.

The ocular inspection reports shall be submitted to the appropriate Division within twenty-four (24) hours from the conduct thereof.

SECTION 7. CASH BOND. - No temporary restraining order or temporary injunction shall be issued except on condition that petitioner shall first file an undertaking to answer for the damages and post a cash bond in the amount not less than thirty thousand pesos (P30,000.00) or as may be determined by the Commission, to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

SECTION 8. EFFECTIVITY OF THE TEMPORARY RESTRAINING ORDER. - A temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days. During the said period, the parties shall be required to present evidence to substantiate their respective positions in the main petition.

SECTION 9. EFFECTS OF DEFIAENCE. - The order or resolution enjoining the performance of illegal acts shall be immediately executory in accordance with the terms thereof. Non-compliance with such order or resolution, the Commission shall impose such sanctions and shall issue such orders as may be necessary to implement the said Order or Resolution, including the enlistment of law enforcement agencies having jurisdiction over the area for the purpose of enforcing the same.

SECTION 10. ORDINARY REMEDY IN LAW OR IN EQUITY. - Nothing in this Rule shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

The Hongkong and Shanghai Banking Corporation Employees Union v. NLRC

Doctrine: NLRC has the power to enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission. (Article 218 (e), LC)

Labor Arbiter cannot issue writs of preliminary injunction

Lahm v. Mayor

Facts: Toze filed a complaint for illegal dismissal against the members of the Board of Trustees of the International School, Manila. The case was raffled to the sala of the respondent, Labor Arbiter. During the proceedings, Toze filed a Verified Motion for the Issuance of a TRO and/or Preliminary Injunction, to which the complainants opposed. Thereafter, LA issued an Order directing the parties in the said case to maintain the status quo ante, which consequently reinstated Toze to his former position as superintendent of the International School Manila.

Issue: Whether or not the labor arbiters have the authority to issue writs of preliminary injunction and/or temporary restraining orders.

Ruling: NO. Under the 2005 Rules of Procedure of the NLRC, the labor arbiters no longer has the authority to issue writs of preliminary injunction and/or temporary restraining orders. Under Section 1, Rule X of the 2005 Rules of Procedure of the NLRC, only the NLRC, through its Divisions, may issue writs of preliminary injunction and temporary restraining orders.

The respondent should, in the first place, not entertain Edward Toze's Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents. He should have denied it outright on the basis of Section 1, Rule X of the 2005 Revised Rules of Procedure of the National Labor Relations Commission. The respondent, being a Labor Arbiter of the Arbitration Branch of the National Labor Relations Commission, should have been familiar with Sections 1 and 4 of the 2005 Revised Rules of procedure of the National Labor Relations Commission. The first, states that it is the Commission of the [NLRC] that may grant a preliminary injunction or restraining order. While the second, states [that] Labor Arbiters [may] conduct hearings on the application of preliminary injunction or restraining order only in a delegated capacity.

Requisites for issuance of an ex parte TRO

Ilaw at Buklod ng Manggagawa v. NLRC

Facts: NLRC issues a TRO against the Union. The Union argued that NLRC Division had no jurisdiction to issue the temporary restraining order or otherwise grant the preliminary

injunction prayed for by SMC and that, even assuming the contrary, the restraining order had been improperly issued.

Also untenable is the Union's other argument that the respondent NLRC Division had no jurisdiction to issue the temporary restraining order or otherwise grant the preliminary injunction prayed for by SMC and that, even assuming the contrary, the restraining order had been improperly issued. The Court finds that the respondent Commission had acted entirely in accord with applicable provisions of the Labor Code.

Issue: WON the TRO is valid.

Ruling: YES. Among the powers expressly conferred on the Commission by Article 218 is the power to "enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party . . ."

As a rule such restraining orders or injunctions do not issue *ex parte*. However, a temporary restraining order may be issued *ex parte* under the following conditions:

- a) the complainant "shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable;
- b) there is "testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice;"
- c) the "complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission;" and
- d) the "temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days.

The reception of evidence "for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission."

The record reveals that the Commission exercised the power directly and plainly granted to it by sub-paragraph (e) Article 217 in relation to Article 254 of the Code, and that it faithfully observed the procedure and complied with the conditions for the exercise of that power prescribed in said sub-paragraph (e).

It acted on SMC's application for immediate issuance of a temporary restraining order ex parte on the ground that substantial and irreparable injury to its property would transpire before the matter could be heard on notice; it, however, first direct SMC Labor Arbitrator Carmen Talusan to receive SMC's testimonial evidence in support of the application and thereafter submit her recommendation thereon; it found SMC's evidence adequate and issued the temporary restraining order upon bond. No irregularity may thus be imputed to the respondent Commission in the issuance of that order.

In any event, the temporary restraining order had a lifetime of only twenty (20) days and became void ipso facto at the expiration of that period. In view of the foregoing factual and legal considerations, all irresistibly leading to the basic conclusion that the concerted acts of the members of petitioner Union in question are violative of the law.

The issuance of an ex parte TRO in a labor dispute is not per se prohibited, but its issuance should be characterized by care and caution. The law requires that it be clearly justified by considerations of extreme necessity (when the commission of unlawful acts is causing substantial and irreparable injury to company properties and the company is, for the moment, bereft of an adequate remedy at law).

Ex parte issuance must be justified by extreme necessity

Big ng Manggagawa sa Concrete Aggregates, Inc. v. NLRC

Facts: The Union staged a strike. The Union picketed the Company premises in its various branches / sites. This led the Company to file with the NLRC a Petition for Injunction to stop the wild-cat strike that it denounced as illegal—no notice; no observance of the cooling-off period; made during the pendency of preventive mediation proceedings; ingress and egress impeded; resort to unlawful and illegal acts.

A TRO was issued against the Union. However, the Union only learned about this when the order was posted at the company premises.

The Union filed its Opposition/Answer, as well as its own Petition for Injunction to enjoin the Company from asking the aid of the police and military officers in escorting scabs to enter the establishment. The Company filed a Motion for the Immediate Issuance of Preliminary Injunction, and attached the affidavits of some witnesses. NLRC granted the Company's Motion for Preliminary Injunction.

Issue: Whether or not NLRC can issue a preliminary injunction, as it did issue, after the lapse of a twenty day temporary restraining order without regard to the specific provision of Article 218 (e) of the Labor Code

Ruling: NO. In the case at bar, the records will show that the respondent NLRC failed to comply with the letter and spirit of Article 218 (e), (4) and (5) of the Labor Code in issuing its Order of May 5, 1992. Article 218 (e) of the Labor Code provides both the procedural and substantive requirements which must strictly be complied with before a temporary or permanent injunction can issue in a labor dispute.

The Solicitor-General noted in his comment [which was affirmed by the SC] that when presented before the Labor Arbitrator, the affiants themselves controverted the allegations in their joint-affidavit. They innocently divulged having signed the prepared affidavit without first reading the same. Likewise, they admitted that they did not see or hear the union members threatened the group of "non-strikers" including themselves of bodily harm.

Abbot v. NLRC

Doctrine: National Labor Relations Commission has the authority to look into the correctness of the execution of the decision in this case and to consider the supervening events that may affect such execution, like the possible set-off of the petitioners' advances or debts against their total claim, their discontinuance from employment by abandonment or resignation, and other relevant developments.

NLRC's injunction powers applies to labor disputes only

Nestle Philippines, Inc. v. NLRC

Doctrine: The NLRC gravely abused its discretion and exceeded its jurisdiction by issuing the writ of injunction to stop the company from enforcing the civil obligation of the private respondents under the car loan agreements and from protecting its interest in the cars which, by the terms of those agreements, belong to it (the company) until their purchase price shall have been fully paid by the employee. **The terms of the car loan agreements are not in issue in the labor case. The rights and obligations of the parties under those contracts may be enforced by a separate civil action in the regular courts, not in the NLRC.**

A labor dispute must first be filed before the NLRC may issue a TRO

Philippine Airlines, Inc. v. NLRC

Doctrine: **NLRC cannot issue an injunction without a complaint for illegal dismissal filed. It is an essential requirement that there must first be a labor dispute between the contending parties before the labor arbiter.** In the present case, there is no labor dispute between the petitioner and private respondents as there has yet been no complaint for illegal dismissal filed with the labor arbiter by the private respondents against the petitioner. The jurisdiction of the NLRC in illegal dismissal cases is appellate in nature and, therefore, it cannot entertain the private respondents' petition for injunction which challenges the dismissal orders of petitioner.

The power of the NLRC to issue an injunctive writ originates from "any labor dispute" upon application by a party thereof, which application if not granted "may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party."

RTC case, apply by analogy - 20-day life of TRO starts upon issuance, includes weekends and holidays

Manotoc v. Agcaoili

Facts: The judge issued the TRO which is “good until such time that the writ shall have been resolved”. Twenty days after, the judge issued an order extending the TRO for five more days and then another extension for 12 more days. Imee and Imelda filed the instant administrative complaint against the judge arguing that the issuance of the TRO and its subsequent extensions constitute a blatant violation of Administrative Circular 20-95 of this Court.

Issue: Whether or not the judge violated the rules on the issuance of TRO. YES

Ruling: In computing the effectivity of a TRO, Saturdays, Sundays, and holidays are not excluded. The maximum period of 20 days includes Saturdays, Sundays, and holidays. Respondent judge, therefore, erroneously excluded weekends in his computation. He claimed that the TRO issued by him on June 18, 1996 and received by the parties on June 19, 1996 took effect on June 20, 1996 until July 12, 1996, excluding Saturdays and Sundays. In truth, the TRO was made effective for a total of 23 days, in clear violation of the 20-day rule.

b. “National interest” cases

Art. 278. Strikes, picketing, and lockouts

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

Another case under the jurisdiction of the Commission is the National Interest cases. Strikes affecting industries indispensable to national interest. The SOLE can either assume or certify to the Commission. NLRC will handle the dispute.

Original jurisdiction of the NLRC boils down to injunctive relief, and national interest cases if certified by SOLE.

5. Adjudicatory powers (appellate)

a. Labor Arbiter

b. DOLE regional director or hearing officers under Art. 129

c. N/A: voluntary arbitrator and Secretary of Labor

6. Issuance of writ of certiorari/extraordinary remedies

Rule XII, 2011 NLRC Rules of Procedure

SECTION 2. GROUNDS. – The petition filed under this Rule may be entertained only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, and based on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the petitioner;
- (c) If a party by fraud, accident, mistake or excusable negligence has been prevented from taking an appeal;
- (d) If made purely on questions of law; or,
- (e) If the order or resolution will cause injustice if not rectified. (As amended by En Banc Resolution No. 05-14, Series of 2014)

Issuance of writ of certiorari/extraordinary remedies

*Triad Security and Allied Services, Inc.
v. Ortega*

Doctrine: In this case, petitioners insist that the NLRC is bereft of authority to rule on a matter involving grave abuse of discretion that may be committed by a labor arbiter. Such conclusion, however, proceeds from a limited understanding of the appellate jurisdiction of the NLRC under Article 223 of

the Labor Code which states:

ART. 223. APPEAL

Decisions, awards, or orders of the Labor Arbitrator are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is **prima facie evidence of abuse of discretion on the part of the Labor Arbitrator.**

In the case of *Air Services Cooperative v. Court of Appeals*, we had the occasion to explain the scope of said article of the Labor Code to mean –

x x x Also, while the title of Article 223 seems to provide only for the remedy of appeal as that term is understood in procedural law and as distinguished from the office of certiorari, nonetheless, a closer reading thereof reveals that it is not as limited as understood by the petitioners x x x.

x x x

Abuse of discretion is admittedly within the ambit of certiorari and its grant thereof to the NLRC indicates the lawmakers' intention to broaden the meaning of appeal as that term is used in the Code x x x

B. APPEAL FROM LA

1. Grounds

Art. 229. Appeal.

Decisions, awards, or orders of the Labor Arbitrator are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

If there is prima facie evidence of abuse of discretion on the part of the Labor Arbitrator;

If the decision, order or award was secured through fraud or coercion, including graft and corruption;

If made purely on questions of law; and

If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbitrator reinstating a dismissed or separated employee, insofar

as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbitrator shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders. (As amended by Section 12, Republic Act No. 6715, March 21, 1989)

Rule VI, NLRC Rules of Procedure

APPEALS

SECTION 1. PERIODS OF APPEAL. – Decisions, awards, or orders of the Labor Arbitrator shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment (DOLE) pursuant to Article 129 of the Labor Code, as amended, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed.

SECTION 2. GROUNDS. – The appeal may be entertained only on any of the following grounds:

- If there is **prima facie evidence of abuse of discretion on the part of the Labor Arbitrator or Regional Director;**
- If the **decision, award or order was secured through fraud or coercion, including graft and corruption;**
- If **made purely on questions of law; and/or,**
- If **serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable**

damage or injury to the appellant.

SECTION 3. WHERE FILED. – The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL.

– (a) The appeal shall be:

- (1) filed within the reglementary period provided in Section 1 of this Rule;
- (2) verified by the appellant himself/herself in accordance with Section 4, Rule 7 of the Rules of Court, as amended;
- (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed ~~SEP~~ decision, award or order;
- (4) in three (3) legibly typewritten or printed copies; and,
- (5) accompanied by: (i) proof of payment of the required appeal fee and legal research fee, ~~SEP~~; (ii) posting of a cash or surety bond as provided in Section 6 of this Rule, and (iii) proof of service upon the other parties.

(b) A mere notice of appeal without complying with the other requisites aforementioned shall not stop the running of the period for perfecting an appeal.

(c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.

(d) Subject to the provisions of Article 218 (now 225) of the Labor Code, as amended, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

xxx

SECTION 9. FILING OF APPEAL; EFFECT. – Without prejudice to immediate reinstatement pending appeal under Section 3 of Rule XI, once an appeal is filed, the Labor Arbiter loses jurisdiction over the case. All pleadings and motions pertaining to the appealed case shall thereafter be addressed to and filed with the Commission.

How do you appeal from LA to NLRC?

Under Article 229, there are specific grounds.

TN If it is not appealed withinin the period, the decision of the LA becomes final and executory.

"One or both parties" can actually appeal. For instance, one party appeals, employer was rendered to pay monetary damages, separation pay, backwages. The employer appeals the whole decision. The employee appeals because the payment is not sufficient, the LA is correct but the amount is insufficient. Sometimes, it is dangerous to appeal if the

decision is already favorable to you.

Grounds for appeal:

- a. Prima facie evidence of abuse of discretion on the part of LA
- b. The decision, order award was secured through fraud or coercion, including graft and corruption
- c. Made purely on questions of law
- d. Seiorus errors in findings of facts

Atty: Now you'll notice a lot of these grounds are very similar to the grounds usually invoked for Certiorari under Rule 65. But usually in practice the most common ground invoked is the last one: **errors in findings of fact** (i.e. there's no illegal dismissal; the employee was not dismissed, etc.)

Period for Appeal
The period for appeal is **10 days**.

Perfection of Appeal Under the NLRC Rules of procedure, there are two requirements for perfecting an appeal:

1. Payment of appeal fees.

Whenever you appeal, you have to pay the appeal fee (~PhP 1,000-2,000).

The Supreme Court, however, held that if there is **failure to pay the appeal fee, the Commission is actually not mandated to dismiss the case.**

So it becomes **discretionary on the part of the Commission** to decide whether or not they will dismiss the appeal fee.

Atty: Basically appeal fee can be paid later on or beyond the period;

The Supreme Court justified this by saying the **broader interest of justice must be considered**. It goes back to the fundamental principles in labor law—justice must be afforded to the worker, everything must be construed in labor and we are not bound by the technical rule. So the Supreme Court said if one paid beyond the payment period, that's actually fine because we have to consider the broader interest of justice.

Appeal fees

So appeal fees are mandatory but payment on time is apparently not mandatory based on that ruling of the Supreme Court because late payment is allowed in the interest of justice.

2. The filing of an appeal bond.

A bond is basically a security: you pay a bondsman or a bonding company a certain amount and that is a bond later on. If it is executed and liquidated, meaning, it's essentially like depositing money for safekeeping.

Atty: Later on when you appeal, that's what you'll use to reimburse/ pay out to the other party—so it's kind of a security. The reason behind that is, if for example the employer is appealing to the NLRC, the employee essentially has to wait even longer for their award. Remember, the reward is not executory if it gets appealed; The employee who won at the Labor Arbiter level has to wait even longer.

To ensure the security of the employee after the NLRC rules the decision, that is what the bond is for. It is to act as a Plan B if the employee also wins at the NLRC level—they can actually ask for execution against the security bond.

Appeal bond
Unlike in the payment of appeal fees, the Supreme Court held that **the appeal bond is actually a condition for the perfect appeal meaning it cannot be perfect without filing the appeal bond—that is indispensable**. Unlike the appeal fees where the Supreme Court is relaxed on its application, an appeal bond is **absolutely necessary for a perfect appeal**.

Appeal bond is usually in the amount of awards given to the employee.

What happens if you file a motion to reduce the appeal bond?

In effect, this will stop the running of the period of the appeal, at least temporarily. If you filed it on the fifth day for filing an appeal, it's as if time will freeze on the fifth day. Later on, after the motion is decided, it will continue running as a fifth day.

Illustration: Today(June 7) is the release of the decision. The employer received the decision: Employee gets Php 200,000 in separation pay and backwages. The employer would want to appeal because the said amount is a lot of money.

You have until June 17 to file an appeal but you don't have Php 200,000. Let's say on the third day of the appeal period (June 10) you file a motion to reduce the appeal bond.

You present your meritorious reasons saying we are financially struggling and show the supporting financial documents. And then you also offer to pay 10% of the monetary award—in this case, Php 20,000.

You offer to pay Php 20,000. You file a motion along with those two requirements which stops the running period for filing an appeal. It's as if everything is frozen on day 3 of the period of the appeal. Later on when the

motion is decided, the period will continue running starting from day 3.

So you have 7 days left since the period did not run while there was a pending motion to reduce the appeal bond.

TN: If you lack either of the two requirements: meritorious ground and the reasonable amount of the bond (the 10% of the monetary award)—motion has no merit and 10% has not been paid—the period for filing an appeal will continue to run. Your motion will not stop the period for filing an appeal if you do not have those two requirements.

If you filed a motion but did not meet the requirements, the period will continue to run and you still have to file the appeal within that period, and pay the appeal bond. You are not exempt from filing the appeal bond and filing the appeal on time if your motion to reduce the bond does not meet the requirements; The period will continue running: you still have to pay the appeal bond and you still have to file the appeal within the period if your motion is insufficient.

Meeting all the requirements will stop the running. Otherwise, the period will continue to run and you'll have to comply with everything within those 10 days.

2. Payment of appeal fees

a. Failure confers a directory, not mandatory power to dismiss

Sec. 5, Rule VI, 2011 NLRC Rules of Procedure

SECTION 5. APPEAL FEE. — The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

Late payment of appeal fees, broader interest of justice must be considered

C.W. Tan Mfg. v. NLRC

Facts: Private respondent failed to pay the required filing fee within the reglementary period of appeal and he paid for the same only after this case was elevated to this Court.

Issue: Whether or not the failure to pay the docketing fee within the reglementary period of appeal is jurisdictional in character such that non-compliance with the same renders the decision of the labor arbiter final and executory. NO

Ruling: As to the issue of the non-payment of the appeal fee on time, this Court held in Del Rosario & Sons Logging

Enterprises, Inc. v. NLRC that "the failure to pay the appeal docketing fee confers a directory and not a mandatory power to dismiss an appeal and such power must be exercised with a sound discretion and with a great deal of circumspection considering all attendant circumstances."

It is true that in *Acda v. Minister of Labor*, we said that **the payment of the appeal fee is "by no means a mere technicality but is an essential requirement in the perfection of an appeal."** However, where as in this case the fee had been paid belatedly, the broader interest of justice and the desired objective in deciding the case on the merits demand that the appeal be given due course.

From the foregoing, it is clear that the **technical rules of evidence are not binding in proceedings before the NLRC or labor arbiters** and that all reasonable means should be used to ascertain the facts of the case without regard to the technicalities of law or procedure.

In this case, although it is obvious that private respondent failed to pay the required docketing fee for an unreasonable length of time nevertheless this Court finds that under the circumstances of the case and considering the merit of the appeal, the **greater interest of justice will be served by giving due course to the appeal despite the much delayed payment of the docketing fee**. Indeed, private respondent Brimon, being a dismissed employee, can very well be considered as a pauper litigant whose failure to pay the nominal docketing fee of P25.00 within the reglementary period should be treated with understanding and compassion.

3. Bond is a condition *sine qua non* for the perfection of appeal; mere motion to reduce bond without posting a bond in a reasonable amount does not stop the running of the period for appeal

Sec. 5, Rule VI, 2011 NLRC Rules of Procedure

SECTION 6. BOND. – *In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.*

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission, and shall be accompanied by original or certified true copies of the following:

- (a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be effective until final disposition of the case;
- (b) an indemnity agreement between the employer-appellant and bonding company;
- (c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; and

(d) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist an accredited bonding company.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. The bond shall still be liable even if the appeal is dismissed for non-perfection or for whatever ground. These conditions shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

Property bond

A property bond is permissible. If you do not have money but you have properties, you can use your property as a form of security. Just present the title of the property to show that you want to offer the property as a bond.

Appeal fees and Appeal bond

Payment of appeal fees and appeal bond. Appeal fees are more feasible while an appeal bond is mandatory but if you are having a hard time paying for your appeal bond, you can file a motion to reduce the appeal bond.

Motion to reduce appeal bond

The requirements to file for a motion to reduce appeal bond are: 1) meritorious ground; and 2) payment of a reasonable amount of the bond or at least 10% of the monetary award. If either of these requisites are missing, your motion to reduce the bond does not stop the running of the period to appeal.

Ten calendar days

Vir-jen Shipping and Marine Services

Doctrine: Article 223 of the Labor Code provides thus:

Appeal. — Decisions, awards, or orders of the Labor Arbiters or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within **ten (10) days** from receipt of such awards, orders, or decisions.

After mature and careful deliberation, We have arrived at the conclusion that **the shortened period of ten (10) days fixed by Article 223 contemplates calendar days and not working days**. We are persuaded to this conclusion, if only because We believe that it is precisely in the interest of labor that the law has commanded that **labor cases be promptly, if not peremptorily, dispose of**. Long periods for any acts to be done by the contending parties can be taken advantage of more by management than by labor. Most labor claims are decided in their favor and management is generally the appellant. **Delay, in most instances, gives the employers more opportunity not only to prepare even ingenious defenses, what with well-paid talented lawyers they can afford, but even to wear out the efforts and meager resources of the workers, to the point that not infrequently the latter either give up or compromise for less than what is due them.**

P2,000,000.00 as moral and exemplary damages, and (c) attorney's fees equivalent to 10% of the total monetary award NLRC denied the motion to reduce bond, explaining that "in cases involving monetary award, an employer seeking to appeal the [LA's] decision to the Commission is unconditionally required by Art. 223, Labor Code to post bond in the amount equivalent to the monetary award"

Issue: Whether or not the motion to reduce bond should be entertained by the NLRC?

Ruling Yes. NLRC should entertain the motion to reduce appeal bond subject to 2 conditions:

1. There is a meritorious ground
2. A bond in a reasonable amount is posted

No. 2, a motion shall be accompanied by the posting of a provisional cash or surety bond equivalent to 10% of the monetary award.

What constitutes a reasonable amount in the determination of the final amount of appeal bond

As regards the requirement on the posting of a bond in a "reasonable amount," the Court holds that the final determination thereof by the NLRC shall be based primarily on the merits of the motion and the main appeal.

On the matter of the filing and acceptance of motions to reduce appeal bond, as provided in Section 6, Rule VI of the 2011 NLRC Rules of Procedure, the Court hereby RESOLVES that henceforth, the following guidelines shall be observed:

- (a) The filing of a motion to reduce appeal bond shall be entertained by the NLRC subject to the following conditions: (1) there is meritorious ground; and (2) a bond in a reasonable amount is posted;
- (b) For purposes of compliance with condition no. (2), a motion shall be accompanied by the posting of a provisional cash or surety bond equivalent to ten percent (10%) of the monetary award subject of the appeal, exclusive of damages and attorney's fees;
- (c) Compliance with the foregoing conditions shall suffice to suspend the running of the 10-day reglementary period to perfect an appeal from the labor arbiter's decision to the NLRC;
- (d) The NLRC retains its authority and duty to resolve the motion to reduce bond and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of "meritorious grounds" and "reasonable amount"; and
- (e) In the event that the NLRC denies the motion to reduce bond, or requires a bond that exceeds the amount of the provisional bond, the appellant shall be given a fresh period of ten (10) days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

But the Supreme Court also said that the **motion to reduce the appeal bond should accompany two things:**

- 1) a meritorious ground; and
- 2) a reasonable amount of the bond.

Meritorious ground - there has to be justifiable

Requirements for motion to reduce bail bond - meritorious ground and a "reasonable" amount for the bond posted/10% of monetary award

McBurnie v. Gauzon

DOCTRINE:

- (a) The filing of a motion to reduce appeal bond shall be entertained by the NLRC subject to the following conditions: (1) there is meritorious ground; and (2) a bond in a reasonable amount is posted;
- (b) For purposes of compliance with condition no. (2), a motion shall be accompanied by the posting of a provisional cash or surety bond equivalent to ten percent (10%) of the monetary award subject of the appeal, exclusive of damages and attorney's fees;

Facts: In 2002, McBurnie, an Australian national, instituted a complaint for illegal dismissal and other monetary claims against the respondents EULALIO GANZON, EGI-MANAGERS, INC. and E. GANZON, INC. McBurnie claimed that in May 1999, he signed a five-year employment agreement with the company EGI as an Executive Vice-President who shall oversee the management of the company's hotels and resorts within the Philippines. He performed work for the company until sometime in November 1999, when he figured in an accident that compelled him to go back to Australia while recuperating from his injuries. While in Australia, he was informed by respondent Ganzon that his services were no longer needed because their intended project would no longer push through.

LA declared McBurnie as having been illegally dismissed from employment, and thus entitled to receive from the respondents; (a) US\$985,162.00 as salary and benefits for the unexpired term of their employment contract, (b)

circumstances. The employer cannot pay the full amount (usually out of financial distress, etc.) so the employer may present documents from independent accountants of financial statements showing they are financially struggling and ask to reduce the bond. [So di lang basta-basta ang filing to reduce the appeal bond]

Reasonable amount of the bond deposited and what the Supreme Court held reasonable is **10% of the monetary award**. So the SC has a very specific amount in mind: 10% of the monetary award.

So those are the two requisites for a motion to reduce the appeal bond: meritorious ground and the reasonable amount of the bond (the 10% of the monetary award)

Bond is a condition sine qua non for the perfection of appeal

Catubay v. NLRC

DOCTRINE: The provision stating that an appeal by an employer may be perfected "only" upon the posting of a cash or surety bonds show the intention of the lawmakers to make the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.

Facts Evelyn Catubay, et al. were employed by Majescan Manufacturing Corporation and Pan Asia Food Manufacturing Corporation. Majescan and Pan Asia were sold to private respondent Fishwealth Canning Corporation which is owned and managed by one Mrs. Lapaz Ngo. Petitioners were retained in the employ of Fishwealth.

Petitioners, with the exception of Virginio Maglay, were piece-rate workers who were paid from P50.00 to P70.00 per day. Maglay, on the other hand, was a daily-paid with a daily wage of P128.00.

Maglay suffered a work-related accident. He was bending to shovel fish from a tank when a nearby pile of trays containing wet fish fell on him. He suffered broken hip bone and developed a limp as a result of the accident. The rest of the individual petitioners, on the other hand, contracted arthritis or rheumatism because of their constant exposure to cold. Petitioners went on unpaid sick leave with the approval of private respondents. However, when they returned to work after their leave, private respondents refused to take them back unless they applied first with an employment agency and/or a labor contractor and accept new terms of employment. Hence, petitioners filed a complaint for payment of salary differentials and separation pay against private respondents before the arbitration branch of the NLRC

Issue: Whether or not the NLRC abused its discretion in taking cognizance of private respondents' appeal and ordering the remand of the case to the labor arbiter? (YES)

Ruling Clearly, for an appeal to be perfected, the appellant must not only file the appeal memorandum and pay the appeal fee, but must also post the required cash or surety bond. The posting of a cash or surety bond is mandatory. Moreover, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but

also jurisdictional.

In the case at bar, the private respondents received a copy of the January 24, 1994 decision of the labor arbiter on February 4, 1994. They filed their appeal memorandum by registered mail on the last day for filing the same or on February 14, 1994. However, in his order, dated April 19, 1994, the labor arbiter noted that the records showed only receipt of the appeal fee of P110.00. There was nothing therein to show that the required cash or surety bond had been posted by the private respondents. Hence, the labor arbiter held that no appeal had been perfected within the reglementary period. Consequently, the decision of the labor arbiter, dated January 24, 1994, became final and executory.

Here, no justifiable reason was put forth by the private respondents for their late filing of the required bond. The bond is sine qua non to the perfection of appeal from the labor arbiter's monetary award. The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond; the word "only" makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.

Borja Estate v. Sps Ballad

Doctrine: It bears stressing that the bond is sine qua non to the perfection of appeal from the labor arbiter's monetary award. The requirements for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. The failure of the petitioners to comply with the requirements for perfection of appeal had the effect of rendering the decision of the labor arbiter final and executory and placing it beyond the power of the NLRC to review or reverse it. As a losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of his/her case.

Damages excluded from computation of bond, "mandatories" vs. "discretionaries"

Sara Lee Phil., Inc. v. Macatlang

Facts Aris Philippines Workers Confederation of Filipino Workers (Union), staged a strike for violation of duty to bargain collectively, union busting and illegal closure. After conciliation, the parties entered into an agreement whereby Aris undertook to pay its employees the benefits which accrued by virtue of the company's closure. FAPI was incorporated. When said incorporation came to the knowledge of the affected employees, they all filed 63 separate complaints against Aris for illegal dismissal. The complaints alleged that FAPI is engaged in the manufacture and exportation of the same articles manufactured by Aris; that there was a mass transfer of Aris' equipment and employees to FAPI's plant in Muntinlupa, Rizal; that contractors of Aris continued as contractors of FAPI; and that the export quota of Aris was transferred to FAPI. Essentially, the complainants insisted that FAPI was organized by the management of Aris to continue the same business of Aris,

thereby intending to defeat their right to security of tenure. Aris countered that it had complied with all the legal requirements for a valid closure of business operations; that it is not, in any way, connected with FAPI, which is a separate and distinct corporation; that the contracts of Aris with its contractors were already terminated.

Issue: W/N the amount awarded to complainants as damages are excluded in the determination of the appeal bond

Ruling Yes, damages are excluded in the determination of the appeal bond.

The NLRC Interim Rules on Appeals under Republic Act No. 6715 specifically provides that damages shall be excluded in the determination of the appeal bond, thus:

SECTION 7. Bond. — In case of a judgment of the Labor Arbiter involving a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in an amount equivalent to the monetary award in the judgment appealed from.

For purposes of the bond required under Article 223 of the Labor Code, as amended, the monetary award computed as of the date of promulgation of the decision appealed from shall be the basis of the bond. For this purpose, moral and exemplary damages shall not be included in fixing the amount of the bond.

Pending the issuance of the appropriate guidelines for accreditation, bonds posted by bonding companies duly accredited by the regular courts, shall be acceptable.

Thus, under the applicable rules, damages and attorney's fees are excluded from the computation of the monetary award to determine the amount of the appeal bond. We shall refer to these exclusions as "discretionaries," as distinguished from the "mandatories" or those amounts fixed in the decision to which the employee is entitled upon application of the law on wages. These mandatories include awards for backwages, holiday pay, overtime pay, separation pay and 13th month pay.

The mandatories comprise the backwages and separation pay. The daily wage rate of an employee of Aris ranges from P170-P200. The average years of service ranges from 5-35 years. The backwages were computed at 108 months or reckoned from the time the employees were actually terminated until the finality of the Labor Arbiter's Decision. Approximately, the amount to be received by an employee, exclusive of damages and attorney's fees, is about P600,000.00.

But for separation pay and backwages there is definitely a very specific way to compute them.

Atty: Because the employees are entitled to those as a matter of course if makadaog sila.

The Supreme Court held that the appeal bond is to be paid based on the amount of the mandatories and exclude the damages. So when you're computing for the appeal bond how much should the employer deposit with the bondsman, you base it on everything except the damages because damages are not part of what is required or the mandatory amounts to be received by the employee.

So what do you do if for example the employer doesn't have the money to file?

Php 200,000 (the amount awarded to the employee in the appeal bond). **What does the employer do?**

The remedy of the employer is to **file for a motion to reduce the bond within the period of the appeal.** (see *McBurnie v. Gauzon*)

For example, there's a decision today (June 7) and the appeal is in 10 days. June 17 is the deadline of the appeal. The employer has to file an appeal bond of Php 200,000. Having no money, he will instead file for a motion to reduce the appeal bond within the period.

Property bond is permissible

UERM- Memorial Medical Center v. NLRC

DOCTRINE The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond."

Facts: Republic Act No. 6640 took effect which mandated a ten (P10.00) peso increase on the prevailing daily minimum wage of P54.00. In applying said law, the petitioners granted salary increases to their employees

Members of the union got 307 PHP a month while ordinary rank and file only got 209 PHP. Private respondents demanded from the petitioners payment of the salary differential and a complaint was filed for correction of the wage distortion

Issue: WON the appeal was perfected even though UERM only posted a property bond

Ruling: Yes, the appeal was perfected because although the LC requires the posting of a cash or surety bond to perfect the appeal the SC has already held in several cases that labor cases should be decided on merit and not on strict technical rules

Article 223 of the LC

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the

Mandatories	Discretionaries
those the employee is absolutely entitled to (i.e. separation pay, backwages...essentially actual damages if we make an equivalent comparison)	Damages i.e. moral damages, exemplary damages, etc the labor arbiter can or cannot grant those in different amounts depending on the labor arbiter.

amount equivalent to the monetary award in the judgment appealed from

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond."

4. Instances where tardy appeals are allowed

Borja Estate v. Sps Ballad

Situations where the Court allowed tardy appeals:

While it is true that this Court has relaxed the application of the rules on appeal in labor cases, it has only done so where the failure to comply with the requirements for perfection of appeal was justified or where there was substantial compliance with the rules. Hence, the Supreme Court has allowed tardy appeals in judicious cases, e.g.,

- 1) where the presence of any justifying circumstance recognized by law, such as fraud, accident, mistake or excusable negligence, properly vested the judge with discretion to approve or admit an appeal filed out of time;
- 2) where on equitable grounds, a belated appeal was allowed as the questioned decision was served directly upon petitioner instead of her counsel of record who at the time was already dead;
- 3) where the counsel relied on the footnote of the notice of the decision of the labor arbiter that the aggrieved party may appeal. . . within ten (10) working days;
- 4) in order to prevent a miscarriage of justice or unjust enrichment such as where the tardy appeal is from a decision granting separation pay which was already granted in an earlier final decision; or
- 5) where there are special circumstances in the case combined with its legal merits or the amount and the issue involved.

5. Only a quorum is necessary

6. Admission of evidence

Clarion Printing House, Inc.

Doctrine: The settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. In fact, labor officials are mandated by the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of

law or procedure, all in the interest of due process.

C. EFFECTS OF PENDING APPEAL ON DECISION

Sec. 12, Rule XI, 2011 NLRC Rules of Procedure

SECTION 12. EXECUTION OF REINSTATEMENT PENDING APPEAL.

— In case the decision includes an order of reinstatement, and the employer disobeys the directive under the second paragraph of Section 19 of Rule V or refuses to reinstate the dismissed employee, the Labor Arbiter shall immediately issue writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such non-reinstatement in the amount specified in the decision.

The Labor Arbiter shall motu proprio issue a corresponding writ to satisfy the reinstatement wages as they accrue until actual reinstatement or reversal of the order of reinstatement.

The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same. If he/she disobeys the writ, such employer or person may be cited for contempt in accordance with Rule IX.

IMPORTANT TOPIC: What happens when an appeal is pending? --- Refer to Article 229 [223] of the LC.

Art. 229 [223]. Appeal. *In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal.* The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

KEYNOTE – this only applies if there is an order for reinstatement. If the order was for separation pay in lieu of reinstatement, Article 223 does not apply because the law is clear that it only refers to reinstatement, so if there is no order for reinstatement, this article would not apply.

SO WHAT DOES NOT ART. 223 OF THE LC MEAN?

If the Labor Arbiter's decision says that there was an illegal dismissal and the employee shall be reinstated to work, even if the ER will file an appeal for such an order, the ER has to comply with the reinstatement

order immediately and not necessarily the monetary award. The monetary awards are on hold pending the appeal but the order for reinstatement is immediately executory.

PURPOSE OF THIS PROVISION: to restore the status quo and to give the EE a measure of social justice. This gives the EE a form of livelihood and other means of income while pending appeal.

DIFFERENCE BETWEEN ACTUAL REINSTATEMENT AND PAYROLL REINSTATEMENT:

The employer may opt for either actual reinstatement or payroll reinstatement. Actual reinstatement means the EE was ordered to report back to work. Payroll reinstatement, on the other hand, means that the employee is put in the payroll of the employer, but does not actually work. The employees receive a salary as if they are working.

WHAT IF IT IS THE NLRC THAT ORDERS FOR REINSTATEMENT? The SC has ruled that Article 223 of the Labor Code is not applicable to the NLRC. The immediate execution of the order for reinstatement only applies to the Labor Arbiter's decision and not the decision of the NLRC. There is no provision in the Labor Code that says that the order of the NLRC is immediately executory when it comes to reinstatement.

WHAT DOES "IMMEDIATELY EXECUTORY" MEAN? It means that the order should be implemented as soon as possible. There is no need for the employee to file for a motion for execution.

For example the Labor Arbiter orders for reinstatement, and then the NLRC upheld the decision of the LA. The Employer appealed to the CA. The original rule would apply because what is immediately executory is the order of the Labor Arbiter and if the NLRC agrees, it does not have an impact as long as it was based on the Labor Arbiter.

dismissal, already found illegal by the labor arbiter, is elevated on appeal by the employer. Such substantive right cannot be treated as a procedural matter that can be undone and taken back when conditions change.

In fine, therefore, the no-reimbursement rule remains.

No backwages in return to work orders issued by Secretary of Labor, Garcia ruling inapplicable

Manggagawa ng Komunikason sa Pilipinas v. Philippine Long Distance Telephone Company Incorporated

Doctrine: Whether or not the prevailing doctrine laid down in Garcia v. Philippine Airlines which provides that even if a Labor Arbiter's order of reinstatement is reversed on appeal, the employer is obligated "to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court applies in this case.

No, Garcia is not applicable. There is no order of reinstatement from a Labor Arbiter in the case at bar, instead, what is at issue is the return-to-work order from the Secretary of Labor and Employment. An order of reinstatement is different from a return-to-work order in the sense that the award of reinstatement, including backwages, is awarded by a Labor Arbiter to an illegally dismissed employee pursuant to Article 294 of the Labor Code; while a return-to-work order is issued by the Secretary of Labor and Employment when he or she assumes jurisdiction over a labor dispute in an industry that is considered indispensable to the national interest, and is merely meant to maintain status quo while the main issue is being threshed out in the proper forum. Clearly, Garcia is not applicable in the case at bar, and there is no basis to reinstate the employees who were terminated as a result of redundancy.

If for example, when the case reached the Supreme Court, and the Supreme Court reversed everything, no reinstatement, no illegal dismissal, is the employee obliged to return all the benefits/wages he received from the time he was reinstated? Let's say, LA's order for reinstatement was today, June 7, 2022 and it was immediately executory. The employee goes back to work, earns salaries, and the employer appealed to the SC but since cases can take years, the SC ruled that there is no illegal dismissal on June 7, 2032, no reinstatement. **Is the employee required to reimburse the employer 10 years worth of wages?**

A: No. For one thing, it would make the remedy pointless because the reason why you are putting the employee back to work is because for him to earn a living but later on there is a risk for him to return the money.. The employee would be gambling. It would be unfair and the purpose of social justice would be useless. Second, this is particularly applicable in actual reinstatement, in actual reinstatement, the employee was working. Fair day's wages for a fair day's work. An employee who actually renders services deserves to be paid. It would be unfair if he rendered service for 10 years and later on he was required to return it. He would

Reinstatement pending appeal

Garcia v. Philippine Airlines, Inc

Doctrine: Garcia downplays the "stray posture" of Genuino and reaffirms the nonreimbursement doctrine in Roquero and conforming rulings. The court explains in Garcia that pursuant to the police power, the state may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee. The immediate reinstatement is "a saving act" designed to stop a continuing threat or danger to the survival or even the life of the employee and his family. Moreover, the social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment.

Concurring with the no-reimbursement doctrine, Justice Brion explains (among other points) that Article 223 grants the employee the substantive right to receive his salary when his

then be giving free labor, which is unfair.

Remember that this rule only applies to Labor Arbiter's decision (not the CA or NLRC), of reinstatement pending appeal.

What if there is a decision and it becomes final and executory?

Basically the complainant has to file a motion for execution of the judgment. Basically you are asking the law and the sheriff to execute the decision and compel the other party to follow it. For example if there is a monetary award, (e.g. backwages, separation pay, etc), the decision becomes final, and the employee files a motion for execution. The sheriff will then proceed against all the funds, properties, bank accounts of the employer and enforce that decision. This is similar to a judgment in regular courts. If for example the labor arbiter's decision was later on elevated to the CA, and the decision became final. So, the employee goes to the LA saying I want to file a motion for execution of the decision of the CA but the LA refuses because he does not agree with the CA. The employee can file a mandamus case against the LA or file an admin case. When the decision is final and executory it is obligatory for the LA and the sheriff to implement the decision as it is. There were cases where the LA refused to execute the decision bec they didn't agree to it but they are bound to implement what the higher courts ordered.

D. EXECUTION

What happens if a party refuses to follow the execution? What if the final execution was reinstatement but the employer refused to accept the employee again?

The remedy of the employee to file a motion for execution and ask the LA to declare the employer in contempt. Just like in the regular courts. The remedy is not to file another motion for execution because you already filed a motion for execution. You cannot also go to the regular courts to enforce the decision because this is a decision of the labor tribunals. Usually the sheriff will garnish bank accounts, secure and sell the properties of the employer.

Art. 230. Execution of Decisions, Orders, or Awards. —
(a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbitrator, or Med-Arbiter or Voluntary Arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or Regional Director, the

Commission, the Labor Arbiter or Med-Arbiter, or Voluntary Arbitrator or panel of Voluntary Arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsels of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

(b) The Secretary of Labor and Employment, and the Chairman of the Commission may designate special sheriffs and take any measure under existing laws to ensure compliance with their decisions, orders or awards and those of Labor Arbiters and Voluntary Arbitrators or panel of Voluntary Arbitrators, including the imposition of administrative fines which shall not be less than Five Hundred Pesos (P500.00) nor more than Ten Thousand Pesos (P10,000.00).

Nova v. Judges Dames II

Doctrine: A regular court has no jurisdiction to hear and decide questions which arise and are incidental to the enforcement of decisions, orders or awards rendered in labor cases by appropriate officers and tribunals of the Department of Labor and Employment. Corollarily, any controversy in the execution of the judgment shall be referred to the tribunal which issued the writ of execution since it has the inherent power to control its own processes in order to enforce its judgments and orders. True, an action for the damages lies within the jurisdiction of a regional trial court. However, the regional trial court has no jurisdiction to issue a temporary restraining order in labor cases. Indeed, the respondent Judge restrained the execution of a final decision of the labor arbiter, which he cannot lawfully do

Deltaventures Resources v. Hon. Cabato

Doctrine: Precedents abound confirming the rule that said courts have no jurisdiction to act on labor cases or various incidents arising therefrom, including the execution of decisions, awards or order. Jurisdiction to try and adjudicate such cases pertains exclusively to the proper labor official concerned under the Department of Labor and Employment. To hold otherwise is to sanction split jurisdiction which is obnoxious to the orderly administration of justice

E. INJUNCTION BY RTC

1. Generally, cannot issue injunction against NLRC

Yupangco Cotton Mills, Inc. v. Court of Appeals

Doctrine: A third-party whose property has been levied upon by a sheriff to enforce a decision against a judgment debtor is afforded with several alternative remedies to protect its interests. The third party may avail himself of alternative remedies cumulatively, and one will not preclude the third party from availing himself of the other alternative remedies in the event he failed in the remedy first availed of.

Thus, a third party may avail himself of the following **alternative remedies**:

- a) File a third-party claim with the sheriff or the Labor Arbiter, and
- b) If the third-party claim is denied, the third party may appeal the denial to the NLRC.

The remedies above mentioned are cumulative and may be resorted to by a third-party claimant independent of or separately from and without need of availing of the others. If a third-party claimant opted to file a proper action to vindicate his claim of ownership, he must institute an action, distinct and separate from

that in which the judgment is being enforced, with the court of competent jurisdiction even before or without need of filing a claim in the court which issued the writ, the latter not being a condition sine qua non for the former. In such proper action, the validity and sufficiency of the title of the third-party claimant will be resolved and a writ of preliminary injunction against the sheriff may be issued."

Facts: From the records before us and by petitioners own allegations and admission, it has taken the following actions in connection with its claim that a sheriff of the National Labor Relations Commission erroneously and unlawfully levied upon certain properties which it claims as its own.

1. It filed a notice of third-party claim with the Labor Arbiter on May 4, 1995.
2. It filed an Affidavit of Adverse Claim with the National Labor Relations Commission (NLRC) on July 4, 1995, which was dismissed on August 30, 1995, by the Labor Arbiter.
3. It filed a petition for certiorari and prohibition with the Regional Trial Court of Manila, October 6, 1995. The Regional Trial Court dismissed the case on October 11, 1995 for lack of merit.
4. It appealed to the NLRC the order of the Labor Arbiter dated August 13, 1995 which dismissed the appeal for lack of merit on December 8, 1995.
5. It filed an original petition for mandatory injunction with the NLRC on November 16, 1995. This case is still pending with that Commission.
6. It filed a complaint in the Regional Trial Court in Manila but it was dismissed. Hence, this petition.

In all of the foregoing actions, petitioner raised a common issue, which is that it is the owner of the properties located in the compound and buildings of Artex Development Corporation, which were erroneously levied upon by the sheriff of the NLRC as a consequence of the decision rendered by the said Commission in a labor case.

On March 29, 1996, the Court of Appeals promulgated a decision dismissing the petition on the ground of forum shopping and that petitioners remedy was to seek relief from this Court.

On April 18, 1996, petitioner filed with the Court of Appeals a motion for reconsideration of the decision.

Issue: W/N the injunction was valid

Ruling: NO The general rule that no court has the power to interfere by injunction with the judgments or decrees of another court with concurrent or coordinate jurisdiction possessing equal power to grant injunctive relief, applies only when no third-party claimant is involved. When a third-party, or a stranger to the action, asserts a claim over the property levied upon, the claimant may vindicate his claim by an independent action in the proper civil court which may stop

the execution of the judgment on property not belonging to the judgment debtor.

In light of the above, the filing of a third-party claim with the Labor Arbiter and the NLRC did not preclude the petitioner from filing a subsequent action for recovery of property and damages with the Regional Trial Court. And, the institution of such complaint will not make petitioner guilty of forum shopping.

2. Exception: third party claims over property subject of execution

Tanongan v. Samson

Facts: Respondents were among the employees of Cayco Marine Service (CAYCO), which was engaged in the business of hauling oil, owned and operated by Iluminada Cayco Olizon. Respondents filed a complaint against CAYCO and Olizon for illegal dismissal, underpayment of wages, non-payment of holiday pay, rest day and leave pay. The Labor Arbiter dismissed the complaint for lack of merit. On appeal, it was reversed by the NLRC. CAYCO and Olizon sought reconsideration of the NLRC's decision, but it proved futile. On petition for certiorari to the Supreme Court, the Court denied the petition. Accordingly, the decision of the NLRC became final and executory. A writ of execution was issued to satisfy the judgment award for each respondent. After the notice of levy/sale on execution of personal property was issued, CAYCO and/or Olizon's motor tanker was seized, to be sold at public auction. However, a certain Dorotea Tanongan, petitioner herein, filed a third party claim before the Labor Arbiter, alleging that she was the owner of the subject motor tanker. The Labor Arbiter dismissed the third party claim for lack of merit. On appeal to the NLRC, the latter reversed the decision of the Labor Arbiter. The Court of Appeals overruled the decision of the NLRC. Hence, this petition.

Issue: WON a third-party claim on a levied property automatically prevents execution. NO

Ruling: When a third-party claim is filed, the sheriff is not bound to proceed with the levy of the property unless the judgment creditor or the latter's agent posts an indemnity bond against the claim. Where the bond is filed, the remedy of the third-party claimant is to file an independent reivindicatory action against the judgment creditor or the purchaser of the property at public auction. The NLRC should not have automatically lifted the levy and restrained execution, just because a third-party claim had been filed.

Can the regular courts interfere with labor cases?

NO. It is not within their jurisdiction to interfere with

labor cases because employee-employer relationship is exclusively within the labor tribunals. It is a matter of respecting the jurisdiction of others. In the early 2000s there was a series of cases where the SC held an exception: if the execution affects the property of a 3rd person not a party of the labor case the regular courts can issue the injunction. Example there is a final decision by the LA, a motion for execution was filed against a single proprietorship employer, the sheriff secured the property of the employer, he included a parcel of land that he would sell to be used for the judgment. However, it turns out that the owner of such land was not the employer, but his sister. The sister, who is not a party to the labor case, can go to RTC and ask for injunction contending that it was her property. Otherwise, the labor arbiter would be adjudicating property. We must take note that this was held during the early 2000s, 2011 Rule XI of the NLRC Rules of Procedure provides that:

Section 14. Third Party Claim. (a) If the property levied is claimed by any person other than the losing party, such person may file a third party claim not later than five (5) days from the last day of posting or publication of the notice of execution sale, otherwise the claim shall be forever barred. Such third party claim must comply with the following requirements:

- (1) An affidavit stating title to property or right to the possession thereof and the property's fair market value with supporting evidence;
- (2) Payment of prevailing filing fee; and
- (3) In case the subject matter of the third party claim is a real property, posting of a refundable cash deposit of Twenty Thousand Pesos (P20,000) for the payment of republication of notice of auction sale."

So in effect since the implementation of the 2011 NLRC Rules of Procedure, there's actually now a new way of third parties protecting their interests and it is to file with the Labor Arbiter. In a way, we can say that those previous rulings by the early 2000s have become moot and academic. But you can also say that those rules involving the regular courts are still applicable because you have to consider instances like "what if they can't file their third-party claim on time?" or "what if they can't follow the requirement under the NLRC Rules of Procedure?" Would this in effect adjudicate the property of the third person to the winning party? So in effect we would still go back to the early 2000s rules seeking help from the regular courts because in no way can the Rules of the NLRC adjudicate property because that's not within their purview or jurisdiction. This is not to say that the 2011 NLRC Rules of Procedure is pointless but it merely gives a third party claimant the opportunity to settle and protect their interests in the level of the Labor Arbiter without having to go to the regular courts.

3. Exception to exception: third party claim is by virtue of a simulated sale

F. APPEAL FROM NLRC

1. To CA, not to SC

St. Martin Funeral Homes v. NLRC

Doctrine: Mode of judicial review over decisions of the NLRC — the way to review NLRC decisions is through the special civil action of certiorari under Rule 65. The jurisdiction over such action belongs to both the Supreme Court and the Court of Appeals but in line with the doctrine on hierarchy of courts, the petition should be initially presented to the lower of the two courts, that is, the Court of Appeals.

2. Petition for Certiorari under Rule 65: 60-day period

So from the NLRC, you appeal to the Court of Appeals.

What is the method for appealing to the Court of Appeals?

A: You file for *Certiorari* under Rule 65. So from NLRC, Rule 65 to the Court of Appeals.

Certiorari not barred by finality of judgment

Sarona v. NLRC, GR. No. 185280

Doctrine: The finality of the NLRC's decision does not preclude the filing of a petition for certiorari under Rule 65 of the Rules of Court. That the NLRC issues an entry of judgment after the lapse of ten (10) days from the parties' receipt of its decision will only give rise to the prevailing party's right to move for the execution thereof but will not prevent the CA from taking cognizance of a petition for certiorari on jurisdictional and due process considerations. In turn, the decision rendered by the CA on a petition for certiorari may be appealed to the Supreme Court by way of a petition for review on certiorari under Rule 45 of the Rules of Court. Rule 45 of the Rules of Court provides the remedy of an appeal by certiorari from decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, which would be but a continuation of the appellate process over the original case. Since an appeal to the Supreme Court is not an original and independent action but a continuation of the proceedings before the CA, the filing of a petition for review under Rule 45 cannot be barred by the finality of the NLRC's decision in the same way that a petition for certiorari under Rule 65 with the CA cannot.

3. Certified true copy: NLRC Decision

Certified true copy must be NLRC's decision, not LA's decision

OSM Shipping Phil., Inc. v. NLRC

Facts:

Private respondent filed a complaint for illegal dismissal, non-payment of salaries, overtime pay and vacation pay against the petitioner. Private respondent alleged that the petitioner did not pay his salary for seven months. On behalf of its principal PC-SASCO, petitioner did not deny hiring a private respondent as a master mariner. However, it argued that he was not deployed overseas. The shipowner allegedly changed its plan on the use of the vessel. Instead of using it for overseas trade, it decided to use it in the coastwide trade. Hence, petitioner contended that using the vessel coastwise trade and subsequently chartering it to another principal had the effect of novating the employment contract. Petitioner further claimed that with the termination of the management agreement and crew agency agreement, its principal was responsible for the payment of the private respondent's wages. The Labor Arbiter ruled for the private respondent. On appeal, the NLRC affirmed the decision of the Labor Arbiter with modification as to the amount of liability. On appeal, the Court of Appeals dismissed the petition for failure of petitioner to attach to its Petition a duplicate original or a certified true copy of the Labor Arbiter's Decision, and for not indicating the actual address of private respondent.

Issue: Whether or not petitioner is required to attach a certified true copy of the LA's Decision to its Petition for Certiorari challenging the NLRC judgment. - NO

Ruling:

Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies. Even under Rule 65 on certiorari and prohibition, petitions need to be accompanied only by duplicate originals or certified true copies of the questioned judgment, order or resolution. Other relevant documents and pleadings attached to it may be mere machine copies thereof. Numerous decisions issued by this Court emphasize that in appeals under Rule 45 and in original civil actions for certiorari under Rule 65 in relation to Rules 46 and 56, what is required to be certified is the copy of the questioned judgment, final order or resolution. Since the LA's Decision was not the questioned ruling, it did not have to be certified. What had to be certified was the NLRC Decision.

Another requirement if you are appealing from the NLRC to the Court of Appeals, you need to submit a

certified true copy of the NLRC's decision. Not the decision of the Labor Arbiter but the NLRC's decision. Why? Because it's the decision of the NLRC that is being questioned so that's the copy that you have to provide.

G. APPEAL FROM CA TO SC: PETITION FOR REVIEW ON CERTIORARI/ UNDER RULE 45; QUESTIONS OF LAW ONLY

From the Court of Appeals, your remedy is Rule 45 to the Supreme Court.

So just remember: Labor Arbiter, appeal to NLRC. From NLRC, appeal by means of Petition for Certiorari under Rule 65. Then from there you appeal to the Supreme Court under Petition for Review under Certiorari under Rule 45.

Is it okay if you appeal directly to the Supreme Court from the NLRC for purely questions of law?

A: As some of you may know, especially those who already took up Civil Procedure, **the Supreme Court actually has jurisdiction over pure questions of law.**

So it has jurisdiction over pure questions of law from the NLRC. Technically, that is also correct. However, we also have to go back to the **Doctrine of Hierarchy of Courts.** So even though the Supreme Court also has jurisdiction over pure questions of law, we also have to take into account the fact that the Court of Appeals is next in line in the hierarchy of courts above the NLRC. You could go directly to the Supreme Court but most likely, in a practical sense, they would probably remand it to the Court of Appeals. So the CA and SC have concurrent jurisdiction but to respect the hierarchy of courts, you would go to the Court of Appeals first. Probably if it is a very very meritorious and possibly controversial case, maybe you could go directly to the SC. But as a general rule, you still need to go through the CA.

Metro Transit Orgn., Inc. v. Court of Appeals

Doctrine:

The instant case is a petition for review where only questions of law may be raised. What petitioners are attempting to do here is to urge the Court to re-examine the probative value or evidentiary weight of the evidence presented below. The Court cannot do this unless the appreciation of the pieces of evidence on hand is glaringly erroneous. The Court of Appeals affirmed the findings of both the NLRC and the Labor Arbiter that petitioners failed to present substantial evidence to establish that Evangelista stole the 2,000 pieces of tokens. The findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on this Court unless patently erroneous. In the instant case, there is no patent errors.

XIII. COMPROMISE AGREEMENTS, WAIVERS AND QUITCLAIMS

A. ATTEMPTS TO AMICABLY SETTLE AT ALL LEVELS

Art. 227 (2)

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction.

Sec. 8, Rule V, 2011 NLRC Rules of Procedure

SECTION 8. Mandatory Conciliation and Mediation Conference.

- a) The mandatory conciliation and mediation conference shall be called for the purpose of (1) amicably settling the case upon a fair compromise; (2) determining the real parties in interest; (3) determining the necessity of amending the complaint and including all causes of action; 4) defining and simplifying the issues in the case; (5) entering into admissions or stipulations of facts; and (6) threshing out all other preliminary matters. The Labor Arbiter shall personally preside over and take full control of the proceedings and may be assisted by the Labor Arbitration Associate in the conduct thereof.
- b) Conciliation and mediation efforts shall be exerted by the Labor Arbiters all throughout the mandatory conferences. Any agreement entered into by the parties whether in partial or full settlement of the dispute shall be reduced into writing and signed by the parties and their counsel or the parties' authorized representatives, if any.
- c) In any case, the compromise agreement shall be approved by the Labor Arbiter, if after explaining to the parties, particularly to the complainants, the terms, conditions and consequences thereof, he/she is satisfied that they understand the agreement, that the same was entered into freely and voluntarily by them, and that it is not contrary to law, morals, and public policy.
- d) A compromise agreement duly entered into in accordance with this Section shall be final and binding upon the parties and shall have the force and effect of a judgment rendered by the Labor Arbiter.
- e) The mandatory conciliation and mediation conference shall, except for justifiable grounds, be terminated within thirty (30) calendar days from the date of the first conference.

- f) No motion for postponement shall be entertained except on meritorious grounds and when filed at least three (3) days before the scheduled hearing.

In all levels in all labor cases, it's always possible to amicably settle the case. Meaning, the parties between themselves would agree to settle the matter. This usually ends up in what is called a Compromise Agreement which is essentially a contract where the parties agree on the terms for their settlement.

A compromise agreement can be done by the parties at all levels even if there are already orders to file position papers, even if there is already a decision from the Labor Arbiter for as long as it has not yet become final and executory, you can always compromise.

So what is the basis for this?

A: We have to remember that labor tribunals, at their core, encourage arbitration. Arbitration being a peaceful settlement of the issues initiated by the parties themselves.

So that's why you'll notice that before the Labor Arbiter, you have your SEnA, you have your mandatory conference because they are trying to encourage the parties to settle. Sometimes the settlement comes a bit late but settlement will always be the preferred means of handling a case.

Settlement and compromise of judgments

Magbanua v. Uy

Doctrine: A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit. They adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. Verily, the compromise may be either extrajudicial (to prevent litigation) or judicial (to end a litigation)

There is no justification to disallow a compromise agreement, solely because it was entered into after final judgment. The validity of the agreement is determined by compliance with the requisites and principles of contracts, not by when it was entered into. As provided by the law on contracts, a valid compromise must have the following elements: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.

In the present case, compliance with the elements of a valid contract is not in issue. Petitioners [complainant workers] do not challenge the factual finding that they entered into a compromise agreement with their

employer. There are no allegations of vitiated consent. Neither was there any proof that the agreement was defective or could be characterized as rescissible, voidable, unenforceable, or void. Instead, petitioners base their argument on the sole fact that the agreement was executed despite a final judgment, which the Court had previously ruled to be allowed by law.

Cosmos Bottling Corp. vs Nagrama

Doctrine: The parties may execute a compromise agreement even after the finality of this decision. They are not precluded from doing so. In a catena of cases, the Court has consistently ruled that even final and executory judgments may be compromised. In Northern Lines, Inc. v. Court of Tax Appeals, the Court recognized the right to compromise final and executory judgments, as long as such right was exercised by the proper party litigants.

B. COMPROMISE AGREEMENT

What are the requirements for a valid compromise agreement?

1. Must be voluntary
2. Binding upon the parties (final adjudication of the case); immediately executory
3. Representatives must be authorized with Special Power of Attorney

ART. 233. COMPROMISE AGREEMENTS. - Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court, shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion.

1. Must be voluntary

What are the requirements for a valid compromise agreement?

First of all, it has to be VOLUNTARY. Obviously, it is essential to have consent, and such consent must be voluntary. All the vices of consent must be absent. There must be no violence, threats, intimidation, etc.

Santiago vs De Guzman

Doctrine: Settlement of disputes by way of compromise whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced, is an accepted, nay desirable and encouraged practice in courts of law and administrative tribunals. It is incumbent upon the Labor Arbiter not only to persuade the parties to settle amicably, but equally to ensure that the compromise agreement entered into by them is a fair one and that the same was forged freely, voluntarily and with a full understanding of the terms and conditions embodied therein as well as the consequences thereof.

Principe vs Philippine Singapore Transport Services

Doctrine: It is true that a compromise agreement once approved by the court has the effect of *res judicata* between the parties and should not be disturbed except for vices of consent and forgery. However, settled is the rule that the NLRC may disregard technical rules of procedure in order to give life to the constitutional mandate affording protection to labor and to conform to the need of protecting the working class whose inferiority against the employer has always been earmarked by disadvantage.

2. Binding upon the parties (*res judicata*); immediately executory

Who is bound to observe the compromise agreement?

A valid compromise agreement is also binding on the parties. It amounts to *res judicata* (final adjudication of the merits of the case). If there is a valid compromise agreement, it is as if the case was dismissed with prejudice; meaning, the employees cannot change their mind and file a case again. Compromise agreement is binding on the parties, and it is also immediately executory. So, if you are ever being convinced into a compromise agreement, you have to think about it very well because, otherwise, you are binding yourself to a final decision. Later on, if you change your mind, that cannot be allowed anymore. So, you have to be very careful when you enter into a compromise agreement. A lot of the time, the employers can manipulate the employees by taking advantage of their innocence because more often than not the employees do not know what they are entitled to (they do not know that they are entitled to separation pay and backwages). The employer would offer an amount that is much less than what the employee would get but the employees, in turn, are happy or willing to accept; plus, the employees might want to avoid the hassle of going through litigation. When the employee accepts such an offer and enters into a compromise agreement with the

employee, that would already amount to res judicata.

Is res judicata binding upon third persons?

Keep in mind that compromise agreement is res judicata between the parties only. So, it is essentially a contract between them. You can neither say that it is binding upon third persons, nor it is binding on the contractor, etc. It is only binding to the people who signed the compromise agreement. For example, if there are 100 employees who filed the case, only 55 of them signed the compromise agreement. Res judicata is only between the employer and the 55 employees who executed the compromise agreement. It is in no way binding on or dismisses the complaints of those other 45 employees. The compromise agreement is only res judicata between those who actually executed it. It is personal to them only.

agreement is not valid when a party in the case has not signed the same or when someone signs for and in behalf of such party without authority to do so

Private respondents were not parties to the compromise agreement. Hence, the judgment approving such agreement cannot have the effect of res judicata upon them since the requirement of identity of parties is not satisfied. A judgment upon a compromise agreement has all the force and effect of any other judgment, hence conclusive only upon parties thereto and their privies

3. Representatives must be authorized with SPA

What if a representative signs the compromise agreement on behalf of the employee, is a Special Power of Attorney needed?

Yes, an SPA is needed. In a case discussed where it was the federation who signed the compromise agreement on behalf of the union. Remember that federation and union are two different entities. And then the SC said, in the absence of an SPA expressly authorizing a representative to sign the compromise agreement on behalf of the union, the compromise agreement signed by such representative is invalid. In this case, the federation has no SPA from the union, hence, the federation is not authorized to represent the union and is not authorized to waive certain rights of the union.

In another case, the one where the union waived the monetary rights of the employees: There was a wage increase, and the employees demanded their salary differential. The union waived the salary differential on behalf of all the employees, and then incorporated such in the compromise agreement. However, the SC said that the compromise agreement is invalid because the union was not authorized to waive those benefits on behalf of the employees. Remember that if the right is personal to the employee (wages, benefits, etc), it cannot be waived unless the employee himself or herself waives it. If the parties signing the compromise agreement is a representative, they have to have a Special Power of Attorney, or proper authorization. If it is a statutory right, it needs waiver or the SPA has to specifically mention that the employee duly authorized another to waive his or her salary differentials for the years so and so. The SPA has to be as specific as possible. If the SPA says that the employee is authorizing the representative to sign the compromise agreement for P10,000.00, and then the representative actually signed an agreement which provides only for P5,000.00, that representative has no authority to represent the employee in that compromise agreement since the SPA is very clear that it only allows the representative to sign for a compromise agreement worth P10,000.00 and not P5,000.00.

Compromise Agreement as Res Judicata on Parties Only

Golden Donuts vs NLRC

Facts: Private respondents Macandog et al. were employees of petitioner Golden Donuts, Inc., and were the complainants in three consolidated cases filed with the LA. They were members of the Kapisanan ng Manggagawa sa Dunkin Donut-CFW. Both panels were able to agree on the rules regarding the CBA negotiation and the management arrived late. This prompted the union panel to walkout. They then held a strike. Golden Donuts wanted to declare the strike illegal. Later on, they entered into a compromise agreement, whereby both parties agreed to withdraw all cases filed against each other. But out of the said 262 striking force, only the five (5) aforementioned complainants disagree (sic) and did not receive the amount due, arguing that the compromise agreement was entered into by their counsel and the President of the Union without their individual consent. Hence these complaints.

Issue: WON the compromise agreement entered into by the union with petitioner company, which has not been consented to nor ratified by respondents minority members has the effect of res judicata upon them

Ruling: NO. A compromise, once approved by final orders of the court has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery

A compromise is basically a contract perfected by mere consent. "Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract."¹⁶ A compromise

We have to construe the power of attorney very strictly. If the authority is for this, it cannot be for that. If the authority is only for this kind of matter, it cannot be extended to another kind of matter. If no SPA to begin with, then the compromise agreement is actually invalid, unless ratified by the employee.

SPA, in writing, signed

Union of Filipro Workers vs NLRC

Facts: A petition for direct certification among rank-and-file workers of SIMEZ was filed before the Med Arbiter. They are affiliated with the UFW. The parties entered into a compromise agreement but there is a question as to its validity, particularly on the validity of such compromise agreement because it was allegedly entered into by the counsel for UFW without authorization.

Issue: W/N the compromise agreement was valid

Ruling: NO. Atty. Modesto Mendoza, counsel for petitioner UFW, whose services were subsequently terminated, was not duly authorized to enter into a compromise with SIMEX and the SANTANDERs. As aptly pointed out by the Solicitor General, Article 1878 of the Civil Code provides that a Special Power of Authority is required before an agent can be authorized to enter into a compromise. It reads:

Art. 1878. Special powers of attorney are necessary in the following cases:

(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired. (Emphasis ours).

No evidence was adduced that would show that the aforementioned counsel for UFW was authorized to enter into a compromise. Correspondingly, he cannot release and discharge SIMEX and the SANTANDERs from their obligation. A perusal of the "Acknowledgment Receipt and Undertaking" reveals that no representative of UFW signed the alleged settlement.

private respondents

Ruling: NO. The authority of attorneys to bind their clients is governed by Section 7, Rule IV of the New Rules of Procedure of the National Labor Relations Commission, which provides:

Authority to bind party. — Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim

When it comes to individual benefits accruing to members of a union from a favorable final judgment of any court, the members themselves become the real parties in interest and it is for them, rather than for the union, to accept or reject individually the fruits of litigation.

The authority to compromise cannot lightly be presumed and should be duly established by evidence.

Hence, the Court finds no reason for the union members to enter into a compromise when the decision of NLRC ordering their reinstatement is more advantageous to them than their being dismissed from their jobs under said Compromise Agreement.

The Compromise Agreement does not apply to private respondents who did not sign the Compromise Agreement, nor avail of its benefits.

However, while respondents Domingo Namia and Rizalde Flores are not bound by the terms of the Compromise Agreement, they are bound by the amended decision of NLRC which provides that members of the board of directors of the union may be dismissed by petitioner subject to the payment of separation pay. The two respondents did not appeal the amended decision after the denial by NLRC of their motion for reconsideration thereof.

General Rubber and Footwear Corporation v. Drilon

Doctrine: The Rules of Court require a special authority before an attorney can compromise the litigation of his clients. The authority to compromise cannot lightly be presumed and should be duly established by evidence.

4. Remedies in case of breach

Scenario: Compromise agreement: It provides the offer of the employer to pay P20,000.00 to settle the case. The employee accepts it by signing the compromise agreement. Copy is submitted to the Labor Arbiter; res judicata; final and executory.

Authority to Compromise

Jag and Haggar Jeans and Sportswear v. NLRC

Facts: The Lakas Manggagawa sa Jag (Union) composed of the rank-and-file employees of Jag & Haggar Jeans and Sportswear Corporation, petitioner herein, staged a strike. Petitioner filed a petition to declare the strike illegal. A compromise agreement was executed and signed by petitioner and the Union represented by its officers.

Issue: Whether or not the Compromise Agreement entered into by petitioner and the Union is binding upon

Now, the employer refuses to pay the P20,000.00. What is the remedy of the employee? Should such an employee file a new labor case?

No, you don't file a new labor case. It is res judicata. It has the effect of a final decision. And what do you do with a final decision? You file a motion for execution. What happens if the employer does not follow the motion for execution? You can file a motion to declare the employer or the other party in contempt. Remember, don't go back to square one when there are other remedies available. If there are reliefs available, do your part by taking advantage of those reliefs.

Remedies in case of violation of compromise agreement

Morales v. NLRC

Facts: Complainants are salesmen and relief salesman of the respondent company San Miguel Beer. They were investigated on irregularities and/or anomalies allegedly committed wherein the respondent company was reportedly to have lost millions of pesos

It appears that many salesmen did not return to the warehouse the containers retrieved from their customers or sold goods to their customers, but allowed the latter to pay for the deposit value of the empties instead of requiring the customers to return the equivalent amount of empties for every full goods purchased.

Issue: Whether or not the compromise agreement is enforceable? YES

Ruling: The compromise agreement is enforceable because a compromise entered into in good faith by workers and their employer to resolve a pending controversy valid and binding on the agreeing parties.

In the case at bench, the compromise agreement was executed by said complainants and SMC in which mutual concessions were given and mutual benefits were derived. The compromise was approved and considered by the NLRC.

As a result, the complainants who so agreed to have their cases amicably settled and compromised were ordered dropped from the complaint. Settlements of this kind not only are recognized to be proper agreements but so encouraged as well.

Under Article 2041 of the Civil Code, should a party fail or refuse to comply with the terms of a compromise or amicable settlement, the other party could either

1. Enforce the compromise by a writ of execution, or
2. Regard it as rescinded and so insist upon his original demand

The original demand of the 4 complainants was for them to be reinstated to their former positions. Certainly, there was nothing erroneous, let alone grave abuse of discretion, on the part of the NLRC when it accordingly ordered their reinstatement with three (3) years of backwages.

5. Cannot compromise a final and executory judgment

What happens if the decision becomes final and executory?

You cannot anymore file for motion to enter into a compromise agreement. It would turn out that you are defying the decision of the Labor Arbiter; you will be held in contempt if you go against the Labor Arbiter's decision which is final and executory. Compromise agreement is valid at any level so long as there is no final and executory decision yet.

Practical note: If you don't want to execute a full judgment, I would say that you just claim what you want from the other party and then file for a motion for execution. Just claim what you want. If the other party is willing to pay, get the money and just not execute the judgment anymore. You are essentially waiving your right to the rest of the money claim. Just a practical application.

Alba Patio de Makati v. NLRC

Doctrine: A final and executory judgment can no longer be altered. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land." Moreover, a final and executory judgment cannot be negotiated, hence, any act to subvert it is contemptuous.

C. WAIVERS AND QUITCLAIMS

What are these waivers and quitclaims?

Waivers and Quitclaims are basically something you sign when you receive something (i.e. separation pay, 13th month pay, etc.) Waivers and Quitclaims basically states that you have received a sum of money, and as such, you are waiving your rights against the employer, hence, you no longer want to pursue the complaint against your employer. You are acknowledging among others that you cannot anymore file a case about a certain dispute because you have already received a sum of money. Any claim that you have filed will be deemed dismissed. You will also state there that you do such waiver voluntarily. Basically the waiver and quitclaims says that you have received what you wanted and that you are no longer interested in filing a case for it, or you are waiving your right for it because you are essentially acknowledging that the other party's obligation has been fulfilled already.

Are waivers and quitclaims looked upon with favor such as those of compromise agreements?

No. Usually, waivers and quitclaims are looked upon

with disfavor because at their core, they are contracts of adhesion. It is usually the employer who drafts the waiver and quitclaim. If you go to DOLE to settle the matters, the employer is more often than not prepares a printed copy of the waiver and quitclaim and would basically ask you to sign it once you accept its offer for settlement.

Are waivers and quitclaims not valid?

No, they are not essentially invalid. There can be valid waivers and quitclaims but they need to meet the requirements of validity; meaning, no vices of consent, there are no threats, the employee is doing this with an informed decision, the employee is aware of what he or she is doing, and that the employee is aware of the contents of the waiver and quitclaims which has been explained to them in a way that they know.

If the waivers and quitclaims contain provisions relating to employees' statutory benefits, would it render such waivers and quitclaims invalid?

It depends, but usually considered as suspicious, therefore, will later on be invalidated by the Labor Tribunals. Waivers and quitclaims are looked upon with disfavor (not favorable in terms of labor law), and as such, if it is something that the employees are entitled to as a matter of right, usually a quitclaim is not seen as valid. For example: 13th month pay. Under the law, an employee is entitled to such benefits. If the employee waived his or her 13th month pay, such will be treated by the Labor Tribunals as **suspicious** because you are entitled to 13th month pay as a matter of law. It is not something as simple as voluntary benefits under the CBA, etc. It is something statutory and you are entitled to receive it. If you are waving it, considering that it is suspicious, usually such waiver or quitclaim would not be enforced and might be even invalidated by the Labor Tribunals.

Another example would be: Retirement pay. Remember our computation, the 22.5 days: 15 days of salary, 5 SIL, and 2.5 days representing 1/12 of your 13th month pay. Let us say the employer's computation is 30 days instead of 22.5 days. That's a bonus. However, what if you got yourself into a labor dispute, the employer offered to pay, but the employer offered an amount much lesser than the 22.5 days, and you already signed a waiver and quitclaim. **What will happen?**

Most likely the Labor Arbiter will invalidate such waiver and quitclaim finding that you cannot compromise and waive away less than what you are entitled to. It will be treated probably as a badge for suspicion, that probably there was a vitiate of consent, etc.

Compromise agreements v. Waivers and Quitclaims

Compromise agreements are looked upon with more favor because it is a contract between the parties. Waivers and quitclaims are usually signed by the

employees only. That is why compromise agreements are more respectable than waivers and quitclaims. Compromise agreements are being created with the aide of negotiation between the parties, discussions, settlement agreement, etc. It is afforded with more validity and there is a presumption as to the consent of the parties. Not to say that you can't try to convince an employee to sign a waiver and quitclaim, but you should know that in entering into a labor case, waiver and quitclaim would probably won't weigh that much than compromise agreement.

Disfavor upon quitclaims and waivers

Veloso and Liguatón v. DOLE

Facts: Veloso, et al. filed a complaint for ULP, underpayment, and non-payment of overtime, holiday, and other benefits. They won in this dispute. Noah's Ark moved for the recomputation of the award. During the same, Veloso et al signed a Quitclaim and Release in consideration of P25K from the original amount of P46k. Veloso et al claim that they were forced to sign their releases by reason of the employer's dire necessity. Noah's Ark counters that the employees' signature was done freely.

Issue: Whether or not the Quitclaim and Release was valid? YES

Ruling: The quitclaims were voluntarily and knowingly made by both petitioners even if they may now deny this. In the case of Veloso, the quitclaim he had signed carried the notation that the sum stated therein had been paid to him in the presence of Atty. Gaga Mauna, his counsel, and the document was attested by Atty. Ferdinand Magabilin, Chief of the Industrial Relations Division of the National Capitol Region of the DOLE. In the case of Liguatón, his quitclaim was made with the assistance of his counsel, Atty. Leopoldo Balguma, who also notarized it and later confirmed it with the filing of the motion to dismiss Liguatón's complaint.

The same Atty. Balguma is the petitioners' counsel in this proceeding. Curiously, he is now challenging the very same quitclaim of Liguatón that he himself notarized and invoked as the basis of Liguatón's motion to dismiss, but this time for a different reason. whereas he had earlier argued for Liguatón that the latter's signature was a forgery, he has abandoned that contention and now claims that the quitclaim had been executed because of the petitioners' dire necessity.

"Dire necessity" is not an acceptable ground for annulling the releases, especially since it has not been shown that the employees had been forced to execute them. It has not even been proven that the considerations for the quitclaims were unconscionably low and that the petitioners had been tricked into accepting them.

The applicable law is Article 227 of the Labor Code providing clearly as follows:

"Art. 227. Compromise agreements. — Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-

compliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation or coercion."

The petitioners cannot renege on their agreement simply because they may now feel they made a mistake in not awaiting the resolution of the private respondent's motion for reconsideration and recomputation. The possibility that the original award might have been affirmed does not justify the invalidation of the perfectly valid compromise agreements they had entered into in good faith and with full voluntariness.

Quitclaims cannot bar an employee from revering benefits to which they are legally entitled

Olacao v. NLRC

Doctrine: Petitioners further contend that their acceptance of separation pay does not operate as a waiver of their claims in the "Illegal Dismissal Case." Indeed, jurisprudence exists to the effect that a deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled (Fuentes vs. NLRC, G.R. No. 76835, November 24, 1988); that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claim arising from the unfair labor practice of the employer (Garcia vs. NLRC, G.R. No. 67825, September 4, 1987, 153 SCRA 639); and that employees who received their separation pay are not barred from contesting the legality of their dismissal and that the acceptance of those benefits would not amount to estoppel.

General Rubber and Footwear Corporation v. Drilon

Doctrine: The waiver of money claims, which in this case were accrued money claims, by workers and employees must be regarded as a personal right, that is, a right that must be personally exercised. For a waiver thereof to be legally effective, the individual consent or ratification of the workers or employees involved must be shown.

Loyola Security and Detective Agency v. NLRC

Doctrine: The New Rules of Procedure of NLRC in Section 2, Rule V (Proceedings Before Labor Arbiter) provides that: x x x "Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing and signed by the parties and their respective counsels, if any, before the Labor Arbiter. The settlement shall be approved by the Labor Arbiter after being satisfied that it was voluntarily entered into by the parties and after having explained to them the terms and consequences thereof.

A compromise agreement entered into by the parties not in the presence of the Labor Arbiter before whom the case is pending shall be approved by him if, after confronting the parties, particularly the complainants, he is satisfied that they understand the terms and conditions of the settlement and that it was entered into freely, and voluntarily by them and the agreement is not contrary to law, morals and public policies."

In the case at bar, the satisfaction of judgment dated October 19, 1990 was executed by the complainants without the assistance of their counsel and without the approval of the Labor Arbiter.

Labor v. NLRC

Doctrine: Recovery of the employees' money claims for the violations of labor standard laws are not barred by the alleged compromise agreements signed by them. Quitclaims do not bar recovery by the employees of their claims if such quitclaims are frowned upon as contrary to public policy. It also said that the employees are still entitled to their money claims if the alleged compromise settlement was for an unconscionably lower amount than that awarded to them by the Labor Arbiter.

In this case, the amounts purportedly received by the petitioners were unreasonably lower than what they were legally entitled to. The "compromise settlements" with the petitioners were not executed with the assistance of the Bureau of Labor Relations or the Regional Office of the DOLE pursuant to Article 227 of the Labor Code.

Goodrich Manufacturing Corp. v. Ativo

Facts: Respondents are former employees of petitioner Goodrich Manufacturing Corporation (Goodrich) assigned as machine or maintenance operators for the different sections of the company, who were eventually given the option to resign on account of lingering financial constraints. Several employees, including respondents, decided to avail of the voluntary resignation option, and thus they were paid their separation pay, supported by waivers and quitclaims. But then, the former employees filed an illegal dismissal case with prayer for payment of their full monetary benefits before the NLRC. The former employees admitted that they were not coerced to sign the quitclaims, however, they insist that they were deceived into signing the quitclaims when they learned that they were not paid their full monetary benefits. Both the Labor Arbiter and the NLRC ruled that respondents executed the quitclaims absent any coercion from the petitioners following their voluntary resignation from the company.

Issue: Whether or not the release, waiver and quitclaim signed by respondents are valid and binding.

Ruling: Yes.

The Court has given effect to quitclaims executed by employees if the employer is able to prove the following **requisites**, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

As held in *Periquet v. National Labor Relations Commission*: "Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding

undertaking."

In this case, the Court finds that:

1st - The contents of the quitclaim documents that have been signed by the respondents are simple, clear and unequivocal. The records of the case are bereft of any substantial evidence to show that respondents did not know that they were relinquishing their right short of what they had expected to receive and contrary to what they have so declared.

2nd - The former employees claim that they were deceived because petitioners did not really terminate their business. Such contention, however, was not proven during the hearing before the Labor Arbiter and the NLRC. Hence, such claim is based only on respondents' surmises and speculations which, unfortunately, can never be used as a valid and legal ground to repudiate respondents' quitclaims.

3rd - the considerations received by the respondents from Goodrich do not appear to be grossly inadequate vis-à-vis what they should receive in full. The difference between the amounts expected from those that were received may, therefore, be considered as a fair and reasonable bargain on the part of both parties.